

**China - Rules for the Implementation of
the Law of the People's Republic of
China on Foreign-Capital Enterprises,
1990**

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**Rules for the Implementation of the Law of the People's Republic of
China on Foreign-Capital Enterprises** 1
**(Approved by the State Council on October 28, 1990, and
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Relations and Trade on December 12, 1990)**

Chapter I - General Provisions 2

Article 1 3

These Rules are formulated in accordance with the provisions in Article 23 of The Law of the People's Republic of China on Foreign-Capital Enterprises. 4

Article 2 5

Foreign-capital enterprises shall be under the jurisdiction of and protection by China's laws. 6

Foreign-capital enterprises, while engaged in business operational activities within the territory of China, must abide by Chinese laws and regulations and must not jeopardize the social and public interests of China. 7

Article 3 8

A foreign-capital enterprise to be established in China must be conducive to the development of China's national economy, be capable of gaining remarkable economic results and shall meet at least one of the following conditions: 9

(1) The enterprise is to adopt advanced technology and equipment, engage in the development of new products, conserve energy and raw materials, and realize the upgrading of products and the replacement of old products with new ones which can be used as import substitutes; 10

(2) Its annual output value of export products accounts for more than 50% of the annual output value of all products, thereby realizing the balance between revenues and expenditures in foreign exchange or with a surplus. 11

Article 4 12

No foreign-capital enterprise shall be established in the following trades: 13

(1) The press, publication, broadcasting, television and movies; 14

(2) Domestic commerce, foreign trade, and insurance; 15

(3) Post and telecommunications; 16

(4) Other trades in which the establishment of foreign-capital enterprises is forbidden, as prescribed by the Chinese government. 17

Article 5 18

The establishment of foreign-capital enterprises shall be restricted in the following trades: 19

(1) Public utilities; 20

(2) Communications and transportation; 21

(3) Real estate; 22

(4) Trust investment; 23

(5) Leasing 24

The application for the establishment of a foreign-capital enterprise in the trades mentioned in the preceding paragraph shall be submitted to the Ministry of Foreign Economic Relations and Trade of the People's Republic of China (hereinafter referred to as the Ministry of Foreign Economic Relations and Trade) for approval, except as otherwise provided by Chinese laws and regulations. 25

Article 6 26

Application for the establishment of a foreign-capital enterprise shall not be approved if the proposed enterprise would involve one of the following circumstances: 27

(1) Injury to China's sovereignty or to social and public interests; 28

(2) Impairment of China's national security; 29

(3) Violation of Chinese laws and regulations; 30

(4) Incompatibility with the requirements of China's national economic development; 31
or

(5) Possible creation of environmental pollution. 32

Article 7 33

A foreign-capital enterprise shall make its own managerial decisions within the approved scope of business operations and shall not be subject to intervention. 34

Chapter II - Procedures for Establishment 35

Article 8 36

The application for the establishment of a foreign-capital enterprise shall be submitted 37

to the Ministry of Foreign Economic Relations and Trade, and after examination and approval, a certificate of approval shall be issued by the Ministry.

With respect to the application for the establishment of a foreign-capital enterprise that comes under one of the following circumstances, the State Council shall authorize the people's government of the relevant province, autonomous region, municipality directly under the Central Government, municipality separately listed on the state plan, or the special economic zone, to issue the certificate of approval after examining and approving the application: 38

(1) The total amount of investment is within the limits of powers for the examination and approval of investments stipulated by the State Council; 39

(2) The proposed enterprises does not need the raw and processed materials to be allocated by the State, or does not influence unfavorably the national comprehensive balance of energy resources, communications and transportation, as well as export quotas for foreign trade. 40

Where the people's government of the province, autonomous region, municipality directly under the Central Government, municipality separately listed on the state plan, or the special economic zone has approved the establishment of a foreign-capital enterprise within its limits of powers granted by the State Council, it shall within 15 days after the approval submit a report to the Ministry of Foreign Economic Relations and Trade for the record (hereinafter the Ministry of Foreign Economic Relations and Trade, the people's government of the province, autonomous region, municipality directly under the Central government, municipality separately listed on the State plan, and the special economic zone shall be called generally as the examining and approving organ). 41

Article 9 42

With respect to a foreign-capital enterprise, the establishment of which has been applied for, if its products are subject to export license, export quota, or import license, or are under restrictions by the State, prior consent of the department of foreign economic relations and trade shall be obtained in accordance with the limits of powers for administration. 43

