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Implementing Rules of the Law of the People's Republic of China on Wholly Foreign-owned Enterprises (Amended in 2001)

CHAPTER 1 – GENERAL PRINCIPLES

Article 1

These Rules are formulated pursuant to the provisions of Article 23 of the Law of the People's Republic of China on Wholly Foreign-owned Enterprises.

Article 2

Wholly foreign-owned enterprises shall be subject to the jurisdiction of and the protection of the laws of China.

Wholly foreign-owned enterprises, while engaged in business operational activities within China, shall comply with the laws and regulations of China and must not harm the social and public interests of China.

Article 3

A wholly foreign-owned enterprise to be established in China must be conducive to the development of China's national economy, be capable of gaining remarkable economic results. This country encourages wholly foreign-owned enterprises to use advanced technology and equipment, to engage in the development of new products, to upgrade products, and to economize energy and raw materials, and encourages the establishment of wholly foreign-owned enterprises specializing in manufacturing import products.

Article 4

Trades in which the establishment of wholly foreign-owned enterprises is prohibited or restricted shall abide by rules of this country on guiding foreign investment orientation and the guiding catalogue of foreign investment industries.

Article 5

Application for the establishment of a wholly foreign-owned enterprise shall not be approved if the proposed enterprise falls into 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 the laws and regulations of China;
- (4) Incompatibility with the requirements of China's national economic development; or
- (5) Possible creation of environmental pollution.

Article 6

No Record A wholly foreign-owned enterprise shall make its own managerial decisions within the approved scope of business operations and shall be interfered with.

CHAPTER 2 – PROCEDURES FOR ESTABLISHMENT

Article 7

The application for the establishment of a wholly foreign-owned enterprise shall be submitted to the MOFERT, and after examination and approval, a certificate of approval shall be issued by the MOFERT.

For the application for the establishment of a wholly foreign-owned 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 planning, 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 powers for the examination and approval of investments stipulated by the State Council; and
- (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.

If the people's government of the province, autonomous region, municipality directly under the Central Government, municipality separately listed on the state planning, or the special economic zone has approved the establishment of a wholly foreign-owned enterprise within its limits of powers granted by the State Council, it shall within 15 days upon approval submit a report to the MOFERT for the record (hereinafter the MOFERT, 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 collectively as the "examining and approving authorities").

Article 8

For a wholly foreign-owned 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 according to the powers authorized.

Article 9

Prior to the filing of an application for the establishment of a wholly foreign-owned enterprise, a foreign investor shall, submit a report to the local people's government at and 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 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.

The local people's government at and above the county level shall give a reply in writing to the said foreign investor within 30 days upon receipt of the report submitted by the foreign investor.

Article 10

If a foreign investor wishes to establish a wholly foreign-owned enterprise, an application shall be submitted to the examining and approving authorities through the local people's government at and above the county level at the place where the enterprise is to be established, together with the following documents:

- (1) The written application for the establishment of a wholly foreign-owned enterprise;
- (2) A feasibility study report;
- (3) The articles of association of the wholly foreign-owned enterprise;
- (4) The name-list of the legal representatives (or the candidates for members of the board of directors) of the wholly foreign-owned enterprise;
- (5) The legal certifying documents and the credit position certifying documents of the foreign investor;
- (6) The written reply given by the people's government at and above the county level at the place, where the 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) of the preceding paragraph must be 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 thereto.

Where 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 authorities for the record.

Article 11

The examining and approving authorities shall, within 90 days upon receipt of all the required documents for an application for the establishment of wholly foreign-owned enterprise, make a decision whether to approve or disapprove the application. Where the examining and approving authorities 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.

Article 12

Upon approval of the application for the establishment of a wholly foreign-owned enterprise by the examining and approving authorities, the foreign investor shall, within 30 days upon receipt of the certificate of approval, file an application with the relevant administration 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.

Where the foreign investor fails to file an application with the administration for industry and commerce for registration on the expiration of the 30 days upon receipt of the certificate of approval, the certificate of approval for the establishment of the proposed enterprise shall become invalid automatically.

A wholly foreign-owned 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 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.

Article 14

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

- (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;
- (2) The name and residence of the wholly foreign-owned enterprise;
- (3) The scope of business operations, the varieties of products, and the scale of production;
- (4) The total amount of investment, the registered capital, the source of funds, and the method of investment contribution and the operation period;
- (5) The organizational form and structure, and the legal representative of the wholly foreign-owned enterprise;
- (6) The primary production equipment to be used and the degrees of depreciation, 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 agencies of working personnel the engagement and use of workers and staff members, their training, salaries and wages, material benefits, insurance, and labor protection;
- (10) The degrees of probable environmental pollution and the measures for tackling pollution;
- (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 business operations and the solutions thereof;
- (13) The progress plan for the construction of the project; and
- (14) The period of business operations of the wholly foreign-owned enterprise to be established.

