

Decision of the State Council on Amending the Rules for the Implementation of the Law of the People's Republic of China on Foreign-capital Enterprises

(Promulgated by Decree No. 301 of the State Council of the People's Republic of China on April 12, 2001, and effective as of the date of promulgation)

In order to meet the needs of new situations of opening up to the outside world of China and further improve the foreign investment environment, in accordance with the Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on Foreign-capital Enterprises, the Rules for the Implementation of the Law of the People's Republic of China on Foreign-capital Enterprises are amended as follows:

1. Article 3 is amended as: "A foreign-capital enterprise to be established must be conducive to the development of China's national economy and be capable of accomplishing remarkable economic results. The State encourages foreign-capital enterprises to adopt advanced technology and equipment, engage in the development of new products, realize the upgrading of products and the replacements of products with ones of a higher grade, conserve energy and raw materials, and encourages the establishment of foreign-capital enterprises oriented to exporting products."
2. Articles 4 and 5 are merged and amended as: "Trades in which the establishment of a foreign-capital enterprise is prohibited or restricted shall be governed by the provisions of the State on guiding foreign investment and the catalogue of industries for guiding foreign investment."
3. In Article 10, "the proportion of the sales of products between the domestic market and the foreign market" is deleted.
4. In Article 15, "and the proportion of sales between China's market and foreign markets" is deleted.
5. Article 22 is amended as: "A foreign-capital enterprise shall not reduce its registered capital during the term of operations. Where, however, a reduction is really needed due to a change in the total amount of investment, the scale of production and operation, etc., approval shall be obtained from the examining and approving organ."
6. The first paragraph of Article 27 is amended as: "Where foreign investors intend to use machinery and equipment that are assigned a fixed price as a contribution, the said machinery and equipment shall be those that are needed for production in the foreign-capital enterprise."
7. The first paragraph of Article 28 is amended as: "Where foreign investors intend to use industrial property rights and proprietary technology, assigned a fixed price, as their contribution, the said industrial property rights and proprietary technology shall be owned by the foreign investors themselves."
8. Article 43 is deleted.
9. Article 45 is amended as: "A foreign-capital enterprise may sell its products on the Chinese market. The State encourages foreign-capital enterprises to export products made by themselves."
10. The second paragraph of Article 46 is amended as: "A foreign-capital enterprise may sell, of its own accord, the products made by itself on the Chinese market, and may also appoint a commercial agency to sell its products on a commission basis."
11. The second and third paragraphs of Article 48 are deleted.
12. In Article 52, "The following goods and materials imported by a foreign-capital enterprise shall be exempted from Customs duties and consolidated industrial and commercial tax" is amended as "The following goods and materials imported by a foreign-capital enterprise shall be granted a tax reduction or tax exemption in accordance

with the relevant provisions of the tax law of China".

13. Article 53 is amended as: "The export commodities produced by a foreign-capital enterprise, except those whose exportation is restricted by China, shall be granted a tax reduction, tax exemption or tax refund in accordance with the relevant provisions of the tax law of China."

14. Article 56 is deleted.

15. Article 84 is amended as: "If a foreign-capital enterprise concludes contracts with any other company, enterprise or economic organization, or with any individual, the Contract Law of the People's Republic of China shall be applied."

16. Article 87 is deleted.

In addition, the wording of some clauses shall be modified and the order of articles be adjusted appropriately. This Decision shall be effective as of the date of promulgation.

The Rules for the Implementation of the Law of the People's Republic of China on Foreign-capital Enterprises shall be re-promulgated after corresponding revisions are made in accordance with this Decision.

Rules for the Implementation of the Law of the People's Republic of China on Foreign-capital Enterprises

(Approved by the State Council on October 28, 1990, promulgated by the Ministry of Foreign Economic Relations and Trade on December 12, 1990, and revised in accordance with the Decision of the State Council on Amending the Rules for the Implementation of the Law of the People's Republic of China on Foreign-capital Enterprises on April 12, 2001)

Chapter I General Provisions

Article 1 These Implementing Rules are formulated in accordance with the provisions of the Law of the People's Republic of China on Foreign-capital Enterprises.

Article 2 Foreign-capital enterprises are under the jurisdiction of and are protected by China's laws. Foreign-capital enterprises, while engaged in business operational activities within the territory of China, must abide by Chinese laws and regulations and shall not jeopardize the social and public interests of China.