Article 10 44

A foreign investor shall, prior to the filing of an application for the establishment of a foreign-capital enterprise, submit a report to the local people's government at or above the county level at the place where the proposed enterprise is to be established. The report shall include: the aim of the establishment of the proposed enterprise; the scope and scale of business operation; the products to be produced; the technology and equipment to be adopted and used; the proportion of the sales of products between the domestic market and the foreign market; the area of land to be used and the related requirements; the conditions and quantities of water, electricity, coal, coal gas and other forms of energy resources required; and the requirement of public facilities. 45

The local people's government at or above the county level shall within 30 days after receiving the report submitted by the foreign investor, give a reply in writing to the said foreign investor. 46

Article 11 47

In case that a foreign investor wishes to establish a foreign-capital enterprise, an application shall be submitted to the examining and approving organ through the local people's government at or above the county level at the place where the enterprise is to be established, together with the following documents. 48

- (1) The written application for the establishment of a foreign-capital enterprise; 49
- (2) A feasibility study report; 50
- (3) The articles of association of the foreign-capital enterprise; 51
- (4) The name-list of the legal representatives (or the candidates for members of the board of directors) of the foreign-capital enterprise; 52
- (5) The legal certifying documents and the credit position certifying documents of the foreign investor; 53
- (6) The written reply given by the people's government at or above the county level at the place, where the enterprise is to be established; 54
- (7) An inventory of goods and materials needed to be imported; 55
- (8) Other documents that are required to be submitted. 56

The documents mentioned in items (1) and (3) in the preceding paragraph must be written in the Chinese language; while the documents mentioned in Items (2), (4) and (5) in the preceding paragraph may be written in a foreign language, but a corresponding Chinese translation shall be attached. 57

In the event that two or more foreign investors jointly file an application for the establishment of a foreign capital enterprise, they shall submit a duplicate of the contract concluded and signed between them to the examining and approving organ for the record. 58

Article 12 59

The examining and approving organ shall, within 90 days after receiving all the required documents with respect to an application for the establishment of foreign-capital enterprise, make a decision whether to approve or disapprove the application. In the event that the examining and approving organ has found that the documents mentioned above are not complete, or that some of them are inappropriate, it may call on the applicant to make up the incomplete documents, or to make necessary revisions, within a prescribed time limit. 60

Article 13

61

After the approval of the application for the establishment of a foreign-capital enterprise by the examining and approving organ, the foreign investor shall, within 30 days after receiving the certificate of approval, file an application with the relevant administrative department for industry and commerce for registration, and obtain a business license. The date on which the business license is issued shall be the date of the establishment of the said enterprise.

62

In the event that the foreign investor fails to file an application with the administrative department for industry and commerce for registration on the expiration of the 30 days after receiving the certificate of approval, the certificate of approval for the establishment of the proposed enterprise shall become invalid automatically.

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A foreign-capital enterprise shall, within 30 days after its establishment, go through the procedures for taxation registration with the tax authorities.

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Article 14

65

Foreign investors may appoint a Chinese service agency for enterprises with foreign investment or other economic organizations to handle, on their behalf, the affairs stipulated in Article 9, the first paragraph of Article 10 and Article 11 of these Rules, but a contract of entrustment shall be concluded and signed between them.

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Article 15

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The written application for the establishment of a foreign-capital enterprise shall include the following contents:

68

(1) The name or designation, the residence and the place of registration of the foreign investor, and the name, nationality, and position of the legal representative;

69

(2) The name and residence of the foreign-capital enterprise;

70

(3) The scope of business operations, the varieties of products, and the scale of production;

71

(4) The total amount of investment, the registered capital, the source of funds, and the method of investment contribution and the operation period;

72

(5) The organizational form and organs, and the legal representative of the foreign-capital enterprise;

73

(6) The primary production equipment to be used and the degrees of depreciation, production technology, technological level and their sources;

74

(7) The sales orientation and areas, the sales channels and methods, and the sales proportion between China's market and foreign markets;

75

(8) The arrangements for the revenues and expenditures in foreign exchange;

76

- (9) The arrangements for the establishment of relevant organs of working personnel the engagement and use of workers and staff members, their training, salaries and wages, material benefits, insurance, and labor protection; 77
- (10) The degrees of probable environmental pollution and the measures for tackling pollution; 78
- (11) The selection of sites and the area of land to be used; 79
- (12) The funds, energy resources, raw and processed materials needed in capital construction and in production and business operations and the solutions thereof; 80
- (13) The progress plan for the construction of the project; and 81
- (14) The period of business operations of the foreign-capital enterprise to be established. 82

Article 16 83

The articles of association of a foreign-capital enterprise shall include the following contents: 84

