

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

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Order of the State Council of the People's Republic of China (No.301)

The Decision of the State Council Regarding the Revision of Rules for the Implementation of the Law of the People's Republic of China on Foreign-funded enterprises is now promulgated, and shall come into force as of the date of promulgation.

Premier Zhu Rongji

April 12, 2001

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

(Revised according to the Decision of the State Council Regarding the Revision of Rules for the Implementation of the Law of the People's Republic of China on Foreign-funded enterprises on April 12, 2001, approved on October 28, 1990 by the State Council, issued on December 12, 1990 by the Ministry of Foreign Economic Relations and Trade)

**Chapter I General Provisions**

Article 1 These Rules are formulated according to the Law of the People's Republic of China on Foreign-funded enterprises.

Article 2 Foreign-funded enterprises shall be subject to and under the protection of Chinese Law.

Foreign-funded enterprises engaging in business in the People's Republic of China must abide by Chinese laws and regulations and must not harm the social and public interests of China.

Article 3 A foreign-funded enterprise to be established must benefit the development of China's national economy and be capable of gaining remarkable economic results. The state encourages foreign-funded enterprises to use advanced technology and equipment, engage in the development of new products, realize the upgrading of products and the replacement of old products with new ones, economize energy and raw materials, and it is also encouraged to establish foreign-funded enterprises which are export oriented.

Article 4 Trades in which the establishment of foreign-funded enterprises is forbidden or restricted shall be determined and established according to the provisions regarding state guidance for foreign investment orientation and guiding catalogue of industries for foreign investment.

Article 5 No application for the establishment of a foreign-funded enterprise shall be approved if the proposed enterprise is under any of the following circumstances:

- (1) injuring China's sovereignty or social and public interests;
- (2) endangering China's national security;
- (3) in violation of Chinese laws and regulations;
- (4) not in keeping with the requirements of China's national economic development;
- (5) may result in environmental pollution.

Article 6 A foreign-funded enterprise shall, within the approved scope of business, have its autonomy in operation and management, and be free from any interference.

#### Chapter II Establishment Procedures

Article 7 The application for the establishment of a foreign-funded enterprise shall be subject to the examination and approval by the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China (hereinafter referred to as the MFTEC), which shall issue a certificate of approval to those approved.

If any applications for the establishment of a foreign-funded enterprise is under any 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, city directly under State planning or special economic zone to conduct the examination and approval and issue a certificate of approval to those approved:

- (1) the total amount of investment is within the limits of power for the examination and approval of investment stipulated by the State Council;
- (2) the enterprise shall not need any raw materials to be allocated by the state, and not influence unfavorably the national comprehensive balance of energy resources, communications and transportation and export quotas for foreign trade.

The people's government of the relevant province, autonomous region, municipality directly under the Central Government, city directly under State planning or special economic zone that has, within the authorization by the State Council, approved any application for the establishment of a foreign-funded enterprise shall, within 15 days since the approval has been issued, report to the MFTEC for record (hereinafter the Ministry of Foreign Trade and Economic Cooperation and the

people's government of the relevant province, autonomous region, municipality directly under the Central Government, city directly under State planning and special economic zone shall be, in general, referred to as the examining and approving authority).

Article 8 With regard to any foreign-funded enterprise that applies for establishment, if its products shall involve export license, export quota, import license or the import of which is restricted by the state, a prior consent shall be obtained from the competent authority of foreign economic relations and trade in accordance with the relevant administrative power.

Article 9 Before submitting any application for the establishment of a foreign-funded enterprise, the foreign investor shall submit to the local people's government at or above the county level at the place where the foreign-funded enterprise is to be established a report regarding matters such as the purpose of the enterprise, its scope and scale of business, products, technology and equipment, land area to be needed and related requirements, conditions and quantities of water, electricity, coal, coal gas or other energy resources required, and requirements to public facilities.

The relevant local people's government at or above the county level shall, within 30 days from the date of receiving the report submitted by the foreign investor, give him a reply in writing.

Article 10 Any foreign investor who wishes to establish a foreign-funded enterprise shall submit an application to the examining and approving authority through the relevant local people's government at or above the county level at the place where the foreign-funded enterprise is to be established, together with the following documents:

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

Documents of (1) and (3) of the preceding paragraph must be prepared in Chinese, while those of (2), (4) and (5) of the same paragraph may be written in a foreign language but the corresponding

Chinese translations should be attached.

If two or more foreign investors jointly apply for the establishment of a foreign-funded enterprise, they shall submit a copy of the contract between them two to the examining and approving authority for record.

Article 11 The examining and approving authority shall, within 90 days from the date of receiving all the documents required for the application for the establishment of a foreign-funded enterprise, make a decision on whether to approve or disapprove the application. When finding that the documents mentioned above are not complete or that some of them are inappropriate, the examining and approving authority may demand supplementation and corrections to be made within a prescribed time limit.

Article 12 The foreign investor shall, within 30 days from the date of receiving the approval certificate issued by the examining and approving authority, apply for registration with and obtain business license from the administrative department for industry and commerce. The date of issue of the business license of the foreign-funded enterprise shall be the date of its establishment.

If the foreign investor fails to apply to the administrative department for industry and commerce for registration within 30 days from the date of receiving the approval certificate for the establishment of the foreign-funded enterprise, the approval certificate shall become invalid automatically.

The foreign-funded enterprise shall, within 30 days from the date of establishment, conduct taxation registration with the tax authorities.

Article 13 Any foreign investor may appoint a Chinese service agency for foreign-funded enterprises or any other economic organization to handle the affairs stipulated in Article 8, in the first paragraph of Article 9 and Article 10 of these Rules, provided that a contract of entrustment shall be concluded between them.

Article 14 A written application for the establishment of a foreign-funded enterprise shall contain:

- (1) the name, domicile, place of registration of the foreign investor, and the name, nationality and position of its legal representative;
- (2) the name and domicile of the foreign-funded enterprise that is to be established;
- (3) the scope of business, products and production scale;
- (4) the total amount of investment, registered capital, source of funds, form of investment and duration of the foreign-funded enterprise;
- (5) the form of organization, internal departments and legal representative of the foreign-funded

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enterprise:

(6) the primary production equipment to be used and the degrees of depreciation thereof, production technology and the level thereof, as well as the sources of all of them;

(7) sales orientation and territories, as well as sales channels and methods, of the products;

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

(9) relevant establishments of the internal departments and sizes of the personnel thereof, arrangements for matters such as the recruitment, training, salaries and wages, welfare, insurance and labor protection of and for workers and staff members;

(10) the degrees of possible environmental pollution and measures for solving this problem;

(11) the site of the enterprise and the area thereof;

(12) funds, energy, raw materials to be needed in capital construction and in production and operations, and the solutions thereof;

(13) schedule of the project;

(14) duration of the foreign-funded enterprise that is to be established.

