

REGULATIONS FOR THE IMPLEMENTATION OF THE LAW ON WHOLLY FOREIGN-OWNED ENTERPRISES

Adopted by Decision No. 60 of the Cabinet on October 27, 2000

Chapter 1. General

Article 1. These regulations are intended to ensure proper implementation of the Law of the DPRK on Wholly Foreign-owned Enterprises.

Article 2. A foreign investor (hereinafter called the investor) is allowed to set up and run a wholly foreign-owned enterprise inside the Rason economic and trade zone (hereinafter called the Zone).

Korean nationals residing outside the territory of the DPRK shall also be allowed to set up a wholly foreign-owned enterprise inside the Zone according to these regulations.

Article 3. A wholly foreign-owned enterprise is a form of business whereby the investor establishes an enterprise with his own investment necessary for its establishment and has the right to independent management.

Article 4. The lawful activities of a wholly foreign-owned enterprise shall be protected by law of the DPRK.

The wholly foreign-owned enterprise shall respect and strictly observe the laws and regulations of the DPRK.

Article 5. A wholly foreign-owned enterprise shall, in principle, be insured by an insurance agency of the DPRK.

Article 6. A wholly foreign-owned enterprise shall make in Korean financial documents and other documents to be submitted to institutions, enterprises and organizations (hereinafter called the institutions and enterprises) of the DPRK.

If a document is made in a foreign language, Korean translation shall be attached to it.

Article 7. The central trade guidance organ shall, through Rason City People's Committee (hereinafter called Zone Administration), give unified control and guidance over wholly foreign-owned enterprises.

Article 8. Establishment and operation of a wholly foreign-owned enterprise shall be subject to these regulations.

Matters not covered by these regulations shall be subject to other laws and regulations of the DPRK.

Chapter 2. Establishment of a Wholly Foreign-Owned Enterprise

Article 9. Sectors where wholly foreign-owned enterprises can be set up are as follows:

1. Electronics, automation, machine-building and power industries,
2. Food processing, garment and daily-necessities manufacturing industries,
3. Building-materials, pharmaceutical and chemical industries
4. Construction, transportation and service sectors, and
5. Other necessary sectors.

Article 10. A wholly foreign-owned enterprise shall not be allowed to be set up unless it satisfies at least any one of the following conditions:

1. It shall be equipped with hi-tech and modern technologies and latest production facilities,
2. It shall be able to produce internationally competitive goods, or
3. It shall be able to raise the quality of its products up to international standards.

Article 11. The establishment of a wholly foreign-owned enterprise shall not be allowed in the following cases:

1. In case it endangers or hinders the security of the country,
2. In case it has an adverse effect on public health, landscape and resources of the country,
3. In case it uses equipment and production processes outdated economically and technologically,
4. In case products it makes have no or small demand locally and internationally, or
5. In case the type of business and mode of management of the enterprise do not conform with or may have a negative impact on the sound ideas and emotions of the people and the mode of life.

Article 12. The establishment of a wholly foreign-owned enterprise shall not be allowed in the following sectors:

1. Publishing, press and broadcasting,
2. Education, culture and public health,
3. Post and telecommunications, and
4. Other sectors where the establishment of a wholly foreign-owned enterprise is prohibited by the State.

Article 13. The investor may go through formalities for the establishment of a wholly foreign-owned enterprise either personally or through his agent.

Article 14. The investor wishing to set up a wholly foreign-owned enterprise shall submit an application for its establishment to the Zone Administration to consult on the matters of relevant sectors such as plan, finance, science, technology, land and environmental protection and construction, and then submit it to the central trade guidance organ through the Zone Administration.

The application shall state name of the investor, enterprise and its general manager (citizenship, nationality, position), categories of business, range and amount of products, amount of total investment, registered capital,

bank with which to open an account, form and period of investment, major production and technical processes, targets and form of marketing of products, organizational structure, number of employees and other data in relation to employment, area of construction and desired location, water, power, and materials needed, annual production plans, period of operation, expected date of operation and other necessary information, and shall be accompanied by the memorandum of association, feasibility study report, documents proving the investor, list of equipment and materials to be contributed, industrial property rights and technical know-how to be supplied and their descriptions and certificates on financial position of the investor.

Article 15. The memorandum of association of a wholly foreign-owned enterprise shall include its name, address, purpose of establishment, scope of business, volume of production, total investment, registered capital, form and period of investment, organizational structure (duties and rights of chairman of the board of directors, president, chief accountant, and auditor), period of operation, procedures for dissolution, liquidation and amendment to the memorandum, and other necessary information.

Article 16. The feasibility study report of a wholly foreign-owned enterprise shall include its name, total investment, registered capital, data on investment plans and production plans, analysis on technological and economical advantages of major production processes and equipment, data on construction work, kinds and needs of major materials, data on marketing, employment and technical training plans, estimations of expected profitability for each phase and other necessary data.