Article 3 A foreign-capital enterprise to be established must be conducive to the development of China's national economy and be capable of accomplishing remarkable economic results. The State encourages foreign-capital enterprises to adopt advanced technology and equipment, engage in the development of new products, realize the upgrading of products and the replacement of products with ones of a higher grade, conserve energy and raw materials, and encourages the establishment of foreign-capital enterprises oriented to exporting products.

Article 4 Trades in which the establishment of a foreign-capital enterprise is prohibited or restricted shall be governed by the provisions of the State on guiding foreign investment and the catalogue of industries for guiding foreign investment.

Article 5 The application for the establishment of a foreign-capital enterprise shall not be approved if the

proposed enterprise would involve one of the following circumstances:

- (1) injury to China's sovereignty or to social and public interests;
- (2) impairment of China's national security;
- (3) violation of Chinese laws and regulations;
- (4) incompatibility with the requirements of China's national economic development; or
- (5) possible creation of environmental pollution.

Article 6 Foreign-capital enterprises make their own operational and managerial decisions within the approved scope of operations and are not subject to interference.

Chapter II Procedures for Establishment

Article 7 The application for the establishment of a foreign-capital enterprise shall be submitted to the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China (hereinafter referred to as the Ministry of Foreign Trade and Economic Cooperation), and after examination and approval, a certificate of approval shall be issued.

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:

- (1) the total amount of investment is within the limits of authority for the examination and approval of investments provided by the State Council; or
- (2) the proposed enterprise does not need 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, etc..

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 authority granted by the State Council, it shall, within 15 days after the approval, submit a report to the Ministry of Foreign Trade and Economic Cooperation for the record (hereinafter the Ministry of Foreign Trade and Economic Cooperation, and 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 examination and approval organ).

Article 8 With respect to a foreign-capital enterprise applying for establishment, where its products involve export licenses, export quotas, or import licenses, or belong to State-restricted imports, prior consent of the department of foreign economic relations and trade shall be obtained in accordance with the relevant administrative limits of authority.

Article 9 A foreign investor shall, prior to the filing of an application for the establishment of a foreign-capital enterprise, submit a report on the following particulars 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 foreign-capital enterprise; the scope and scale of business operations; the products to be produced; the technology and equipment to be adopted and used; 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 requirements for public facilities, etc.

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.

Article 10 Where a foreign investor wishes to establish a foreign-capital enterprise, an application shall be submitted to the examination and approval organ through the local people's government at or above the county level at the place where the proposed foreign-capital enterprise is to be established, together with the following documents:

- (1) the application for the establishment of a foreign-capital enterprise;
- (2) a feasibility study report;
- (3) the articles of association of the foreign-capital enterprise;
- (4) the name-list of the legal representative (or the candidates for members of the board of directors) of the foreign-capital enterprise;
- (5) the legal certifications and the credit certifications of the foreign investor;
- (6) the written reply given by the local people's government at or above the county level at the place where the proposed foreign-capital enterprise is to be established;
- (7) an inventory of goods and materials needed to be imported; and
- (8) other documents that are required to be submitted.

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.

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 examination and approval organ for the record.

Article 11 The examination and approval organ shall, within 90 days after receiving all the required documents with respect to an application for the establishment of a foreign-capital enterprise, make a decision whether to approve or disapprove the application. In the event that the examination and approval 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 a supplement or revisions within a prescribed time limit.

Article 12 After the approval of the application for the establishment of a foreign-capital enterprise by the examination and approval 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.

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

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

Article 13 Foreign investors may appoint a Chinese service agency for enterprises with foreign investment or other economic organization to handle, on their behalf, the affairs provided in Article 8, the first paragraph of Article 9 and Article 10 of these Rules, but a contract of entrustment shall be concluded and signed between them.