Article 15 The articles of association of a foreign-funded enterprise shall contain:

(1) the name and domicile;

(2) the aim and scope of business;

(3) the total amount of investment, registered capital, and the time limit of capital subscription;

(4) the form of organization;

(5) the establishments of the internal departments and their functions and powers and rules of procedures, duties and power limits of the legal representative and of other persons such as the general manager, chief engineer and chief accountant;

(6) the principles and system of financial affairs, accounting and auditing;

(7) labor management;

(8) the operating period, termination and liquidation of the enterprise;

(9) procedures for amending the articles of association.

Article 16 The articles of association of a foreign-funded enterprise shall become effective upon the approval by the examining and approving authority. The same procedure shall apply whenever any amendment thereto is made.

Article 17 Any division or merger of foreign-funded enterprises or any of their significant changes in capital resulting from any other causes shall be subject to the approval by the examining and approving authority, and for which changes, the relevant enterprises shall engage a Chinese certified public accountant to make verification and render a capital verification report; upon approval by the examining and approving authority, the enterprises shall go through the procedures for the change of registration with the administrative department for industry and commerce.

### Chapter III Form of Organization and Registered Capital

Article 18 The form of organization of a foreign-funded enterprise shall be a limited liability company. Other liability forms may be adopted by approval.

In case of a limited liability company, the foreign investor shall be liable for the enterprise to the extent of what he has contributed for the capital.

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

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

Article 20 The registered capital of a foreign-funded enterprise refers to the total amount of capital registered with the administrative department for industry and commerce for the purpose of establishing the foreign-funded enterprise, i.e. the total amount of investment that the foreign investor undertakes to contribute.

The amount of registered capital of a foreign-funded enterprise must be in keeping with the enterprise's operation scale, and the ratio between the registered capital and the total amount of investment shall conform to the relevant Chinese provisions.

Article 21 In its operating period, no foreign-funded enterprise may reduce their registered capital. If however, it is really needed to make such reduction due to some changes such as those in the total amount of investment or production scale, it may be reduced upon the approval by the examining and approving authority.

Article 22 Any increase or assignment of the registered capital of a foreign-funded enterprise shall be subject to the approval by the examining and approving authority, and then the enterprise shall go through the procedures for change of registration with the administrative department for industry and commerce.

Article 23 Where any foreign-funded enterprise intends to mortgage or assign its assets or right and interests to a third party, the case shall be submitted to the examining and approving authority for approval, and then to the administrative department for industry and commerce for record.

Article 24 The legal representative of a foreign-funded enterprise is the person-in-charge who, in accordance with the enterprise's articles of association,

executes his/her functions and powers on behalf of the enterprise.

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

#### Chapter IV Form of Investments and Time Limit for Contributing Investments

Article 25 The foreign investors may make their investments with convertible foreign currencies, or with machinery and equipment, with industry property rights and proprietary technology by appraising the values of them.

Upon the approval by the examining and approving authority, the foreign investors may also make their investments with their profits in Renminbi from any other enterprises established in China with their investments.

Article 26 Machinery and equipment to be contributed by the foreign investor as investment must be those needed for the production of the foreign-funded enterprise.

The appraised value of the machinery and equipment may not be higher than the normal price of machinery and equipment of the same kind in international market at that time.

An inventory must be made for all the machinery and equipment to be contributed as investment, it shall include the name, type, quantity and appraised value of the machinery and equipment, and shall be submitted to the examining and approving authority together with the application for the establishment of the foreign-funded enterprise as an attachment to the application.

Article 27 The industry property rights and proprietary technology to be contributed as investment by the foreign investor must be owned by the foreign investor.

Such industrial property rights and proprietary technology must be appraised in accordance with the relevant international rules, and the value amount of them may not exceed 20% of the registered capital of the foreign-funded enterprise.

Detailed information must be prepared for the industrial property rights and proprietary technology appraised to be contributed as investment, including the copy of certificate of the title, validity of the title, and their technical performance, practical value, and the basis and standard on and according to which the value has been appraised, and it shall be submitted to the examining and approving authority together with the application for the establishment of the foreign-funded enterprise as an attachment to the application.

Article 28 Upon arrival at any port of China of the machinery and equipment contributed as investment, the foreign-funded enterprise shall apply for inspection to China's commodity inspection authority, which shall render an inspection report.

Where the machinery and equipment contributed as investment are inconsistent with those listed in the inventory submitted by the foreign investor to the examining and approving authority in type, quality or quantity, the examining and approving authority may demand corrections by the foreign investor within a prescribed time limit.

Article 29 After the industrial property rights and proprietary technology appraised have been put to use, the examining and approving authority shall have the power to inspect them, and demand corrections by the foreign investor, within a prescribed time limit, if they are inconsistent with the industrial property rights and proprietary technology prescribed in the information submitted by the foreign investor.

Article 30 The time limit for the foreign investor to make his investment contributions must be clearly indicated in both the application for the establishment of the foreign-funded enterprise and the enterprise's articles of association. The foreign investor may contribute the investment in installments, provided that the last installment shall be made within three years from the date of issue of the business license. The first installment may not be less than 15% of the total amount to be contributed by the foreign investor, and shall be made within 90 days from the date of issue of the business license of the foreign-funded enterprise.

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

Article 31 The installments other than the first one shall be made by the foreign investor within each prescribed time limit.

If an installment has not been made 30 days after the time limit, the second paragraph of the



Article 30 shall apply.

If the foreign investor has any reasonable ground for the extension of time for making an installment, he should get the approval by the examining and approving authority and the extension of time shall be submitted to the administrative department for industry and commerce for record.

Article 32 For each installment made by the foreign investor, the foreign-funded enterprise shall engage a Chinese certified public accountant to make verification and render a capital verification report, which shall be submitted to the examining and approving authority and the administrative department for industry and commerce for record.

#### Chapter V Use of Land and the Land Use Fee

Article 33 The local people's government at or above the county level at the place where the foreign-funded enterprise is to be established shall make arrangements for the land to be used by the foreign-funded enterprise after examination and verification in the light of the local conditions.

Article 34 The foreign-funded enterprise shall, within 30 days from the date of issue of its business license, go through the procedures for use of land with and obtain land certificate from the department of land administration of the people's government at or above the county level at the place where the foreign-funded enterprise is to be established, by presenting the approval certificate and business license.

Article 35 The land certificate shall be a legal certificate by which the foreign-funded enterprise may use a certain piece of land. In its operating period, no foreign-funded enterprise may assign its right to use land without authorization.

Article 36 For obtaining land certificate, the foreign-funded enterprise must pay land use fee to the department of land administration at the place where the enterprise is to be established.

Article 37 For using developed land, the foreign-funded enterprise must pay land development fee.