Article 17. The list of equipment and materials to be contributed shall include their names, specifications, uses, units, amounts, unit prices, total prices, and manufacturer, countries from which they are imported and other necessary data.

Article 18. Introductory descriptions on an industrial property right or technical know-how to be contributed shall state its name, holder, practical utility, term of validity and the like and be accompanied by technical literature, designs, operation manual or other technical data as well as the basis of calculation of price, a copy of the certificate of industrial property right and so on.

Article 19. The central trade guidance organ shall do screening of a proposed wholly foreign-owned enterprise.

Article 20. The Zone Administration shall, within 10 days from receipt of an application for the establishment of a wholly foreign-owned enterprise, deliver the application accompanied by its opinion to the central trade guidance organ.

Article 21. The central trade guidance organ shall, within 80 days from receipt of the application for the establishment of a wholly foreign-owned enterprise, screen the application and give a notice of approval or rejection to the applicant through the Zone Administration.

Article 22. In case the establishment of a wholly foreign-owned enterprise is approved, it shall open a necessary account in a bank mentioned in the document of approval of establishment of an enterprise according to the relevant legal provisions, make its official seal and have it registered.

Article 23. A wholly foreign-owned enterprise, within 30 days from receipt of the notice of approval, register enterprise itself with, and have a certificate of business registration issued by, the Zone Administration.

The day of business registration shall be the foundation day of the wholly foreign-owned enterprise and, from that date, the enterprise shall be a corporate body of the DPRK.

Article 24. A wholly foreign-owned enterprise shall, within 20 days from its business registration, make tax registration with the Zone taxation organ.

Article 25. A wholly foreign-owned enterprise, with approval of the Cabinet, may open or set up its branches, agencies, representative offices or subsidiaries, and associate itself with companies of a foreign country.

Article 26. The investor may commission construction work, if necessary, to a construction company of the DPRK.

Chapter 3. Procedures and Method of Investment

Article 27. A wholly foreign-owned enterprise shall invest according to the letter of approval of the establishment of enterprise.

Article 28. The size of the registered capital shall be determined as follows:

1. Not less than 65 per cent of the amount of total investment if the amount of total investment is not greater than 450,000,000 *won*,
2. Not less than 45 per cent of the amount of total investment if the amount of total investment is greater than 450,000,000 *won* and less than 1,500,000,000 *won*,
3. Not less than 35 per cent of the amount of total investment if the amount of total investment is greater than 1,500,000,000 *won* and less than 4,500,000,000 *won*, or
4. Not less than 30 per cent of the amount of total investment if the amount of total investment is greater than 4,500,000,000 *won*.

Article 29. The registered capital shall be contributed within a specified period. In case it cannot be contributed within the specified period, an approval for extending contribution period shall be obtained through the central trade guidance organ.

Article 30. A wholly foreign-owned enterprise *may* increase its registered capital but not reduce it.

In case of increase in the registered capital, it shall be registered with the relevant organ.

Article 31. A wholly foreign-owned enterprise *may* be transferred to

another person.

In case of transfer of the enterprise, approval shall be obtained for it from the central trade guidance organ and, upon approval, registration shall be made of the change with the relevant organ.

Article 32. Investment may take the form of cash, property in kind, industrial property right, technical know-how and the like.

Article 33. The price of property in kind, industrial property rights or technical know-how shall be decided by the enterprise on the basis of the international market prices prevailing at the moment.

Article 34. Property in kind, industrial property right, technical know-how and the like which are to be contributed shall satisfy the following conditions:

1. It shall belong to the ownership or possession right of the investor,
2. It shall be able to produce highly competitive export goods, and
3. The estimated value of the industrial property right and technical know-how shall not exceed the amount equivalent to 20 per cent of the registered capital.

Article 35. Property in kind brought in as a contribution shall, upon request, be inspected by the foreign goods inspection body (by scientific institution, in case of technology).

The inspection body shall inspect property in kind or technology upon written request and issue a certificate of inspection.

A wholly foreign-owned enterprise or the investor shall provide conditions for the inspection of property in kind or technology.

Article 36. A wholly foreign-owned enterprise may reinvest whole or part of its profits earned legally from the operation of the enterprise.

Income tax that has been paid on the reinvested portion of the profits may be refunded in full in infrastructure construction projects or by half in non-infrastructure projects.

If the reinvested capital is withdrawn within 5 years from the time of reinvestment, the income tax that has been refunded shall be re-payable.

Article 37. Whenever a wholly foreign-owned enterprise invests the registered capital, it shall submit to the central trade guidance organ a document certifying the investment issued by the relevant certifying body.

This document shall be accompanied by the report verifying the investment.

Chapter 4. Business Licence and Management Activities

Article 38. A wholly foreign-owned enterprise shall have business licence in order to be able to undertake operation.

Business licence shall be issued by the Zone Administration.