- (1) The name and the residence; 85
- (2) The aim and the scope of business operations; 86
- (3) The total amount of investments, the registered capital, and the time limit for contributing investment; 87
- (4) The form of organization; 88
- (5) The internal organizational structures and their functions and powers as well as their rules of procedures; the functions, duties and limits of powers of the legal representative as well as of the general manager, chief engineer, chief accountant and other staff members; 89
- (6) The principles and system of financial affairs, accounting and auditing; 90
- (7) Labor administration; 91
- (8) The term of business operations, termination, and liquidation; and 92
- (9) The procedures for the amendment of the articles of association. 93

Article 17 94

The articles of association of a foreign-capital enterprise shall become effective after the approval by the examining and approving organ. The same procedure shall apply when amendments are made. 95

Article 18

96

The division or merge of foreign-capital enterprises, and the significant change in capital resulting from other causes, shall be subject to the approval by the examining and approving organ; in addition, the said enterprises shall engage a Chinese registered accountant to carry out verification, and to submit a report on the verification of capital; after the approval by the examining and approving organ, the enterprises concerned shall go through the procedures for the change of the registration with the relevant administrative department for industry and commerce.

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Chapter III - Form of Organization and Registered Capital

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Article 19

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The organizational form of a foreign-capital enterprise shall be a limited liability company. With approval, the enterprise may also take any other liability form.

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With respect to a foreign-capital enterprise which is a limited liability company, the liability of the foreign investor to the enterprise shall be limited to the amount of investment subscribed and contributed to the enterprise by the investor.

101

With respect to a foreign-capital enterprise which takes any other liability form, the liability of the foreign investor to the enterprise shall be dealt with in accordance with the provisions of Chinese laws and regulations.

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Article 20

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The total amount of investment of a foreign-capital enterprise refers to the total amount of funds needed for the establishment of the enterprises, i. e. the sum total of the funds invested in capital construction in accordance with the scope of production and the circulating funds for production.

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Article 21

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The registered capital of a foreign-capital enterprise refers to the total amount of capital registered with the administrative department for industry and commerce for the purpose of establishing the foreign-capital enterprise, i. e. the total amount of investment the foreign investor undertakes to contribute.

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The registered capital of a foreign-capital enterprise shall fit in with the enterprise's scope of business operations; and the proportion between the registered capital and the total amount of investment shall conform with the provisions of the relevant Chinese laws and regulations.

107

Article 22 108

A foreign-capital enterprise shall not reduce the registered capital during the term of business operations. 109

Article 23 110

The increase or assignment of the registered capital of a foreign-capital enterprise shall be subject to approval by the examining and approving organ; in addition, the said enterprise shall go through the procedures for the change of the registration with the administrative department for industry and commerce. 111

Article 24 112

In case that a foreign-capital enterprise intends to mortgage or assign its assets or rights and interests to a foreign unit, the case shall be submitted to the examining and approving organ for approval, and then to the administrative department for industry and commerce for the record. 113

Article 25 114

The legal representative of a foreign-capital enterprise shall be the person-in-charge who, in accordance with the stipulations in the enterprise's articles of association, executes his/her functions and powers on behalf of the enterprise. 115

In the event that the legal representative is unable to execute his/her functions and powers, he/she shall entrust in writing an agent with the execution of his/her functions and powers. 116

Chapter IV - Methods of Contributing Investment and the Time Limit 117

Article 26 118

Foreign investors may use convertible foreign currencies for the contribution of investment, or use as their investment machinery and equipment, industrial property rights, and proprietary technology that are assigned a fixed price. 119

Foreign investors may, after approval by the examining and approving organ, use, as their investment, their profits in Renminbi (RMB) earned from other enterprises with foreign investment established within the territory of China. 120

Article 27

121

In case that foreign investors intend to use machinery and equipment, being assigned a fixed price, as their investment, the said machinery and equipment must meet the following requirements:

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(1) Those that are needed for the production of the foreign-capital enterprise;

123

(2) Those that cannot be produced in China, or that can be produced in China but cannot be guaranteed to meet the needs in terms of technical performance or time of supply.

124

The price fixed for the aforesaid machinery and equipment shall not be higher than the normal price for similar machinery and equipment sold on the international market at the time.

125

With respect to the machinery and equipment, being assigned a fixed price and used as contributing investment, an inventory listing in detail the assigning of fixed prices as contributing investment, including the names, categories, quantities, and the assignment of prices, shall be made and submitted to the examining and approval organ as an appendix to the application for the establishment of the foreign-capital enterprise.

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Article 28

127

In case that foreign investors intend to use industrial property rights and proprietary technology, being assigned a fixed price, as their investment, the said industrial property rights and proprietary technology must meet the following requirements:

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(1) Owned by the foreign investors themselves;

129

(2) Capable of producing new products that are urgently needed by China, or that are suitable for export and marketable abroad.