The land development fee mentioned in the preceding paragraph includes the expenses for requisition of the land, and expenses for demolition and resettlement allowances, as well as expenses for the construction of infrastructure needed by the foreign-funded enterprise. The land development fee may be calculated and collected by the land development enterprise once for all or in yearly installments.

Article 38 Where a piece of land not yet developed is to be used, the foreign-funded enterprise may either develop the land by itself or entrust a relevant Chinese enterprise to develop the land. The people's government at or above the county level at the place where the foreign-funded enterprise is to be established shall make overall arrangements for the construction of

infrastructure.

Article 39 The standards for calculating and collecting the land use fee and land development fee paid by foreign-funded enterprises shall abide by the relevant provisions of China.

Article 40 The term for land use by the foreign-funded enterprise shall be the same as the approved operating period of this enterprise.

Article 41 In addition to the present Chapter, a foreign-funded enterprise may obtain the right to use land in accordance with other regulations in China.

#### Chapter VI Purchasing and Marketing

Article 42 Any foreign-funded enterprise may make decisions by itself on the purchase, for its own use, of machinery and equipment, raw materials, fuels, parts and components, auxiliary equipment, primary parts, means of transportation, office appliance (hereinafter referred to as goods and materials in general).

When purchasing goods and materials in China, any foreign-funded enterprise shall enjoy the same treatment as that enjoyed by Chinese enterprises under the same conditions.

Article 43 Any foreign-funded enterprise may sell its products in Chinese market. The state encourages all foreign-funded enterprises to export their products.

Article 44 Any foreign-funded enterprise may export their products either by themselves or by entrusting a Chinese foreign trade company or a company outside China with the sale of their products.

A foreign-funded enterprise may sell their products in China either by themselves or by entrusting any commercial organization with the sale of their products.

Article 45 Where any machinery and equipment contributed by a foreign investor as his investment is subject to import license according to the Chinese provisions, the relevant foreign-funded enterprise shall, by presenting the relevant approved inventory of equipment and goods and materials to be imported, apply for import license to the license issuing authority either directly or through an agency.

The foreign-funded enterprise shall prepare their annual import plans for goods and materials that are to be imported for their own use and necessary to their production within the approved scope of business, and apply for the import license to the license issuing authority every six months, if the import of goods and materials is subject to import license according to the Chinese provisions.

The foreign-funded enterprise shall prepare their annual export plans for products that are to be exported, and apply for the export license to the license issuing authority every six months, if the

export of products is subject to export license according to the Chinese provisions.

Article 46 The price of goods and materials and any technical service imported by the foreign-funded enterprise shall not be higher than the normal price for goods and materials and technical services of the same kind in international market at that time. The price for the export products of a foreign-funded enterprise shall be determined by the enterprise itself in the light of the relevant prices in international market at that time, provided that they shall not be lower than reasonable export prices. If any enterprise evades taxes by importing products at a high price or exporting products at a low price, the legal responsibility of the relevant enterprise shall be investigated according to tax law by the tax authority.

Article 47 Any foreign-funded 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 Any foreign-funded enterprise shall pay taxes in accordance with Chinese laws and regulations.

Article 49 Workers and staff members of a foreign-funded enterprise shall pay individual income tax in accordance with Chinese laws and regulations.

Article 50 Taxes on the following goods and materials imported by a foreign-funded enterprise shall be exempted or reduced in accordance with Chinese tax law:

- (1) machinery and equipment, parts and components, materials for construction, and materials needed for installing and fixing the machinery, which are contributed as investment by the foreign investor;
- (2) machinery and equipment, parts and components, means of transportation for production, and production management equipment, which are imported, for their own use in production, by the foreign-funded enterprise with funds within its total amount of investment;
- (3) raw materials, auxiliary materials, primary parts, parts and components and packing materials imported by the foreign-funded enterprise for producing export products.

Where any goods and materials imported as mentioned in the preceding paragraph are, upon approval, resold in the territory of China or used for producing products to be sold in China, the relevant foreign-funded enterprise shall, in accordance with Chinese tax law, pay the taxes that were exempted or reduced.

Article 51 The export commodities produced by the foreign-funded enterprises may enjoy tax

reduction, exemption or refund according to the relevant provisions of Chinese tax law, except those whose export is restricted by China.

#### Chapter VIII Foreign Exchange Control

Article 52 Foreign exchange affairs of a foreign-funded enterprise shall be handled in accordance with Chinese regulations concerning foreign exchange control.

Article 53 A foreign-funded enterprise shall, on the strength of the business license issued by the administrative department for industry and commerce, open an account at a bank in China that may handle foreign exchange business, which shall supervise the foreign exchange receipts and payments by the foreign-funded enterprise.

The foreign exchange revenues of the foreign-funded enterprise shall be deposited to its account and the foreign exchange expenditures of the enterprise shall be made from its foreign exchange account.

Article 54 Where any foreign exchange account is to be opened at a bank outside China as required by its production and operation, the foreign-funded enterprise shall submit the case to the Chinese administrative department for foreign exchange control for approval and, according to the provisions of the latter, make regular reports on its receipts and payments of foreign exchange, and provide bank statements.

Article 55 Wages and salaries as well as any other legitimate income in foreign exchange of foreign workers and staff members, or of the workers and staff members from Hong Kong, Macao or Taiwan, of a foreign-funded enterprise may be remitted outside China freely after the income tax is paid according to Chinese tax law.

#### Chapter IX Financial Management and Accounting

Article 56 A foreign-funded enterprise shall, in accordance with Chinese laws and regulations and provisions of the financial authority, set up its own financial and accounting systems and submit them to the local financial and tax authorities for record.

Article 57 A fiscal year of any foreign-funded enterprise shall begin from January 1 and end on December 31 of Gregorian calendar.

Article 58 A foreign-funded enterprise shall retain certain amount from its profits after the income tax has been paid in accordance with Chinese tax law as reserve funds, bonus and welfare funds for workers and staff members. The amount retained for the reserve funds shall not be less than 10% of the profits (profits after the income tax has been paid), the withdrawal may stop when the accumulated amount withdrawn has been up to 50% of the registered capital of the enterprise. The amount retained for bonus and welfare funds for workers and staff members shall be determined

by the foreign-funded enterprise itself.

No foreign-funded enterprise may distribute its profits unless and until its deficits of previous fiscal years have been made up; undistributed profits of the 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-funded enterprise shall be prepared in Chinese; if they are written in any foreign language, notes in Chinese are required.

Article 60 A foreign-funded enterprise shall conduct their business accounting independently.

A foreign-funded enterprise shall prepare annual accounting statements and liquidation accounting statements in accordance with the provisions of Chinese financial and tax authorities. If an accounting statement is prepared in a foreign currency, a corresponding accounting statement in which the foreign currency is converted into Renminbi shall be prepared at the same time.