Article 15

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

- (1) The name and the residence;
- (2) The aim and the scope of business operations;

- (3) The total amount of investments, the registered capital, and the time limit for contributing investment;
- (4) The form of organization;
- (5) The internal organizational structures and their functions and powers as well as their measures 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;
- (6) The principles and system of financial affairs, accounting and auditing;
- (7) Labor administration;
- (8) The duration, termination, and liquidation; and
- (9) The procedures for the amendment of the articles of association.

Article 16

The articles of association of a wholly foreign-owned enterprise shall become effective upon approval by the examining and approving authorities. The same procedure shall apply when amendments are made.

Article 17

The division or merge of wholly foreign-owned enterprises, and the significant change in capital resulting from other causes, shall be subject to the approval by the examining and approving authorities; 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; upon approval by the examining and approving authorities, the enterprises concerned shall go through the procedures for the change of the registration with the relevant administration for industry and commerce.

CHAPTER 3 – FORM OF ORGANIZATION AND REGISTERED CAPITAL

Article 18

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

For a wholly foreign-owned 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 investor.

For a wholly foreign-owned enterprise, which takes any other liability form, the liability of the foreign investor to the enterprise shall be handled pursuant to the provisions of the laws and regulations of China.

Article 19

The total amount of investment of a wholly foreign-owned 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 line with the scope of production and the circulating funds for production.

Article 20

No RecordThe registered capital of a wholly foreign-owned enterprise refers to the total amount of capital registered with the administration for industry and commerce for establishing the wholly foreign-owned enterprise, i.e. the total amount of investment the foreign investor undertakes to contribute.

The registered capital of a wholly foreign-owned 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 the laws and regulations of China.

Article 21

Article 22

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

Article 23

If a wholly foreign-owned 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 authorities for approval, and then to the administration for industry and commerce for the record.

Article 24

The legal representative of a wholly foreign-owned enterprise shall be the person-in-charge who, pursuant to the stipulations in the enterprise's articles of association, performs his/her functions and powers on behalf of the enterprise.

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

CHAPTER 4 – METHODS OF CONTRIBUTING INVESTMENT AND THE TIME LIMIT

Article 25

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.

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

Article 26

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 be necessary equipment for the production of such wholly foreign-owned enterprises:

- (1) Those that are needed for the production of the wholly foreign-owned enterprise; and
- (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.

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.

For 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 agency as an appendix to the application for the establishment of the wholly foreign-owned enterprise.

Article 27

In case that foreign investors intend to use industrial property rights and know-how, being assigned a fixed price, as their investment, the said industrial property rights and know-how shall be owned by these foreign investors:

- (1) Owned by the foreign investors themselves; and

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

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 wholly foreign-owned enterprise.

For these 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 authorities as an appendix to the application for the establishment of the wholly foreign-owned enterprise

Article 28

When the machinery and equipment, being assigned a fixed price and used as contributing investment, have arrived at China's port, the wholly foreign-owned enterprise shall apply to China's commodity inspection authorities for inspection, which shall then issue an inspection report.

If 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 authorities, the examining and approving authorities 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 contributing investment have been put to use, the examining and approving authorities has the power to carry out inspection. If 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 authorities has the power 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 investment contributions shall be clearly stipulated in the written application for the establishment of the wholly foreign-owned enterprise and 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.

If 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 wholly foreign-owned enterprise shall become invalid automatically. The wholly foreign-owned enterprise in question shall go through the procedure for registration cancellation with the relevant administration 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 administration for industry and commerce shall revoke the business license and announce the case publicly.

Article 31

Upon making the first installment of investment contribution, the foreign investor shall make the remaining installments of contribution strictly as scheduled. Where a foreign investor is in arrears with the contribution for 30 days without any justification, the case shall be handled pursuant to the provisions of paragraph 2 of Article 31 of these Rules.

Where a foreign investor has proper reasons for requesting the postponement of investment contribution, prior consent of the examining and approving authorities shall be obtained, and the case shall be reported to the administration for industry and commerce for the record.

Article 32

Upon making the foreign investor's each installment of investment contribution, the wholly foreign-owned 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 authorities and the administration for industry and commerce for the record.

CHAPTER 5 – USE OF SITE AND THE SITE USE FEES

Article 33

For the site to be used by a wholly foreign-owned 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.

Article 34

A wholly foreign-owned 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.

Article 35

The land certificate shall be the legal instrument for the wholly foreign-owned enterprise to use land. The wholly foreign-owned enterprise within its duration, may not assign its land-use right without permission.

Article 36

A wholly foreign-owned 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.

Article 37

If a wholly foreign-owned enterprise uses land that has already been developed, it shall pay the land development fee.