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The assigning of a fixed price for the aforesaid industrial property rights and proprietary technology shall be in conformity with the general pricing principles of the international market, and the amount of pricing thereof shall not exceed 20% of the registered capital of the foreign-capital enterprise.

131

With respect to those industrial property rights and proprietary technology, being assigned a fixed price for contributing investment, a detailed inventory of relevant data, including a duplicate of the proprietary rights certificate, the effective condition, technological performance, the practical value, the basis and standard for the calculation of pricing, shall be prepared and submitted to the examining and approving organ as an appendix to the application for the establishment of the foreign-capital enterprise.

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Article 29

133

When the machinery and equipment, being assigned a fixed price and used as contributing investment, have arrived at China's port, the foreign-capital enterprise shall

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apply to China's commodity inspection authorities for inspection, which shall then issue an inspection report.

In the event that the variety, quality and quantity of the machinery and equipment, being assigned a fixed price and used as contributing investment, are not in conformity with the variety, quality and quantity of the machinery and equipment, being assigned a fixed price as contributing investment and listed in the inventory submitted to the examining and approving organ, the examining and approving organ has the power to require the foreign investors to make corrections within a prescribed time limit. 135

Article 30 136

After the industrial property rights and proprietary technology priced as contributing investment have been put to use, the examining and approving organ has the power to carry out inspection. In the event that the said industrial property rights and proprietary technology are not in conformity with the data originally provided by the foreign investors, the examining and approving organ has the power to require the foreign investors to make corrections within a prescribed time limit. 137

Article 31 138

The time limit for a foreign investor to make the investment contributions shall be clearly stipulated in the written application for the establishment of the foreign-capital enterprise and also in the articles of association of the enterprise. A foreign investor may make the investment contribution by installments, but the last installment of the contribution shall be made within the period of three years beginning from the day when the business license is issued. The first installment of investment contribution shall not be less than 15% of the total amount of investment contribution that the foreign investor undertakes to make, and shall be made in full within a period of 90 days beginning from the day when the business license is issued. 139

In the event that a foreign investor fails to make in full the first installment of the investment contribution within the time limit stipulated in the preceding paragraph, the certificate of approval for the establishment of the proposed foreign-capital enterprise shall become invalid automatically. The foreign-capital enterprise in question shall go through the procedure for registration cancellation with the relevant administrative department for industry and commerce, and hand in its business license for cancellation. In the event of the failure to go through the procedure for registration cancellation and to hand in the business license for cancellation, the administrative department for industry and commerce shall revoke the business license and announce the case publicly. 140

Article 32 141

After making the first installment of investment contribution, the foreign investor shall make the remaining installments of contribution strictly as scheduled. In the event that 142

a foreign investor is in arrears with the contribution for 30 days without any justification, the case shall be handled in accordance with the provisions of paragraph 2 of Article 31 of these Rules.

In the event that a foreign investor has proper reasons for requesting the postponement of investment contribution, prior consent of the examining and approving organ shall be obtained, and the case shall also be reported to the administrative department for industry and commerce for the record. 143

Article 33 144

After the foreign investor's each installment of investment contribution, the foreign-capital enterprise shall engage a Chinese registered accountant to carry out verification, and to prepare a report on the verification of capital, which shall be submitted to the examining and approving organ and the administrative department for industry and commerce for the record. 145

Chapter V - Use of Site and the Site Use Fees 146

Article 34 147

With respect to the site to be used by a foreign-capital enterprise, the local people's government at or above the county level in the place where the enterprise is to be located, shall make arrangements after examination and verification in the light of the local conditions. 148

Article 35 149

A foreign-capital enterprise shall, within 30 days from the day the business license is issued, go through the procedure for the use of land and obtain the land certificate by presenting the certificate of approval and the business license to the land administration department under the local people's government at or above the county level in the place where the enterprise is to be located. 150

Article 36 151

The land certificate shall be the legal instrument for the foreign-capital enterprise to use land. The foreign-capital enterprise within its term of operations, may not assign its land-use right without permission. 152

Article 37 153

A foreign-capital enterprise shall, when obtaining the land certificate, pay its land use fee to the land administrative department in the place where the enterprise is located. 154

Article 38

155

In case that a foreign-capital enterprise uses land that has already been developed, it shall pay the land development fee.

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The land development fee , as mentioned in the preceding paragraph, includes the expense for the requisition of land, the expense for the pulling down of houses and the settlement allowance, and the expense for the construction of basic installations that match the foreign-capital enterprise. The land development fee may be calculated and collected by the land development unit in a lump-sum, or by yearly installments.