A foreign-funded enterprise shall engage Chinese certified public accountants to verify its annual accounting statements and liquidation accounting statements, and render verification reports accordingly.

The annual accounting statements and liquidation accounting statements of a foreign-funded enterprise, stipulated in the second and third paragraphs, as well as the relevant verification reports rendered by Chinese certified public accountants, shall be submitted within the prescribed time limit to the financial and tax authorities, and to the examining and approving authority and the administrative department for industry and commerce for record.

Article 61 Any foreign investor may engage Chinese or foreign accountants to audit the account books of the relevant foreign-funded enterprise, and shall bear the expenses.

Article 62 A foreign-funded enterprise shall submit their annual statements of assets and liabilities and annual profit and loss statements to the financial and tax authorities, and to the examining and approving authority and the administrative department for industry and commerce for record.

Article 63 The foreign-funded enterprise shall set up account books at the place where it is located, and shall be subject to the supervision by the financial and tax authorities.

If there is any violation of the preceding paragraph, the financial and tax authorities may impose a fine, and the administrative department for industry and commerce may order a suspension of business or revoke the business license, on or of the violating foreign-funded enterprise.

#### Chapter X Workers and Staff Members

Article 64 The foreign-funded enterprise employing workers and staff members from China shall

conclude labor contracts with the workers and staff members employed in accordance with Chinese laws and regulations. The contract shall contain such matters as employment, dismissal, remuneration, welfare, labor protection and labor insurance.

No foreign-funded enterprise may employ child laborers.

Article 65 A foreign-funded enterprise shall be responsible for the vocational and technical training of its workers and staff members, set up checking and appraisal system, and make the workers and staff members capable of meeting the needs of the production and development of the enterprise.

#### Chapter XI Trade Union

Article 66 Workers and staff members of any foreign-funded enterprise shall be entitled to set up grass-roots trade union organizations and carry out trade union activities in accordance with the Trade Union Law of the People's Republic of China.

Article 67 The trade union in a foreign-funded enterprise, represents the interests of the relevant workers and staff members, and shall have the right to conclude labor contracts, on behalf of the workers and staff members, with the enterprise, and shall supervise the execution of such labor contracts.

Article 68 The basic tasks of the trade union in a foreign-funded enterprise shall be: to safeguard lawful rights and interests of the workers and staff members in accordance with the provisions of Chinese laws and regulations, and to assist the enterprise in making proper arrangements for and use of the welfare and bonus funds for worker and staff members; to organize for the workers and staff members political study, and study of scientific, technical and professional knowledge, and to carry out recreational and sports activities; to educate the workers and staff members to observe labor disciplines and strive to fulfill the economic tasks of the enterprise.

The representative of trade union in a foreign-funded enterprise shall have the right to attend, as an observer, meetings held to discuss and decide matters regarding rewards and punishment to workers and staff members, salary and wage system, welfare, labor protection and labor insurance, etc. The foreign-funded enterprise shall heed the opinions of the trade union, and win the cooperation thereof.

Article 69 The foreign-funded enterprise shall give an active support to the work of the trade union, and in accordance with the provisions of the Trade Union Law of the People's Republic of China, provide the trade union organization with housing and facilities necessary for office use, meeting, and carrying out collective undertakings of welfare, culture and sports for the workers and staff members. The foreign-funded enterprise shall, at a monthly basis, appropriate a sum of 2% of the actual total amount of wages and salaries of the workers and staff members, as funds of the trade union, which shall be used by the trade union in accordance with the relevant measures of All-China Federation of Trade Unions for the management of funds of trade unions.

Chapter XII Duration (Operating Period), Termination and Liquidation

Article 70 The duration of a foreign-funded enterprise shall, in the light of the circumstances of the specific trade and enterprise, be proposed by the relevant foreign investor in the application for the establishment of the foreign-funded enterprise, and shall be subject to the approval by the examining and approval authority.

Article 71 The duration of a foreign-funded enterprise shall be calculated from the date of issue of its business license.

In case of an intention to extend the duration of a foreign-funded enterprise, an application for such extension shall be submitted 180 days prior to the expiration of the duration to the examining and approving authority, which shall, within 30 days from the date of receiving the application, make a decision of approving or disapproving of the extension.

If the application for the extension of duration is approved, the foreign-funded enterprise shall, within 30 days from the date of receiving the approval, go through the procedures for change of registration with the administrative department for industry and commerce.

Article 72 A foreign-funded enterprise shall be terminated, if it is under any of the following circumstances:

- (1) upon the expiration of its duration;
- (2) if the foreign investor decides to dissolve it because of poor management and serious losses;
- (3) if the business cannot be carried on because of heavy losses resulting from force majeure such as natural disasters and wars;
- (4) if it becomes bankrupt;
- (5) if it is cancelled according to law due to its violation of Chinese laws and regulations or due to its harming the social and public interests; or
- (6) if any other cause for dissolution, stipulated in the articles of association of the foreign-funded enterprise, has occurred.

In case of circumstances of (2), (3) or (4) of the preceding paragraph, the foreign-funded enterprise shall, on its own initiative, submit an application for termination to the examining and approving authority for approval. The date of approval after verification by the examining and approving authority shall be the date of termination of the enterprise.

Article 73 In case of termination under (1), (2), (3) or (6) of Article 72 of these Rules, the

foreign-funded enterprise shall, within 15 days from the date of termination, make a public announcement and notify the creditors of the termination and, within 15 day from the date of such announcement, put forward liquidation procedures, principles and candidates for the liquidation committee, submit them to the examining and approving authority for verification and approval and, upon such approval, carry out the liquidation.

Article 74 The liquidation committee shall be composed of the legal representative of the foreign-funded enterprise, representative of creditors and representatives from the competent authorities concerned, and Chinese certified public accountants and lawyers shall also be engaged to participating in the liquidation.

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

- (1) to convene meetings of creditors;
- (2) to take over and liquidate the property of the enterprise, and to prepare the statement of assets and liabilities and inventory of the property;
- (3) to propose a basis for the valuation and computation of the property of the enterprise;
- (4) to work out a liquidation plan;
- (5) to recover and discharge debts;
- (6) to recover payments payable but not yet paid by shareholders;
- (7) to distribute the residual property;
- (8) to institute and respond to actions on behalf of the enterprise.

Article 76 The foreign investor may not remit or carry the enterprise's money out of the territory of China, nor dispose of the enterprise's property privately, until the liquidation of the foreign-funded enterprise is gone through.

The net assets and residual property of a foreign-funded enterprise, after the liquidation is gone through, shall be treated as profit and subject to income tax in accordance with Chinese tax law.

Article 77 When the liquidation is completed, the foreign-funded enterprise shall go through the procedures for cancellation of registration with and band in its business license for cancellation to the administrative department for industry and commerce.