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 wholly foreign-owned 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

If a wholly foreign-owned 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.

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.

Article 39

The standard for the calculation and collection of land use fee and land development fee shall be handled pursuant to the relevant provisions of China.

Article 40

No RecordThe term for the use of land by a wholly foreign-owned enterprise shall be the same as the approved operation period of the said enterprise.

Article 41

Wholly foreign-owned enterprise, besides obtaining the land-use right pursuant to the provisions of this Chapter, may also obtain the same right pursuant to the relevant provisions of other laws and regulations of China.

CHAPTER 6 – PURCHASING AND MARKETING

Article 42

A wholly foreign-owned 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 transportation, and articles for office use (hereinafter uniformly called "goods and materials").

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

Article 43

A wholly foreign-owned enterprise may sell its products on the Chinese market. This country encourages wholly foreign-owned enterprises to export their manufactured products.

Article 44

A wholly foreign-owned 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 territories of China to sell its goods on a commission basis.

A wholly foreign-owned enterprise is entitled to sell, of its own accord, the products produced by itself on the Chinese market; it may also entrust a Chinese commercial agency to sell its products on a commission basis.

Article 45

If machinery and equipment being assigned a fixed price and use by foreign investors as contributing investment require, according to the relevant 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 agency for obtaining due import licenses.

If a wholly foreign-owned enterprise has to import, based on the approved scope of business, goods and materials for its own use and needed by its production and if, according to the relevant 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 agency for the licenses.

For products to be exported by a wholly foreign-owned enterprise, if, according to the relevant 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 agency for the license.

Article 46

The prices of the goods and materials and technological labor service imported by a wholly foreign-owned 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 wholly foreign-owned 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. For 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, pursuant to the relevant provisions of the tax law, to investigate the legal responsibilities therefore.

Article 47

A wholly foreign-owned enterprise shall provide statistical data and submit statistical statements to the departments concerned pursuant to 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.

CHAPTER 7 – TAXATION

Article 48

A wholly foreign-owned enterprise shall pay taxes and duties pursuant to the provisions of the laws and regulations of China.

Article 49

The workers and staff members of a wholly foreign-owned enterprise shall pay individual income tax pursuant to the provisions of the laws and regulations of China.

Article 50

The following goods and materials imported by a wholly foreign-owned enterprise shall be exempted from duties and taxes or enjoy the reduction of duties and taxes according to the relevant provisions of this country on taxation:

(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;

(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 wholly foreign-owned enterprise with the funds included in the total amount of investment; and

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

If the imported goods and materials are resold within China, or are used in the production of products to be sold within China as mentioned in the preceding paragraph, the wholly foreign-owned enterprise concerned shall pay the taxes or make up the taxes pursuant to the provisions of the tax law of China.

Article 51

The export commodities produced by a wholly foreign-owned enterprise, except those whose export is restricted by China, shall enjoy the exemption from taxes and duties, reduction of taxes and duties, or the drawback according to the relevant provisions of this country on taxation.

CHAPTER 8 – FOREIGN EXCHANGE

Article 52

Foreign exchange affairs of a wholly foreign-owned enterprise shall be handled pursuant to the relevant laws and regulations of China on the administration of foreign exchange.

Article 53

A wholly foreign-owned enterprise shall open an account at a bank, which may handle foreign exchange business within China based on the business license issued by the administration for industry and commerce, and its receipts and payments in foreign exchange shall be subject to the supervision by the bank concerned.

The foreign exchange revenue of a wholly foreign-owned 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

If a wholly foreign-owned enterprise has the necessity to open a foreign exchange account at

a bank outside the territories of China to meet the needs of production and business operations, the case shall be submitted the Chinese administrative department of foreign exchange for approval and, pursuant to the provisions of the Chinese administrative department of 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 rightful earnings in foreign exchange of foreign workers and staff members and of those from Hong Kong, Macao and Taiwan working in a wholly foreign-owned enterprise may be remitted freely out of the country after taxes have been paid pursuant to the provisions of the Chinese tax law.

CHAPTER 9 – FINANCIAL AFFAIRS AND ACCOUNTING

Article 56

A wholly foreign-owned enterprise shall, pursuant to Chinese laws, regulations and the provisions of financial agencies, 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.

Article 57

The fiscal year of a wholly foreign-owned 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 wholly foreign-owned enterprise has paid income tax pursuant to the provisions of the Chinese tax law. The proportion of reserve 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 wholly foreign-owned enterprise of its own accord.

Where deficits of previous fiscal years of a wholly foreign-owned 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 profits of the current fiscal year, which are to be distributed.

Article 59

Accounting vouchers, account books and accounting statements made by a wholly foreign-

owned 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 wholly foreign-owned enterprise shall be conducted independently. The annual accounting statements and liquidation accounting statements of a wholly foreign-owned enterprise shall be prepared pursuant to 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.