Article 14 The application for the establishment of a foreign-capital enterprise shall include the following contents:

- (1) the name or name of the organization, domicile and the place of registration of the foreign investor, and the name, nationality, and position of the legal representative;
- (2) the name and domicile of the foreign-capital enterprise to be established;
- (3) the scope of operations, varieties of products, and the scale of production;
- (4) the total amount of investment, the registered capital, the source of funds, and the methods and time limit of making contribution to the foreign-capital enterprise to be established;
- (5) the organizational form and structure of the organization, and the legal representative of the foreign-capital enterprise to be established;
- (6) the principal production equipment to be used and the extent of its age, production technology, technological level and their sources;
- (7) the sales orientation and areas, the sales channels and methods;
- (8) the arrangements for the revenues and expenditures in foreign exchange;
- (9) the arrangements for the establishment of relevant departments and working personnel, the recruitment of workers and staff members, their training, salaries and wages, material benefits, insurance, and labor protection, etc.;
- (10) the extent to which environmental pollution may be created and the measures for resolution;
- (11) the selection of sites and the area of land to be used;
- (12) the funds, energy resources, raw and processed materials needed in capital construction and in production and operations and the solutions thereof;
- (13) the progress plan for the implementation of the project; and
- (14) the period of operations of the foreign-capital enterprise to be established.

Article 15 The articles of association of a foreign-capital enterprise shall include the following contents:

- (1) the name and the domicile;
- (2) the aim and the scope of operations;
- (3) the total amount of investment, the registered capital, and the time limit for making the contribution;
- (4) the form of organization;
- (5) the internal organizational structures and their functions and powers as well as their rules of procedure; the functions, duties and limits of authority of the legal representative as well as of the general manager, chief engineer, chief accountant and other staff members;
- (6) the principles and system of financial affairs, accounting and auditing;
- (7) labor administration;
- (8) the term of operations, the termination, and the liquidation; and
- (9) the procedures for the amendment of the articles of association.

Article 16 The articles of association of a foreign-capital enterprise shall become effective after approval by the examination and approval organ. The same procedure shall apply when amendments are made.

Article 17 The division or merges of foreign-capital enterprises, and significant changes in capital resulting from other causes, shall be subject to approval by the examination and approval organ; in addition, the said enterprises shall engage a Chinese certified public accountant to carry out verification, and to submit a report on the capital verification; after approval by the examination and approval organ, the enterprises concerned shall go through the procedures for the change of the registration with the relevant administrative department for industry and commerce.

Chapter III Form of Organization and Registered Capital

Article 18 The organizational form of a foreign-capital enterprise shall be a limited liability company. With approval, the enterprise may also take other liability forms.

With respect to a foreign-capital enterprise that 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 foreign investor.

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

Article 19 The total amount of investment of a foreign-capital enterprise refers to the total amount of funds needed for the establishment of the enterprise, i.e. the sum total of the funds invested in capital construction in accordance with the scope of production and circulating funds for production.

Article 20 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.

The registered capital of a foreign-capital enterprise shall fit in with the enterprise's scale of operations; and the proportion between the registered capital and the total amount of investment shall conform to the relevant provisions of China.

Article 21 A foreign-capital enterprise shall not reduce its registered capital during the term of operations. Where, however, a reduction is really needed due to a change in the total amount of investment, the scale of production and operation, etc., approval shall be obtained from the examination and approval organ.

Article 22 The increase or assignment of the registered capital of a foreign-capital enterprise shall be subject to the approval by the examination and approval organ, and the procedures for change of registration shall be handled with the administrative department for industry and commerce.

Article 23 A foreign-capital enterprise mortgaging or assigning its assets or rights and interests externally, shall undergo approval by the examination and approval organ, and submit it to the administrative department for industry and commerce for the record.

Article 24 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, exercises his/her functions and powers

on behalf of the enterprise.

When the legal representative is unable to exercise his/her functions and powers, he/she shall entrust in writing an agent with the exercise of his/her functions and powers.

Chapter IV Methods of Making Contributions and Time Limits

Article 25 Foreign investors may use convertible foreign currencies for a contribution, and may use machinery and equipment, industrial property rights, and proprietary technology that are assigned a fixed price for a contribution.

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

Article 26 Where foreign investors intend to use machinery and equipment that are assigned a fixed price as a contribution, the said machinery and equipment shall be those that are indispensable to production in the foreign-capital enterprise.

The appraised price 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.

With respect to the machinery and equipment, assigned a fixed price and used as a contribution, an inventory listing in detail the assigned prices as a contribution, including the names, categories, quantities, and the assignment of prices, etc., 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.