Article 78 Chinese enterprises and other economic organizations shall, under equal conditions, have the right of preemption to assets to be disposed of during the liquidation of any



foreign-funded enterprise.

Article 79 In case of termination of a foreign-funded enterprise under (4) of Article 72 of these Rules, the liquidation shall be conducted by reference to Chinese laws and regulations.

In case of termination of a foreign-funded enterprise under (5) of Article 72 of these Rules, the liquidation shall be conducted in accordance with the relevant Chinese provisions.

#### Chapter XIII Supplementary Provisions

Article 80 All foreign-funded enterprise shall buy their various insurances from insurance companies in China.

Article 81 All contracts between a foreign-funded enterprise and other company, enterprise or economic organization and individual shall be governed by the Contract Law of the People's Republic of China.

Article 82 Enterprises, which are wholly owned by any company, enterprise or other economic organization or individual from Hong Kong, Macao or Taiwan or by any overseas Chinese, established with his total capital in the mainland of China, shall be handled by reference to these Rules.

Article 83 Foreign workers and staff members, workers and staff members from Hong Kong, Macao and Taiwan, of any foreign-funded enterprise may carry into the mainland of China means of transportation and articles for daily use that are within reasonable quantities and for their own use, and shall go through import formalities.

Article 84 These Rules shall come into force as of the date of promulgation.

**中华人民共和国外资企业法实施细则(2001修订)**

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**中华人民共和国外资企业法实施细则**

(根据1990年10月28日国务院批准 1990年12月12日对外经济贸易部发布 根据2001年4月12日《国务院关于修改〈中华人民共和国外资企业法实施细则〉的决定》修订)

**第一章 总则**

**第一条** 根据《中华人民共和国外资企业法》的规定，制定本实施细则。

(相关资料: 实务指南)

**第二条** 外资企业受中国法律的管辖和保护。

外资企业在中国境内从事经营活动，必须遵守中国的法律、法规，不得损害中国的社会公共利益。

(相关资料: 裁判文书2篇 相关论文1篇 实务指南)

**第三条** 设立外资企业，必须有利于中国国民经济的发展，能够取得显著的经济效益。国家鼓励外资企业采用先进技术和设备，从事新产品开发，实现产品升级换代，节约能源和原材料，并鼓励举办产品出口的外资企业。

(相关资料: 相关论文1篇 实务指南)

**第四条** 禁止或者限制设立外资企业的行业，按照国家指导外商投资方向的规定及外商投资产业指导目录执行。

(相关资料: 相关论文 1 篇 实务指南)

第五条 申请设立外资企业, 有下列情况之一的, 不予批准:

- (一) 有损中国主权或者社会公共利益的;
- (二) 危及中国国家安全的;
- (三) 违反中国法律、法规的;
- (四) 不符合中国国民经济发展要求的;
- (五) 可能造成环境污染的。

(相关资料: 地方法规 1 篇 实务指南)

第六条 外资企业在批准的经营范围内, 自主经营管理, 不受干涉。

(相关资料: 实务指南)

## 第二章 设立程序

第七条 设立外资企业的申请, 由中华人民共和国对外贸易经济合作部(以下简称对外贸易经济合作部)审查批准后, 发给批准证书。

设立外资企业的申请属于下列情形的, 国务院授权省、自治区、直辖市和计划单列市、经济特区人民政府审查批准后, 发给批准证书:

- (一) 投资总额在国务院规定的投资审批权限以内的;
- (二) 不需要国家调拨原材料, 不影响能源、交通运输、外贸出口配额等全国综合平衡的。

省、自治区、直辖市和计划单列市、经济特区人民政府在国务院授权范围内批准设立外资企业, 应当在批准后 15 天内报对外贸易经济合作部备案(对外贸易经济合作部和省、自治区、直辖市和计划单列市、经济特区人民政府, 以下统称审批机关)。

(相关资料: 地方法规 5 篇 裁判文书 2 篇 实务指南)

第八条 申请设立的外资企业,其产品涉及出口许可证、出口配额、进口许可证或者属于国家限制进口的,应当依照有关管理权限事先征得对外经济贸易主管部门的同意。

(相关资料:实务指南)

第九条 外国投资者在提出设立外资企业的申请前,应当就下列事项向拟设立外资企业所在地的县级或者县级以上地方人民政府提交报告。报告内容包括:设立外资企业的宗旨;经营范围、规模;生产产品;使用的技术设备;用地面积及要求;需要用水、电、煤、煤气或者其他能源的条件及数量;对公共设施的要求等。

县级或者县级以上地方人民政府应当在收到外国投资者提交的报告之日起30天内以书面形式答复外国投资者。

(相关资料:实务指南)

第十条 外国投资者设立外资企业,应当通过拟设立外资企业所在地的县级或者县级以上地方人民政府向审批机关提出申请,并报送下列文件:

- (一) 设立外资企业申请书;
- (二) 可行性研究报告;
- (三) 外资企业章程;
- (四) 外资企业法定代表人(或者董事会人选)名单;
- (五) 外国投资者的法律证明文件和资信证明文件;
- (六) 拟设立外资企业所在地的县级或者县级以上地方人民政府的书面答复;
- (七) 需要进口的物资清单;
- (八) 其他需要报送的文件。

前款(一)(三)项文件必须用中文书写;(二)(四)(五)项文件可以用外文书写,但应当附中文译文。

两个或者两个以上外国投资者共同申请设立外资企业,应当将其签订的合同副本报送审批机关备案。

(相关资料: 地方法规 2 篇 裁判文书 2 篇 实务指南)

第十一条 审批机关应当在收到申请设立外资企业的全部文件之日起 90 天内决定批准或者不批准。审批机关如果发现上述文件不齐备或者有不当之处,可以要求限期补报或者修改。

(相关资料: 裁判文书 1 篇 实务指南)

第十二条 设立外资企业的申请经审批机关批准后,外国投资者应当在收到批准证书之日起 30 天内向工商行政管理机关申请登记,领取营业执照。外资企业的营业执照签发日期,为企业成立日期。

外国投资者在收到批准证书之日起满 30 天未向工商行政管理机关申请登记的,外资企业批准证书自动失效。

外资企业应当在企业成立之日起 30 天内向税务机关办理税务登记。

(相关资料: 裁判文书 2 篇 实务指南)

第十三条 外国投资者可以委托中国的外商投资企业服务机构或者其他经济组织代为办理本实施细则第八条、第九条第一款和第十条规定事宜,但须签订委托合同。

(相关资料: 实务指南)

第十四条 设立外资企业的申请书应当包括下列内容:

- (一) 外国投资者的姓名或者名称、住所、注册地和法定代表人的姓名、国籍、职务;
- (二) 拟设立外资企业的名称、住所;
- (三) 经营范围、产品品种和生产规模;
- (四) 拟设立外资企业的投资总额、注册资本、资金来源、出资方式 and 期限;

- (五) 拟设立外资企业的组织形式和机构、法定代表人；
- (六) 采用的主要生产设备及其新旧程度、生产技术、工艺水平及其来源；
- (七) 产品的销售方向、地区和销售渠道、方式；
- (八) 外汇资金的收支安排；
- (九) 有关机构设置和人员编制，职工的招用、培训、工资、福利、保险、劳动保护等

事项的安排；

- (十) 可能造成环境污染的程度和解决措施；
- (十一) 场地选择和用地面积；
- (十二) 基本建设和生产经营所需资金、能源、原材料及其解决办法；
- (十三) 项目实施的进度计划；
- (十四) 拟设立外资企业的经营期限。

(相关资料：相关论文1篇 实务指南)

第十五条 外资企业的章程应当包括下列内容：

- (一) 名称及住所；
- (二) 宗旨、经营范围；
- (三) 投资总额、注册资本、出资期限；
- (四) 组织形式；
- (五) 内部组织机构及其职权和议事规则，法定代表人以及总经理、总工程师、总会计

师等人员的职责、权限；

- (六) 财务、会计及审计的原则和制度；
- (七) 劳动管理；
- (八) 经营期限、终止及清算；

(九)章程的修改程序。

(相关资料: 地方法规 1 篇 实务指南)

第十六条 外资企业的章程经审批机关批准后生效,修改时同。

(相关资料: 地方法规 2 篇 实务指南)

第十七条 外资企业的分立、合并或者由于其他原因导致资本发生重大变动,须经审批机关批准,并应当聘请中国的注册会计师验证和出具验资报告;经审批机关批准后,向工商行政管理机关办理变更登记手续。

(相关资料: 地方法规 1 篇 裁判文书 2 篇 实务指南)

### 第三章 组织形式与注册资本

第十八条 外资企业的组织形式为有限责任公司。经批准也可以为其他责任形式。

外资企业为有限责任公司的,外国投资者对企业的责任以其认缴的出资额为限。

外资企业为其他责任形式的,外国投资者对企业的责任适用中国法律、法规的规定。

(相关资料: 地方法规 1 篇 案例 1 篇 裁判文书 3 篇 相关论文 1 篇 实务指南)

第十九条 外资企业的投资总额,是指开办外资企业所需资金总额,即按其生产规模需要投入的基本建设资金和生产流动资金的总和。

(相关资料: 案例 1 篇 裁判文书 4 篇 相关论文 2 篇 实务指南)

第二十条 外资企业的注册资本,是指为设立外资企业在工商行政管理机关登记的资本总额,即外国投资者认缴的全部出资额。

外资企业的注册资本要与其经营规模相适应,注册资本与投资总额的比例应当符合中国有关规定。

(相关资料: 案例 1 篇 裁判文书 3 篇 实务指南)

第二十一条 外资企业在经营期内不得减少其注册资本。但是,因投资总额和生产经营

规模等发生变化,确需减少的,须经审批机关批准。

(相关资料:地方法规1篇 相关论文1篇 实务指南)

第二十二条 外资企业注册资本的增加、转让,须经审批机关批准,并向工商行政管理机关办理变更登记手续。

(相关资料:裁判文书3篇 实务指南)

第二十三条 外资企业将其财产或者权益对外抵押、转让,须经审批机关批准并向工商行政管理机关备案。

(相关资料:地方法规1篇 实务指南)

第二十四条 外资企业的法定代表人是依照其章程规定,代表外资企业行使职权的负责人。

法定代表人无法履行其职权时,应当以书面形式委托代理人,代其行使职权。(相关资料:裁判文书2篇 实务指南)

#### 第四章 出资方式与期限

第二十五条 外国投资者可以用可自由兑换的外币出资,也可以用机器设备、工业产权、专有技术等作价出资。

经审批机关批准,外国投资者也可以用其从中国境内举办的其他外商投资企业获得的人民币利润出资。

(相关资料:相关论文1篇 实务指南)

第二十六条 外国投资者以机器设备作价出资的,该机器设备应当是外资企业生产所必需的设备。

该机器设备的作价不得高于同类机器设备当时的国际市场正常价格。

对作价出资的机器设备,应当列出详细的作价出资清单,包括名称、种类、数量、作价



等，作为设立外资企业申请书的附件一并报送审批机关。

(相关资料: 相关论文3篇 实务指南)

第二十七条 外国投资者以工业产权、专有技术作价出资的，该工业产权、专有技术应当为外国投资者所有。

该工业产权、专有技术的作价应当与国际上通常的作价原则相一致，其作价金额不得超过外资企业注册资本的20%。

对作价出资的工业产权、专有技术，应当备有详细资料，包括所有权证书的复制件，有效状况及其技术性能、实用价值，作价的计算根据和标准等，作为设立外资企业申请书的附件一并报送审批机关。

(相关资料: 相关论文1篇 实务指南)

第二十八条 作价出资的机器设备运抵中国口岸时，外资企业应当报请中国的商检机构进行检验，由该商检机构出具检验报告。

作价出资的机器设备的品种、质量和数量与外国投资者报送审批机关的作价出资清单列出的机器设备的品种、质量和数量不符的，审批机关有权要求外国投资者限期改正。

(相关资料: 实务指南)

第二十九条 作价出资的工业产权、专有技术实施后，审批机关有权进行检查。该工业产权、专有技术与外国投资者原提供的资料不符的，审批机关有权要求外国投资者限期改正。

(相关资料: 实务指南)

第三十条 外国投资者缴付出资的期限应当在设立外资企业申请书和外资企业章程中载明。外国投资者可以分期缴付出资，但最后一期出资应当在营业执照签发之日起3年内缴清。其中第一期出资不得少于外国投资者认缴出资额的15%，并应当在外资企业营业执照签发之日起90天内缴清。

外国投资者未能在前款规定的期限内缴付第一期出资的，外资企业批准证书即自动失效。外资企业应当向工商行政管理机关办理注销登记手续，缴销营业执照；不办理注销登记手续和缴销营业执照的，由工商行政管理机关吊销其营业执照，并予以公告。

(相关资料：地方法规 1 篇 裁判文书 2 篇 实务指南)

第三十一条 第一期出资后的其他各期的出资，外国投资者应当如期缴付。

无正当理由逾期 30 天不出资的，依照本实施细则第三十条第二款的规定处理。

外国投资者有正当理由要求延期出资的，应当经审批机关同意，并报工商行政管理机关备案。

(相关资料：地方法规 1 篇 裁判文书 2 篇 实务指南)