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Article 39

158

In case that a foreign-capital uses land that has not been developed, it may develop the land by itself, or it may entrust a department concerned in China to develop the land.

159

The infrastructure construction shall be carried out under the unified arrangement of the local people's government at or above the county level in the place where the enterprise is to be located.

160

Article 40

161

The standard for the calculation and collection of land use fee and land development fee shall be handled in accordance with pertinent provisions of China.

162

Article 41

163

The term for the use of land by a foreign-capital enterprise shall be the same as the approved operation period of the said enterprise.

164

Article 42

165

foreign-capital enterprise, besides obtaining the land-use right in accordance with the provisions of this Chapter, may also obtain the same right in accordance with the pertinent provisions of other Chinese laws and regulations.

166

Chapter VI - Purchasing and Marketing

167

Article 43

168

A foreign-capital enterprise shall formulate and execute its production and operation plans on its own; the said production and operation plans shall be submitted to the competent department in charge of the trade, in the place where the said enterprise is located, for the record.

169

Article 44

170

A foreign-capital enterprise is entitled to make decisions for itself on the purchase, for its own use, of machinery and equipment, raw and processed materials, fuels, parts and components, fittings, primary parts, means of transport, and articles for office use (hereinafter uniformly called "goods and materials").

171

A foreign-capital enterprise shall, when purchasing goods and materials in China under the same conditions, enjoy the same treatment as enjoyed by the Chinese enterprises.

172

Article 45

173

In case that a foreign-capital enterprise sells its products on the Chinese market, it shall conduct its sales in accordance with the approved sales proportion.

174

In the event that sales of products on the Chinese market by a foreign-capital enterprise exceed the approved sales proportion, the case shall be subjected to the approval by the examining and approving organ.

175

Article 46

176

A foreign-capital enterprise is entitled to export of its own accord, goods produced by itself; it may also appoint a Chinese foreign trade company or a company outside the territory of China to sell its goods on a commission basis.

177

A foreign-capital enterprise is entitled to sell, of its own accord, the products produced by itself on the Chinese market in accordance with the approved sales proportion; it may also appoint a Chinese commercial agency to sell its products on a commission basis.

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Article 47

179

Where machinery and equipment being assigned a fixed price and use by foreign investors as contributing investment require, according to the pertinent provisions of China, import licenses, the foreign investors shall, on the strength of the approved inventory of equipment and goods and materials of the said enterprise to be imported, file an application directly, or through an agency entrusted by them, with the license-issuing organ for obtaining due import licenses.

180

Where a foreign-capital enterprise has to import, in accordance with the approved scope of business, goods and materials for its own use and needed by its production and if, according to the pertinent provisions of China, it is necessary for the said enterprise to obtain import licenses, it shall work out an annual plan for importation, and apply, every six months, to the license-issuing organ for the licenses.

181

With respect to products to be exported by a foreign-capital enterprise, if, according

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to the pertinent provisions of China, it is necessary for the said enterprise to obtain an export license, it shall work out an annual plan for exportation, and apply, every six months, to the license-issuing organ for the license.

Article 48

183

The prices of the goods and materials and technological labor service imported by a foreign-capital enterprise shall not be higher than the normal prices of similar goods and materials and technological labor service on the international market at the time. The price of export products produced by a foreign-capital enterprise shall be fixed by the enterprise itself with reference to the international market prices at the time, but the prices must not be lower than the reasonable export prices. With respect to the evasion of tax by using such methods as importing at high prices while exporting at low prices, the tax authorities shall have the power, in accordance with the pertinent provisions of the tax law, to investigate the legal responsibilities therefor.

184

The pricing of products to be sold by a foreign-capital enterprise on the Chinese market in accordance with the approved sales proportion shall be governed by the pertinent provisions of China concerning the administration of prices.

185

The pricing mentioned in the preceding paragraph shall be reported to the administrative authorities for prices and the tax authorities for the record, and shall be placed under their supervision.

186

Article 49

187

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

188

Chapter VII - Taxation

189

Article 50

190

A foreign-capital enterprise shall pay taxes and duties in accordance with the provisions of Chinese laws and regulations.

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Article 51

192

The workers and staff members of a foreign-capital enterprise shall pay individual income tax in accordance with the provisions of Chinese laws and regulations.

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Article 52

194

The following goods and materials imported by a foreign-capital enterprise shall be exempted from Customs duties and consolidated industrial and commercial tax;

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(1) The machinery and equipment, parts and components, building materials as well as other materials used as investment by the foreign investor and needed for construction, as well as the installation and reinforcement of machinery;

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(2) The machinery and equipment, parts and components, means of communications and transportation for use in production, and equipment for use in production and management, imported, for their own use, by a foreign-capital enterprise with the funds included in the total amount of investment;

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(3) The raw materials and processed materials, auxiliary materials, primary parts, parts and components, and articles and materials for packaging imported by a foreign-capital enterprise for the production of export products.