Article 27 Where foreign investors intend to use industrial property rights and proprietary technology, assigned a fixed price, as their contribution, the said industrial property rights and proprietary technology shall be owned by the foreign investors themselves.

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 assigned thereto shall not exceed 20% of the registered capital of the foreign-capital enterprise.

With respect to those industrial property rights and proprietary technology, assigned a fixed price as a contribution, a detailed inventory of relevant data, including a duplicate of the ownership certificate, the circumstances of effectiveness, technological performance, the practical value and the basis and standard for the calculation of pricing, shall be prepared and submitted to the examination and approval organ as an appendix to the application for the establishment of the foreign-capital enterprise.

Article 28 When the machinery and equipment, assigned a fixed price and used as a contribution, have arrived at a Chinese port, the foreign-capital enterprise shall apply to China's commodity inspection authorities for inspection, which shall then issue an inspection report.

Where that the variety, quality and quantity of the machinery and equipment, assigned a fixed price and used as a contribution, are not in conformity with the variety, quality and quantity of the machinery and equipment, assigned a fixed price as a contribution and listed in the inventory submitted to the examination and approval organ, the examination and approval organ has the power to require the foreign investors to make corrections within a prescribed time limit.

Article 29 After the industrial property rights and proprietary technology priced as a contribution have been put to use, the examination and approval organ has the right to carry out an inspection. Where the said industrial property rights and proprietary technology are not in conformity with the data originally provided by the foreign investors, the examination and approval organ has the right to require the foreign investors to make corrections within a prescribed time limit.

Article 30 The time limit for a foreign investor to make the contribution shall be clearly stated in the application for the establishment of the foreign-capital enterprise and the articles of association of the enterprise. A foreign investor may make the contribution in installments, but the last installment of the contribution shall be made within three years from the day when the business license is issued. The first installment of the contribution shall not be less than 15% of the total amount of the 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. Where a foreign investor fails to make in full the first installment of the contribution within the time limit provided 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 shall go through the procedure for registration cancellation with the 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 make a public announcement.

Article 31 After making the first installment of the contribution, the foreign investor shall make the remaining installments of the contribution strictly as scheduled. In the event that 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 the second paragraph of Article 30 of these Rules.

Where a foreign investor has proper reasons for requesting the postponement of the contribution, prior consent of the examination and approval organ shall be obtained, and the case shall also be reported to the administrative department for industry and commerce for the record.

Article 32 After each installment of the foreign investor's contribution, the foreign-capital enterprise shall engage a Chinese certified public accountant to carry out verification, and to prepare a report on the capital verification, which shall be submitted to the examination and approval organ and the administrative department for industry and commerce for the record.

Chapter V Use of the Land and Its Use Fees

Article 33 With respect to the land 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 light of local conditions.

Article 34 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 of the local people's government at or above the

county level in the place where the enterprise is located.

Article 35 The land certificate shall be the legal instrument for the foreign-capital enterprise to use land. The foreign-capital enterprise during its term of operations, shall not assign its land-use right without permission.

Article 36 A foreign-capital enterprise shall, when obtaining the land certificate, pay its land use fee to the land administration department in the place where the enterprise is located.

Article 37 In using land that has already been developed, a foreign-capital enterprise shall pay the land development fee.

The land development fee, as mentioned in the preceding paragraph, includes the cost of the requisition of the land, of pulling down of houses and of re-settlement, and the cost of the construction of infrastructure necessary for 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.

Article 38 In using land that has not been developed, a foreign-capital enterprise may develop the land by itself, or it may entrust a unit concerned in China to develop the land. 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 foreign-capital enterprise is located.

Article 39 The standard for the calculation and collection of land use fees and land development fees of foreign-capital enterprises shall be handled in accordance with the pertinent provisions of China.

Article 40 The term for the use of land by a foreign-capital enterprise shall be the same as the approved period of operation of the said enterprise.

Article 41 A 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 provisions of other Chinese laws and regulations.

Chapter VI Purchasing and Marketing

Article 42 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"). A foreign-capital enterprise shall, when purchasing goods and materials in China under the same circumstances, enjoy the same treatment as enjoyed by Chinese enterprises.

Article 43 A foreign-capital enterprise may sell its products on the Chinese market. The State encourages foreign-capital enterprises to export products made by themselves.

Article 44 A foreign-capital enterprise is entitled to export, of its own accord, products made 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.