第三十二条 外国投资者缴付每期出资后，外资企业应当聘请中国的注册会计师验证，并出具验资报告，报审批机关和工商行政管理机关备案。

(相关资料：地方法规 2 篇 裁判文书 1 篇 实务指南)

## 第五章 用地及其费用

第三十三条 外资企业的用地，由外资企业所在地的县级或者县级以上地方人民政府根据本地区的情况审核后，予以安排。

(相关资料：相关论文 1 篇 实务指南)

第三十四条 外资企业应当在营业执照签发之日起 30 天内，持批准证书和营业执照到外资企业所在地县级或者县级以上地方人民政府的土地管理部门办理土地使用手续，领取土地证书。

(相关资料：实务指南)

第三十五条 土地证书为外资企业使用土地的法律凭证。外资企业在经营期限内未经批准，其土地使用权不得转让。

(相关资料: 实务指南)

第三十六条 外资企业在领取土地证书时,应当向其所在地土地管理部门缴纳土地使用费。

(相关资料: 实务指南)

第三十七条 外资企业使用经过开发的土地,应当缴付土地开发费。

前款所指土地开发费包括征地拆迁安置费用和为外资企业配套的基础设施建设费用。土地开发费可由土地开发单位一次性计收或者分年计收。

(相关资料: 实务指南)

第三十八条 外资企业使用未经开发的土地,可以自行开发或者委托中国有关单位开发。基础设施的建设,应当由外资企业所在地县级或者县级以上地方人民政府统一安排。

(相关资料: 实务指南)

第三十九条 外资企业的土地使用费和土地开发费的计收标准,依照中国有关规定办理。

(相关资料: 实务指南)

第四十条 外资企业的土地使用年限,与经批准的该外资企业的经营期限相同。

(相关资料: 实务指南)

第四十一条 外资企业除依照本章规定取得土地使用权外,还可以依照中国其他法规的规定取得土地使用权。

(相关资料: 实务指南)

## 第六章 购买与销售

第四十二条 外资企业有权自行决定购买本企业自用的机器设备、原材料、燃料、零部件、配套件、元器件、运输工具和办公用品等(以下统称“物资”)。

外资企业在中国购买物资，在同等条件下，享受与中国企业同等的待遇。

(相关资料: 实务指南)

第四十三条 外资企业可以在中国市场销售其产品。国家鼓励外资企业出口其生产的产品。

(相关资料: 实务指南)

第四十四条 外资企业有权自行出口本企业生产的产品,也可以委托中国的外贸公司代销或者委托中国境外的公司代销。

外资企业可以自行在中国销售本企业生产的产品,也可以委托商业机构代销其产品。

(相关资料: 裁判文书1篇 实务指南)

第四十五条 外国投资者作为出资的机器设备,依照中国规定需要领取进口许可证的,外资企业凭批准的该企业进口设备和物资清单直接或者委托代理机构向发证机关申领进口许可证。

外资企业在批准的经营范围內,进口本企业自用并为生产所需的物资,依照中国规定需要领取进口许可证的,应当编制年度进口计划,每半年向发证机关申领一次。

外资企业出口产品,依照中国规定需要领取出口许可证的,应当编制年度出口计划,每半年向发证机关申领一次。

(相关资料: 相关论文2篇 实务指南)

第四十六条 外资企业进口的物资以及技术劳务的价格不得高于当时的国际市场同类物资以及技术劳务的正常价格。外资企业的出口产品价格,由外资企业参照当时的国际市场价格自行确定,但不得低于合理的出口价格。用高价进口、低价出口等方式逃避税收的,税务机关有权根据税法规定,追究其法律责任。

(相关资料: 实务指南)

第四十七条 外资企业应当依照《中华人民共和国统计法》及中国利用外资统计制度的规定，提供统计资料，报送统计报表。

(相关资料: 实务指南)

## 第七章 税务

第四十八条 外资企业应当依照中国法律、法规的规定，缴纳税款。

(相关资料: 实务指南)

第四十九条 外资企业的职工应当依照中国法律、法规的规定，缴纳个人所得税。

(相关资料: 实务指南)

第五十条 外资企业进口下列物资，依照中国税法的有关规定减税、免税：

(一) 外国投资者作为出资的机器设备、零部件、建设用建筑材料以及安装、加固机器所需材料；

(二) 外资企业以投资总额内的资金进口本企业生产所需的自用机器设备、零部件、生产用交通运输工具以及生产管理设备；

(三) 外资企业为生产出口产品而进口的原材料、辅料、元器件、零部件和包装物料。

前款所述的进口物资，经批准在中国境内转卖或者转用于生产在中国境内销售的产品，应当依照中国税法纳税或者补税。

(相关资料: 相关论文1篇 实务指南)

第五十一条 外资企业生产的出口产品，除中国限制出口的以外，依照中国税法的有关规定减税、免税或者退税。

(相关资料: 实务指南)

## 第八章 外汇管理

第五十二条 外资企业的外汇事宜，应当依照中国有关外汇管理的法规办理。

(相关资料: 实务指南)

第五十三条 外资企业凭工商行政管理机关发给的营业执照,在中国境内可以经营外汇业务的银行开立账户,由开户银行监督收付。

外资企业的外汇收入,应当存入其开户银行的外汇账户;外汇支出,应当从其外汇账户中支付。

(相关资料: 实务指南)

第五十四条 外资企业因生产和经营需要在中国境外的银行开立外汇账户,须经中国外汇管理机关批准,并依照中国外汇管理机关的规定定期报告外汇收付情况和提供银行对账单。

(相关资料: 实务指南)

第五十五条 外资企业中的外籍职工和港澳台职工的工资和其他正当的外汇收益,依照中国税法纳税后,可以自由汇出。

(相关资料: 实务指南)

## 第九章 财务会计

第五十六条 外资企业应当依照中国法律、法规和财政机关的规定,建立财务会计制度并报其所在地财政、税务机关备案。

(相关资料: 实务指南)

第五十七条 外资企业的会计年度自公历年的1月1日起至12月31日止。

(相关资料: 实务指南)

第五十八条 外资企业依照中国税法规定缴纳所得税后的利润,应当提取储备基金和职工奖励及福利基金。储备基金的提取比例不得低于税后利润的10%,当累计提取金额达到

注册资本的50%时,可以不再提取。职工奖励及福利基金的提取比例由外资企业自行确定。

外资企业以往会计年度的亏损未弥补前,不得分配利润;以往会计年度未分配的利润,可与本会计年度可供分配的利润一并分配。

(相关资料:实务指南)

第五十九条 外资企业的自制会计凭证、会计账簿和会计报表,应当用中文书写;用外文书写的,应当加注中文。

(相关资料:实务指南)