198

In the event that the imported goods and materials, as mentioned in the preceding paragraph, are resold within the territory of China, or are used in the production of products to be sold within the territory of China, the foreign-capital enterprise concerned shall pay the taxes or make up the taxes in accordance with the provisions of the tax law of China.

199

Article 53

200

The export commodities produced by a foreign-capital enterprise, except those whose exportation is restricted by China, shall be exempted from Customs duties and consolidated industrial and commercial tax in accordance with the tax law of China.

201

Chapter VIII - Control of Foreign Exchange

202

Article 54

203

Foreign exchange affairs of a foreign-capital enterprise shall be handled in accordance with the pertinent laws and regulations of China concerning foreign exchange control.

204

Article 55

205

A foreign-capital enterprise shall, on the strength of the business license issued by the administrative department for industry and commerce, open an account at a bank which may handle foreign exchange business within the territory of China, and its receipts and payments in foreign exchange shall be subject to the supervision by the interested bank.

206

The foreign exchange revenue of a foreign-capital enterprise shall be deposited in the foreign exchange account of the bank where it has opened an account: and the foreign exchange expenses shall be paid from the foreign exchange account. 207

Article 56 208

A foreign-capital enterprise shall achieve by itself the balance of revenues and expenditures in foreign exchange. 209

In the event that a foreign-capital enterprise is unable to strike by itself the balance between revenues and expenditure in foreign exchange, the foreign investor shall indicate it clearly in the application for the establishment of the enterprise, and put forward a specific plan for solving the problem; the examining and approving organ shall give a reply after consultation with departments concerned. 210

In the event that the foreign investor has indicated in the application for the establishment of the foreign-capital enterprise, that the balance of revenues and expenditure in foreign exchange would be achieved by itself no government department shall be responsible for the solution of the balance problem of revenues and expenditure in foreign exchange for the said enterprise. 211

With respect to products, manufactured by a foreign-capital enterprise, urgently needed in China, capable of replacing similar imported goods, and permitted to be sold in China, the payments may be made in foreign exchange, subject to the approval by the Chinese administrative department for foreign exchange control. 212

Article 57 213

In case that a foreign-capital enterprise has the necessity to open a foreign exchange account at a bank outside the territory of China to meet the needs of production and business operations, the case shall be submitted the Chinese administrative department for foreign exchange control for approval and, in accordance with the provisions of the Chinese administrative department for foreign exchange control, regular reports on the conditions of revenues and expenditures in foreign exchange and statements of account shall be submitted. 214

Article 58 215

The wages and salaries as well as other rightful earnings in foreign exchange of foreign workers and staff members and of those from Hong Kong, Macao and Taiwan working in a foreign-capital enterprise may be remitted freely out of the country after taxes have been paid in accordance with the provisions of the Chinese tax law. 216

Chapter IX - Financial Affairs and Accounting 217

Article 59 218

A foreign-capital enterprise shall, in accordance with Chinese laws, regulations and the provisions of financial organs, set up financial and accounting systems, which shall be reported, for the record, to the financial departments and the tax authorities at the place where the enterprise is located. 219

Article 60 220

The fiscal year of a foreign-capital enterprise shall begin from January 1 and end on December 31 of Gregorian calendar. 221

Article 61 222

Reserve funds and bonus and welfare funds for workers and staff members shall be withdrawn from the profits after a foreign-capital enterprise has paid income tax in accordance with the provisions of the Chinese tax law. The proportion of reverse funds to be withdrawn shall not be lower than 10% of the total amount of profits after payment of tax; the withdrawal of reserve funds may be stopped when the total cumulative reserve has reached 50% of the registered capital. The proportion of bonus and welfare funds for workers and staff members to be withdrawn shall be determined by the foreign-capital enterprise of its own accord. 223

In the event that deficits of previous fiscal years of a foreign-capital have not been made up, it may not distribute the profits, while the undistributed profits of previous fiscal year may be distributed together with the distributable profits of the current fiscal year. 224

Article 62 225

Accounting vouchers, account books and accounting statements made by a foreign-capital enterprise shall be written in the Chinese language; if they are written in a foreign language, notes in the Chinese language are required. 226

Article 63 227

Business accounting of a foreign-capital enterprise shall be conducted independently. The annual accounting statements and liquidation accounting statements of a foreign-capital enterprise shall be prepared in accordance with the provisions of the Chinese competent departments for financial and tax affairs. If accounting statements are prepared in foreign currencies, accounting statements in which the foreign currencies are converted into Renminbi (RMB) shall be prepared at the same time. 228

The annual accounting statements and liquidation accounting statements of a foreign- 229

capital enterprise, as stipulated in the second and third paragraphs of this Article, together with the verification report prepared by a Chinese registered accountant, shall be submitted, within a prescribed time limit, to the China competent departments for financial and tax affairs and also to the examining and approving organ and the administrative department for industry and commerce for the record.