A foreign-capital enterprise may sell, of its own accord, the products made by itself on the Chinese market, and may also appoint a commercial agency to sell its products on a commission basis.

Article 45 Where machinery and equipment being contributed by a foreign investor as part of its investment require, according to the relevant provisions of China, import licenses, the foreign-capital enterprise shall, on the strength of the approved inventory of equipment and goods and materials to be imported by the enterprise, file an application directly, or through an agency entrusted by it, with the license-issuing organ for obtaining due import licenses.

Where a foreign-capital enterprise has to import, within the approved scope of business, goods and materials for its own use and needed by its production and if, according to the provisions of China, it is necessary for the 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.

With respect to products to be exported by a foreign-capital enterprise, if, according to the provisions of China, it is necessary for the said enterprise to obtain export licenses, it shall work out an annual plan for exportation, and apply, every six months, to the license-issuing organ for the licenses.

Article 46 The prices of the goods and materials and technological labor services imported by a foreign-capital enterprise shall not be higher than the normal prices of similar goods and materials and technological labor services on the international market at the time. The prices of export products made 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 shall not be lower than 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 right, in accordance with the provisions of the tax law, to investigate for legal responsibility.

Article 47 A foreign-capital enterprise shall provide statistical data 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 the relevant provisions of China concerning the statistical system for the utilization of foreign capital.

Chapter VII Taxation

Article 48 A foreign-capital enterprise shall pay taxes and duties in accordance with the provisions of Chinese laws and regulations.

Article 49 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.

Article 50 The following goods and materials imported by a foreign-capital enterprise shall be granted a tax reduction or tax exemption in accordance with the relevant provisions of the tax law of China:

- (1) the machinery and equipment, parts and components, building materials as well as other materials used as an investment by the foreign investor and needed for construction, as well as the installation and reinforcement of machinery;
- (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; or
(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. The imported goods and materials as mentioned in the preceding paragraph, which, upon approval, are resold within the territory of China, or are used in the production of products to be sold within the territory of China, shall be subject to payment of taxes or repayment of taxes in accordance with the provisions of the tax law of China.

Article 51 The export commodities produced by a foreign-capital enterprise, except those whose exportation is restricted by China, shall be granted a tax reduction, tax exemption or tax refund in accordance with the relevant provisions of the tax law of China.

Chapter VIII Control of Foreign Exchange

Article 52 Foreign exchange affairs of a foreign-capital enterprise shall be handled in accordance with the pertinent regulations of China on foreign exchange control.

Article 53 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 depository bank.

The foreign exchange revenues 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.

Article 54 Where 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 to the Chinese administrative department for foreign exchange for approval and, in accordance with the provisions of the Chinese administrative department for foreign exchange, regular reports on the conditions of revenues and expenditures in foreign exchange and statements of account shall be submitted.

Article 55 The wages and salaries as well as other proper 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 territory after taxes have been paid in accordance with the provisions of the Chinese tax law.

Chapter IX Financial Affairs and Accounting

Article 56 A foreign-capital enterprise shall, in accordance with Chinese laws, regulations and the provisions of finance organs, set up financial and accounting systems, which shall be reported, for the record, to the finance departments and the tax authorities at the place where the enterprise is located.

Article 57 The fiscal year of a foreign-capital enterprise shall begin from January 1 and end on December 31 of Gregorian calendar.

Article 58 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.

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

Article 59 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.

Article 60 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 finance and tax. 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.

The annual accounting statements and liquidation accounting statements of a foreign-capital enterprise shall be verified by a Chinese certified public accountant who shall submit a verification report.

The annual accounting statements and liquidation accounting statements of a foreign-capital enterprise, as provided in the second and third paragraphs, together with the verification report prepared by a Chinese certified public accountant, shall be submitted, within a prescribed time limit, to the Chinese competent departments for finance and tax and also to the examination and approval organ and the administrative department for industry and commerce for the record.

Article 61 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.

Article 62 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 finance and tax, and also to the examination and approval organ as well as the administrative department for industry and commerce for the record.

Article 63 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 finance and tax.

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 suspension of operations or revocation of the business license.

Chapter X Workers and Staff Members

Article 64 Where 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 Chinese laws and regulations, conclude labor contracts. Matters as employment, dismissal, salaries and wages, welfare, labor protection and labor insurance shall be clearly stipulated in the contracts.