The annual accounting statements and liquidation accounting statements of a wholly foreign-owned 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 authorities and the administration 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 wholly foreign-owned enterprise, and the expenses thus entailed shall be borne by the foreign investor.

Article 62

A wholly foreign-owned 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 authorities as well as the administration for industry and commerce for the record.

Article 63

A wholly foreign-owned 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.

Any wholly foreign-owned enterprise that has violated the provisions in the preceding paragraph, the competent departments for financial and tax affairs may impose a fine, and the administration for industry and commerce may order to suspend its business operations or revoke its business license.

CHAPTER 10 – WORKERS AND STAFF MEMBERS

Article 64

If a wholly foreign-owned enterprise employs workers and staff members within China, both the enterprise and the workers and staff members shall, pursuant to the laws and regulations of China, 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.

Wholly foreign-owned enterprises shall not hire child labors.

Article 65

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

CHAPTER 11 – TRADE UNION

Article 66

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

Article 67

The trade union in a wholly foreign-owned 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 trade union in a wholly foreign-owned enterprise shall have the following basic tasks: to safeguard the lawful rights and interests of workers and staff members pursuant to the provisions of the laws and regulations of China, and to assist the enterprise in the rational arrangements and use of welfare and bonus funds for the workers and staff members; to authorize 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 fulfil various economic tasks of the enterprise.

When a wholly foreign-owned 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 wholly foreign-owned enterprise shall listen to the opinions of the trade union, and win its cooperation.

Article 69

A wholly foreign-owned enterprise shall give an active support to the work of the trade union of the enterprise, and, pursuant to the provisions of the Trade Union Law of the Peoples' Republic of China, provide the trade union organization with the necessary 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 pursuant to the measures for the administration of trade union outlay, as formulated by the All-China Federation of Trade Unions.

CHAPTER 12 – DURATION, TERMINATION AND LIQUIDATION

Article 70

The duration of a wholly foreign-owned enterprise shall be proposed by the foreign investor in the written application for the establishment of the enterprise according to the actual situation of enterprise, and shall be subjected to the approval by the examining and approving authorities.

Article 71

The duration of a wholly foreign-owned enterprise shall be commencing from the day of the issuance of its business license.

If the duration of a wholly foreign-owned enterprise has to be extended upon its expiration, the enterprise shall file an application for the extension of the duration with the examining and approving authorities within 180 days before the expiration of the duration. The examining and approving authorities shall, within 30 days from the day of receiving the application, determine whether to approve the extension or not.

The wholly foreign-owned enterprise shall, after obtaining the approval for an extension of its duration 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 administration for industry and commerce.

Article 72

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

- (1) The duration 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;
- (5) Disbanded by law because it has violated the laws and regulations of China or jeopardized social and public interests;
- (6) Other causes for dissolution, as stipulated in the enterprise's articles of association, have occurred.

If a wholly foreign-owned 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 authorities for verification and approval.

The date of approval after verification by the examining and approving authorities shall be the date of the said enterprise's termination.

Article 73

If a wholly foreign-owned enterprise terminates its business operations pursuant to 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 authorities for verification and approval before liquidation is carried out.

Article 74

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

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

Article 75

The liquidation committee shall perform 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 of the enterprise in question;
- (4) To work out a liquidation plan;
- (5) To recover creditor's rights and to pay the debts;
- (6) To receive the payments from shareholders which have not yet been made;
- (7) To distribute the remaining property; and
- (8) To represent the wholly foreign-owned enterprise in bringing a suit or responding to a suit.

Article 76

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

If, upon the conclusion of the liquidation of a wholly foreign-owned 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 pursuant to the Chinese tax law.

Article 77

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

Article 78

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

Article 79

Where a wholly foreign-owned enterprise terminates its business operations pursuant to the provisions in Item (4) of Article 75, its liquidation shall be carried out with reference to the relevant laws and regulations of China.

CHAPTER 13 – SUPPLEMENTARY RULES

Article 80

A wholly foreign-owned enterprise shall take out insurance from insurance companies within China for all insurance policies.

Article 81

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

Article 82

These Rules shall be applicable with reference to the establishment in Mainland China of enterprises of which the capital is owned solely by the companies, enterprises, and other economic organizations or individuals in Hong Kong, Macao or Taiwan, or by Chinese citizens residing in foreign countries.

Article 83

Foreign workers and staff members, and workers and staff members from Hong Kong, Macao and Taiwan, who are working in a wholly foreign-owned enterprise, may carry into the country means of transportation and articles for daily use that are within reasonable quantities and for their own use, and they shall go through the importation procedures pursuant to the relevant provisions of China.

Article 84

These Rules shall take effect as of the date of promulgation.