第六十条 外资企业应当独立核算。

外资企业的年度会计报表和清算会计报表,应当依照中国财政、税务机关的规定编制。以外币编报会计报表的,应当同时编报外币折合为人民币的会计报表。

外资企业的年度会计报表和清算会计报表,应当聘请中国的注册会计师进行验证并出具报告。

第二款和第三款规定的外资企业的年度会计报表和清算会计报表,连同中国的注册会计师出具的报告,应当在规定的时间内报送财政、税务机关,并报审批机关和工商行政管理机关备案。

(相关资料:实务指南)

第六十一条 外国投资者可以聘请中国或者外国的会计人员查阅外资企业账簿,费用由外国投资者承担。

(相关资料:裁判文书2篇 实务指南)

第六十二条 外资企业应当向财政、税务机关报送年度资产负债表和损益表,并报审批机关和工商行政管理机关备案。

(相关资料:地方法规1篇 实务指南)

第六十三条 外资企业应当在企业所在地设置会计账簿,并接受财政、税务机关的监督。

违反前款规定的,财政、税务机关可以处以罚款,工商行政管理机关可以责令停止营业或者吊销营业执照。

(相关资料:实务指南)

## 第十章 职工

第六十四条 外资企业在中国境内雇用职工,企业和职工双方应当依照中国的法律、法规签订劳动合同。合同中应当写明雇用、辞退、报酬、福利、劳动保护、劳动保险等事项。

外资企业不得雇用童工。

(相关资料:裁判文书1篇 实务指南)

第六十五条 外资企业应当负责职工的业务、技术培训,建立考核制度,使职工在生产、管理技能方面能够适应企业的生产与发展需要。

(相关资料:实务指南)

## 第十一章 工会

第六十六条 外资企业的职工有权依照《中华人民共和国工会法》的规定,建立基层工会组织,开展工会活动。

(相关资料:实务指南)

第六十七条 外资企业工会是职工利益的代表,有权代表职工同本企业签订劳动合同,并监督劳动合同的执行。

(相关资料:实务指南)

第六十八条 外资企业工会的基本任务是:依照中国法律、法规的规定维护职工的合法权益,协助企业合理安排和使用职工福利、奖励基金;组织职工学习政治、科学技术和业务



知识，开展文艺、体育活动；教育职工遵守劳动纪律，努力完成企业的各项经济任务。

外资企业研究决定有关职工奖惩、工资制度、生活福利、劳动保护和保险问题时，工会代表有权列席会议。外资企业应当听取工会的意见，取得工会的合作。

(相关资料: 实务指南)

第六十九条 外资企业应当积极支持本企业工会的工作，依照《中华人民共和国工会法》的规定，为工会组织提供必要的房屋和设备，用于办公、会议、举办职工集体福利、文化、体育事业。外资企业每月按照企业职工实发工资总额的2%拨交工会经费，由本企业工会依照中华全国总工会制定的有关工会经费管理办法使用。

(相关资料: 实务指南)

第十二章 期限、终止与清算

第七十条 外资企业的经营期限，根据不同行业和企业的具体情况，由外国投资者在设立外资企业的申请书中拟订，经审批机关批准。

(相关资料: 相关论文1篇 实务指南)

第七十一条 外资企业的经营期限，从其营业执照签发之日起计算。

外资企业经营期满需要延长经营期限的，应当在距经营期满180天前向审批机关报送延长经营期限的申请书。审批机关应当在收到申请书之日起30天内决定批准或者不批准。

外资企业经批准延长经营期限的，应当自收到批准延长期限文件之日起30天内，向工商行政管理机关办理变更登记手续。

(相关资料: 地方法规1篇 实务指南)

第七十二条 外资企业有下列情形之一的，应予终止：

- (一) 经营期限届满；
- (二) 经营不善，严重亏损，外国投资者决定解散；

(三) 因自然灾害、战争等不可抗力而遭受严重损失，无法继续经营；

(四) 破产；

(五) 违反中国法律、法规，危害社会公共利益被依法撤销；

(六) 外资企业章程规定的其他解散事由已经出现。

外资企业如存在前款第(二)(三)(四)项所列情形，应当自行提交终止申请书，报审批机关核准。审批机关作出核准的日期为企业的终止日期。

(相关资料：地方法规2篇 相关论文1篇 实务指南)

第七十三条 外资企业依照本实施细则第七十二条第(一)(二)(三)(六)项的规定终止的，应当在终止之日起15天内对外公告并通知债权人，并在终止公告发出之日起15天内，提出清算程序、原则和清算委员会人选，报审批机关审核后进入清算。

(相关资料：实务指南)

第七十四条 清算委员会应当由外资企业的法定代表人、债权人代表以及有关主管机关的代表组成，并聘请中国的注册会计师、律师等参加。

清算费用从外资企业现存财产中优先支付。

(相关资料：实务指南)

第七十五条 清算委员会行使下列职权：

- (一) 召集债权人会议；
- (二) 接管并清理企业财产，编制资产负债表和财产目录；
- (三) 提出财产作价和计算依据；
- (四) 制定清算方案；
- (五) 收回债权和清偿债务；
- (六) 追回股东应缴而未缴的款项；

(七) 分配剩余财产；

(八) 代表外资企业起诉和应诉。

(相关资料: 实务指南)

第七十六条 外资企业在清算结束之前,外国投资者不得将该企业的资金汇出或者携出中国境外,不得自行处理企业的财产。

外资企业清算结束,其资产净额和剩余财产超过注册资本的部分视同利润,应当依照中国税法缴纳所得税。

(相关资料: 实务指南)

第七十七条 外资企业清算结束,应当向工商行政管理机关办理注销登记手续,缴销营业执照。

(相关资料: 相关论文1篇 实务指南)

第七十八条 外资企业清算处理财产时,在同等条件下,中国的企业或者其他经济组织有优先购买权。

(相关资料: 实务指南)

第七十九条 外资企业依照本实施细则第七十二条第(四)项的规定终止的,参照中国有关法律、法规进行清算。

外资企业依照本实施细则第七十二条第(五)项的规定终止的,依照中国有关规定进行清算。

(相关资料: 相关论文1篇 实务指南)

### 第十三章 附则

第八十条 外资企业的各项保险,应当向中国境内的保险公司投保。

(相关资料: 实务指南)

第八十一条 外资企业与其他公司、企业或者经济组织以及个人签订合同，适用《中华人民共和国合同法》。

(相关资料: 实务指南)

第八十二条 香港、澳门、台湾地区的公司、企业和其他经济组织或者个人以及在国外居住的中国公民在大陆设立全部资本为其所有的企业，参照本实施细则办理。

(相关资料: 地方法规 1 篇 实务指南)

第八十三条 外资企业中的外籍职工和港澳台职工可带进合理自用的交通工具和生活物品，并依照中国规定办理进口手续。

(相关资料: 实务指南)

第八十四条 本实施细则自公布之日起施行。