Foreign-capital enterprises shall not hire child laborers.

Article 65 A foreign-capital enterprise shall be responsible for the professional and technical training of its workers and staff members, and for establishing an assessment system, so that workers and staff members are capable of meeting the needs of the enterprise's production and development in the area of production and management functions.

Chapter XI Trade Unions

Article 66 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.

Article 67 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.

Article 68 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 arrangement and use of welfare and bonus funds for the workers and staff members; to organize workers and staff members in carrying out 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.

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 meetings as nonvoting delegates. A foreign-capital enterprise shall listen to the opinions of the trade union, and win its cooperation.

Article 69 A foreign-capital enterprise shall give 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 People's Republic of China, provide the trade union organization with the necessary building and equipment for handling trade union work, holding meetings, and holding worker and staff collective welfare, cultural and sports activities. Every month, the foreign-capital enterprise shall allocate a sum equal to 2% of the actual total amount of wages and salaries of workers and staff as trade union funds, and the trade union of the enterprise shall use this sum of money in accordance with the measures for the administration of trade union funds, as formulated by the All-China Federation of Trade Unions.

Chapter XII Term, Termination and Liquidation

Article 70 The term of operations of a foreign-capital enterprise shall be proposed by the foreign investor in the application for the establishment of the enterprise in light of the specific circumstances of different industries and enterprises, and shall be subjected to the approval by the examination and approval organ.

Article 71 The term of operations of a foreign-capital enterprise shall be calculated from the day when the business license is issued.

Where 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 examination and approval organ. The examination and approval 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 72 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) operations cannot be continued because of heavy losses as a result of natural disasters, wars or other force majeure;
- (4) bankruptcy;
- (5) disbanded in accordance with the law because it has violated Chinese laws and regulations or jeopardized social and public interests;
- (6) other causes for dissolution, as stipulated in the enterprise's articles of association, have occurred.

If a foreign-capital enterprise falls under any of the circumstances as provided 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.

Article 73 In case that a foreign-capital enterprise terminates its operations in accordance with the provisions in Item (1), (2), (3) or (6) of Article 72 of these Rules, the enterprise shall, within 15 days from the date of termination, make a public announcement and notify the creditors and, within 15 days from the date of the issuance of the public announcement of termination, put forward the procedures and 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.

Article 74 The liquidation committee shall be comprised of the legal representative of the foreign-capital enterprise, the representatives of the creditors and the representatives from the competent authorities concerned and Chinese certified public accountants and lawyers shall be engaged to participate.

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

Article 75 The liquidation committee shall exercise the following functions and powers:

- (1) to convene a meeting of creditors;
- (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;
- (3) to propose a basis for the valuation and computation of the property;
- (4) to work out a liquidation plan;
- (5) to recover creditors' rights and to pay debts;
- (6) to receive payments from shareholders which have not yet been made;
- (7) to distribute the remaining property; and
- (8) to represent the foreign-capital enterprise in bringing a suit or responding to a suit.

Article 76 Prior to the conclusion of the liquidation of the foreign-capital enterprise, the foreign investor shall not remit or carry the enterprise's funds out of the territory of China, nor dispose of the enterprise's property privately.

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 Chinese tax law.

Article 77 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 hand in the business license for cancellation.

Article 78 While disposing of the property of a foreign-capital enterprise, Chinese enterprises or other economic organizations shall have the preferential right to purchase as an equal footing.

Article 79 Where a foreign-capital enterprise terminates its operations in accordance with the provisions in Item (4) of Article 72 of these Rules, liquidation shall be carried out with reference to the pertinent laws and regulations of China.

Where a foreign-capital enterprise terminates its operations in accordance with the provisions in Item (5) of Article 72 of these Rules, liquidation shall be carried out in accordance with the relevant provisions of China.

Chapter XIII Supplementary Provisions

Article 80 A foreign-capital enterprise shall be covered against various categories of insurance from insurance companies within the territory of China.

Article 81 If a foreign-capital enterprise concludes contracts with any other company, enterprise or economic organization, or with any individual, the Contract Law of the People's Republic of China shall be applied.

Article 82 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.

Article 83 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 the relevant Chinese provisions.

Article 84 These Rules shall be effective as of the date of promulgation.