

China

Law on Wholly Foreign-Owned Enterprises (1986)

Unofficial translation

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Law on Wholly Foreign-Owned Enterprises

(Adopted 12 April 1986 at the 4th Session of the 6th National People's Congress. Revised 31 October 2000 at the 18th Meeting of the Standing Committee of the National People's Congress by the Decision on Revision of the "Law of the People's Republic of China Concerning Enterprises with Sole Foreign Investment")

[Note: The phrase "Enterprises with Sole Foreign Investment" in this paragraph is also known and bears the same meaning as "Wholly Foreign-owned Enterprises".

Article 1

In order to expand foreign economic co-operation and technological exchange and to promote the development of the Chinese national economy, the People's Republic of China permits foreign enterprises and other economic organizations or individuals (hereinafter referred to as foreign investors) to establish enterprises with sole foreign investment within Chinese territory, and protects the legitimate rights and interests of such enterprises.

Article 2

Enterprises with sole foreign investment as referred to in this law are those enterprises established within Chinese territory, in accordance with the relevant Chinese laws, with their capital provided totally by a foreign investor. It does not include branches in China of foreign enterprises or other economic organizations.

Article 3

Enterprises established exclusively with foreign capital must benefit the development of the Chinese national economy. The State encourages the establishment of export-oriented foreign investment enterprises and foreign investment enterprises with advanced technology. Lines of business in which the establishment of enterprises with sole foreign investment is prohibited or restricted shall be stipulated by the State Council.

Article 4

The investments, profits and other legitimate rights and interests of foreign investors in China are protected by Chinese law.

Enterprises with sole foreign investment must observe Chinese laws and regulations, and shall not harm the social order or public interest of China.

Article 5

The State will not nationalize or expropriate enterprises with sole foreign investment but in special circumstances, where it is necessary to the public interest, an enterprise with sole foreign investment may be expropriated in accordance with legal procedures and the appropriate compensation paid.

Article 6

Applications for the establishment of enterprises with sole foreign investment shall be submitted for examination and approval by the State Council department in charge of foreign economic relations and trade or a body authorized by the State Council. The examining and approving body shall, within 90 days of receipt of the application make a decision whether or not to approve the application.

Article 7

Following approval of an application for the establishment of an enterprise with sole foreign investment, the foreign investor shall, within 30 days of receipt of the approval certificate, apply for registration with the industrial and commercial administrative authorities and obtain a business license. The date of issue of the business license of an enterprise with sole foreign investment is the date of establishment of the said enterprise.

Article 8

An enterprise with sole foreign investment, which conforms to the conditions for becoming a legal person under the relevant Chinese law, shall acquire such status in accordance with the law.

Article 9

An enterprise with sole foreign investment shall invest in China within the time limit approved by the examining and approving body. Should it fail to invest within the required time the industrial and commercial administrative authorities shall have the right to revoke its business license.

The industrial and commercial administrative authorities shall carry out inspection and supervision of the investment status of enterprises with sole foreign investment.

Article 10

In the event of division merger or other major changes, an enterprise with sole foreign investment shall report to, and seek approval from, the examining and approving body and carry out procedures for registration of such changes with the industrial and commercial administrative authorities.

Article 11

An enterprise with sole foreign investment shall carry out its operation and management in accordance with the approved articles of association of the enterprise and free from interference.

Article 12

An enterprise with sole foreign investment employing Chinese staff and workers shall sign contracts in accordance with the law. Such contracts shall contain clear provisions relating to matters such as employment, dismissal, remuneration, welfare, labor protection and labor insurance.

Article 13

The staff and workers of an enterprise with sole foreign investment may, in accordance with the law, establish a trade union organization, which may undertake trade union activities and protect the legitimate rights and interests of the staff and workers.

An enterprise with sole foreign investment shall provide the necessary facilities for the activities of the trade union of the enterprise.

Article 14

An enterprise with sole foreign investment must setup books of account in China, conduct independent auditing and, in accordance with the regulations, submit its accounting statement to and accept the supervision of the financial and taxation authorities.

Should an enterprise with sole foreign investment refuse to maintain books of account in China, penalties may be imposed by the financial and taxation authorities, and the industrial and commercial administrative authorities may order the enterprise to cease operation or may revoke its business license.

Article 15

The raw materials, fuel and other materials required by an enterprise with sole foreign investment and which come within its authorized scope of business may, in accordance with the principle of fairness and reasonableness, be purchased within China or in the international market.

Article 16

The various types of insurance of an enterprise with sole foreign investment shall be taken out with insurance companies in China.

Article 17

An enterprise with sole foreign investments shall pay tax in accordance with the relevant State tax regulations and may enjoy preferential reduction of or exemption from tax.

Where an enterprise with sole foreign investment reinvests after-tax profits in China, it may, in accordance with State regulations, apply for reimbursement of the income tax already paid on the reinvested amount.

Article 18

Matters relating to the foreign exchange of an enterprise with sole foreign investment shall be handled in accordance with the State regulations governing foreign exchange control.

An enterprise with sole foreign investment shall open a bank account with the Bank of China or a bank designated by the State authority for foreign exchange control.

Article 19

The foreign investor may remit abroad legitimate profits earned from an enterprise with sole foreign investment, other legitimate income and funds obtained after liquidation of the enterprise.

Wages and other legitimate income of foreign staff and workers of an enterprise with sole foreign investment may be remitted abroad after payment of individual income tax in accordance with the law.

Article 20

The operating period of an enterprise with sole foreign investment shall be approved, following application by the foreign investor, by the examining and approving body. Where an extension of the operating period is required upon expiry, an application shall be made to the examining and approving authorities 180 days prior to the expiry of the original operating period. The examining and approving authorities shall, within 30 days of receipt of the application, make a decision on whether or not to approve the application.

Article 21

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Upon termination of an enterprise with sole foreign investment prompt notification shall be given and liquidation carried out in accordance with the legally stipulated procedures. Pending completion of liquidation, the foreign investor shall not dispose of the assets of the enterprise except for the purposes of carrying out the liquidation.

Article 22

Upon termination of an enterprise with sole foreign investment, procedures shall be completed with the industrial and commercial administrative authorities for the cancellation of registration and handing in as well as the cancellation of the business license.

Article 23

Detailed regulations for the implementation of this Law shall be formulated by the State Council department in charge of foreign economic relations and trade and shall go into effect following a submission to and approval by the State Council.

Article 24

This Law shall be effective from the date of promulgation.