Article 64

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The foreign investor may engage Chinese or foreign accounting personnel to consult the account books of a foreign-capital enterprise, and the expenses thus entailed shall be borne by the foreign investor.

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Article 65

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A foreign-capital enterprise shall submit its annual statement of assets and liabilities and annual statement of profit and loss to the competent departments for financial and tax affairs, and also to the examining and approving organ as well as the administrative department for industry and commerce for the record.

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Article 66

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A foreign-capital enterprise shall set up account books at the place where the said enterprise is located, and shall receive supervision of the competent departments for financial and tax affairs.

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With respect to any foreign-capital enterprise which violates the provisions in the preceding paragraph, the competent departments for financial and tax affairs may impose a fine, and the administrative department for industry and commerce may order to suspend its business operations or revoke its business license.

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Chapter X - Workers and Staff Members

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Article 67

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In case that a foreign-capital enterprise employs workers and staff members within the territory of China, both the enterprise and the workers and staff members shall, in accordance with the Chinese laws and regulations, conclude and sign a labor contract. Matters as employment, dismissal, salaries and wages, welfare labor protection and, labor insurance shall be clearly stipulated in the contract.

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Foreign-capital enterprises may not hire child laborers.

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Article 68

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The workers and staff members of a foreign-capital enterprise shall have the right to set up a grass-roots trade union organization and carry out trade union activities in accordance with the provisions of the Trade Union Law of the People's Republic of China.

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Chapter XI - Trade Union

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Article 69

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The workers and staff members of a foreign-capital enterprise shall have the right to set up a grass-roots trade union organization and carry out trade union activities in accordance with the provisions of the Trade Union Law of the People's Republic of China.

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Article 70

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The trade union in a foreign-capital enterprise shall represent the interests of workers and staff members, and have the right to conclude labor contracts with the enterprise on their behalf, and to supervise the execution of the labor contracts.

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Article 71

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The basic tasks of the trade union in a foreign-capital enterprise shall be as follows: to safeguard the lawful rights and interests of workers and staff members in accordance with the provisions of Chinese laws and regulations, and to assist the enterprise in the rational arrangements and use of welfare and bonus funds for the workers and staff members; to organize workers and staff members in carrying on political study, in learning scientific, technical and professional knowledge, in carrying out cultural, artistic and sports activities; to educate workers and staff members in complying with labor discipline and in striving to fulfill various economic tasks of the enterprise.

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When a foreign-capital enterprise holds discussions on problems concerning the commendation and punishment of workers and staff members, the wage system, welfare benefits, labor protection and labor insurance, representatives of the trade union shall have the right to attend the discussions as nonvoting attendants. A foreign-capital enterprise shall listen to the opinions of the trade union, and win its cooperation.

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Article 72

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A foreign-capital enterprise shall give an active support to the work of the trade union of the enterprise, and, in accordance with the provisions of the Trade Union Law of the Peoples' Republic of China, provide the trade union organization with the necessary

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houses and equipment for handling trade union work, holding meetings and conducting such collective undertakings as welfare benefits, and sports activities for workers and staff members. Every month, the enterprise shall appropriate a sum equal to 2% of the actual total amount of wages and salaries of workers and staff members to the trade union as outlay, and the trade union of the enterprise shall use this sum of money in accordance with the measures for the administration of trade union outlay, as formulated by the All-China Federation of Trade Unions.

Chapter XII - Term of Operations, Termination and Liquidation

Article 73

The term of operations of a foreign-capital enterprise shall be proposed by the foreign investor in the written application for the establishment of the enterprise in the light of the specific conditions of different enterprises, and shall be subjected to the approval by the examining and approving organ.

Article 74

The term of operations of a foreign-capital enterprise shall be calculated from the day when the business license is issued.

In the event that the term of operations of a foreign-capital enterprise has to be extended upon its expiration, the enterprise shall, 180 days before the expiration of the term of operations, file an application for the extension of the term of operations with the examining and approving organ. The examining and approving organ shall, within 30 days from the day of receiving the application, determine whether to approve or disapprove the extension.

The foreign-capital enterprise shall, after obtaining the approval for an extension of its term of operations and within 30 days from the day of receiving the approval for the extension, go through the procedure for the change of registration with the administrative department for industry and commerce.

Article 75

A foreign-capital enterprise that falls under one of the following circumstances shall terminate its business operations:

- (1) The term of operations expires;
- (2) The foreign investor decides to dissolve it because of poor operation and management resulting in serious losses;
- (3) Business cannot be carried on because of heavy losses as a result of natural disasters, wars or other force majeure;*

- (4) Bankruptcy; 265
- (5) Disbanded by law because it has violated Chinese laws and regulations or jeopardized social and public interests; 266
- (6) Other causes for dissolution, as stipulated in the enterprise's articles of association, have occurred. 267

If a foreign-capital enterprise falls under any of the circumstances as stipulated in Items (2), (3) and (4) of the preceding paragraph, it shall submit, of its own accord, an application for the termination of business operations to the examining and approving organ for verification and approval. The date of approval after verification by the examining and approving organ shall be the date of the said enterprise's termination. 268

Article 76 269

In case that a foreign-capital enterprise terminates its business operations in accordance with the provisions in Items (1), (2), (3) and (6) of Article 75, the enterprise shall, make a public announcement and notify the creditors; and, it shall, within 15 days from the day of the public termination announcement for liquidation, the principles of liquidation, and the candidates for the liquidation committee to the examining and approving organ for verification and approval before liquidation is carried out. 270

Article 77 271

The liquidation committee shall be composed of the legal representatives of the foreign-capital enterprise, the representatives of the creditors, the representatives from the competent authorities concerned; Chinese registered accountants and lawyers shall be engaged in the liquidation. 272

Priority shall be given to the payment of expenses for liquidation made from the existing property of the foreign-capital enterprise. 273

Article 78 274

The liquidation committee shall execute the following functions and powers: 275

- (1) To convene a meeting of creditors; 276
- (2) To take over and liquidate the property of the enterprise in question, and to prepare the statement of assets and liabilities and the inventory of property; 277
- (3) To propose a basis for the valuation and computation of the property of the enterprise in question; 278
- (4) To work out a liquidation plan; 279
- (5) To recover creditor's rights and to pay the debts; 280

- (6) To receive the payments from shareholders which have not yet been made; 281
- (7) To distribute the remaining property; 282
- (8) To represent the foreign-capital enterprise in bringing a suit or responding to a suit. 283

Article 79 284

Prior to the conclusion of the liquidation of foreign-capital enterprise, the foreign investor shall not remit or carry the said enterprise's funds out of the territory of China, nor dispose of the enterprise's property privately. 285

If , upon the conclusion of the liquidation of a foreign-capital enterprise, its net assets and remaining property exceed its registered capital, the excess portion shall be regarded as profit on which income tax shall be imposed in accordance with the Chinese tax law. 286

Article 80 287

Upon the conclusion of the liquidation of a foreign-capital enterprise, it shall go through the procedures for the cancellation of registration with the administrative department for industry and commerce, and to hand in the business license for cancellation. 288

Article 81 289

While disposing of the assets and properties of a foreign-capital enterprise, Chinese enterprises or other economic organizations shall, under equal conditions, have the priority in purchasing the aforesaid assets and properties. 290

Article 82 291

In case that a foreign-capital enterprise terminates its business operations in accordance with the provisions in Item (4) of Article 75, its liquidation shall be carried out with reference to the pertinent laws and regulations of China. 292

Chapter XIII - Supplementary Provisions 293

Article 83 294

With respect to the various categories of insurance for a foreign-capital enterprise, it shall take out insurance from insurance companies within the territory of China. 295

Article 84 296

If a foreign-capital enterprise concludes economic contracts with any other Chinese enterprise or economic organization, the Economic Contract Law of the People's Republic of China shall be applied. 297

If a foreign-capital enterprise concludes economic contracts with any foreign company, enterprise or individual, the Law of the People's Republic of China on Economic Contracts Involving Foreign Interests shall be applied. 298

Article 85 299

Cases concerning the establishment, in China's mainland, of enterprises, the capital of which is owned solely by the companies, enterprises, and other economic organizations or individuals in the regions of Hong Kong, Macao or Taiwan, or by Chinese citizens residing in foreign countries, shall be handled with reference to these Rules. 300

Article 86 301

Foreign workers and staff members, and workers and staff members from Hong Kong, Macao and Taiwan, who are working in a foreign-capital enterprise, may carry into the country means of transport and articles for daily use that are within reasonable quantities and for their own use, and they shall go through the import procedures in accordance with pertinent provisions of China. 302

Article 87 303

The right to interpret these Rules shall reside in the Ministry of Foreign Economic Relations and Trade. 304

Article 88 305

These Rules shall go into effect as of the date of promulgation. 306

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