Article 39. Business licence shall be obtained before the estimated date of commissioning specified in the letter of business approval.

In case it cannot obtain business licence before the estimated date of commissioning, it shall apply to the central trade guidance organ for an approval of postponement of commissioning.

Article 40. In order to obtain a business licence, an application for business licence shall be submitted to the Zone Administration.

The application shall state necessary information and be accompanied by a certificate of investment issued by the certifying body, documents issued by a relevant body guaranteeing the safety and environmental aspects of the production processes and facilities, and a sample of product.

Article 41. The Zone Administration shall, within 15 days from receipt of the application for business licence, examine it, and licence or reject the business.

In case it has licenced the business, it shall issue business licence and inform the central trade guidance organ of it.

Article 42. Business activities of a wholly foreign-owned enterprise shall be limited to such categories of business as are allowed by the letter of business approval.

In case the enterprise intends to change the category of its business, approval shall be obtained from the central trade guidance organ.

Change of its business category shall be allowed on the condition that the enterprise has finished the approved investment and received business licence.

Article 43. A wholly foreign-owned enterprise shall register its plans with the Zone Administration before it begins to implement them.

Article 44. A wholly foreign-owned enterprise may purchase materials needed for its operation either in the territory of the DPRK or bring them in from a foreign country, and export its products or sell them in the territory of the DPRK.

If the enterprise is to purchase materials produced by an institution or an enterprise outside the Zone or sell its products in the territory of the DPRK outside the Zone, the enterprise shall do so through a relevant trading agency of the DPRK (except transactions between foreign-invested enterprises).

In case the enterprise is to bring materials from or sell its products to a foreign country, an application for approval of import and export shall be submitted to the Zone Administration.

Article 45. Customs duty on import and export materials of a wholly foreign-owned enterprise shall be applied according to the relevant legal provisions of the DPRK.

Article 46. A wholly foreign-owned enterprise may commission a relevant trading agency of the DPRK to export its products.

Article 47. Prices of export and import goods (including fees for technical service) of a wholly foreign-owned enterprise shall be based on the international market prices prevailing at the moment.

Article 48. A wholly foreign-owned enterprise shall regularly keep

records relating to the storage and use of imported materials, and to the export of its products.

Chapter 5. Financial Management

Article 49. A wholly foreign-owned enterprise shall do its financial management according to the laws and regulations related to the financial management of foreign-invested enterprises.

Article 50. A wholly foreign-owned enterprise shall do its accounting in Korean *won*.

If accounting is to be done in foreign currency, the equivalent amounts of Korean *won* calculated with the exchange rate of that time set by the Foreign Trade Bank inside the Zone shall be recorded.

Article 51. A wholly foreign-owned enterprise shall do the transactions and management of foreign currencies according to the laws and regulations of the DPRK related to the management of foreign currencies.

A wholly foreign-owned enterprise shall open and use an account of Korean *won* and accounts of foreign currencies in the foreign exchange bank in the Zone.

If necessary, the enterprise may open its accounts with another bank of the DPRK or with a bank of a foreign country upon agreement with the foreign exchange control body.

Transactions and clearing in foreign currencies shall be done only through its account in the bank.

In case it opens an account with a bank of a foreign country, the enterprise shall submit quarterly to the central trade guidance organ and the foreign exchange control body the records of receipt and payment and the document certifying account of the bank through the Zone Administration.

Article 52. A financial year for a wholly foreign-owned enterprise shall be from January 1 to December 12 of each calendar year.

In the year of establishment, the financial year shall be from the date of establishment to December 31 of the same year, and in the year of termination, the financial year shall be from January 1 of the same year to the date of termination.

Article 53. A wholly foreign-owned enterprise shall pay tax subject to the laws and regulations of the DPRK on taxation on foreign-invested business.

Article 54. A wholly foreign-owned enterprise shall, after the payment of enterprise income tax, create the reserve fund, bonus fund and welfare fund and the like for its employees out of net profit.

The reserve fund shall be created by saving 5 per cent of the annual taxable income until the amount of the fund amounts to 25 per cent of the registered capital. The reserve fund shall be used only for increasing the registered capital and making up the loss of management. The size and limit of the other funds shall be determined by the enterprise by itself.

Article 55. A wholly foreign-owned enterprise shall review its management on a quarterly and yearly basis.

Yearly financial statements shall be submitted to the central trade guidance organ and the Zone Administration not later than February of next year, and quarterly financial statements within 15 days of the next quarter.

Quarterly and yearly financial statements shall include balance sheets, cost accounts, production and sales revenue accounts, profit and distribution accounts, profit and loss accounts, overheads expenses accounts, fixed assets depreciation accounts and the like.

Financial statements shall be attested by a public accountant's office.

Article 56. A wholly foreign-owned enterprise may remit abroad its profits and other incomes earned legally from the operation of the enterprise and the money remaining after the liquidation of the enterprise.

Article 57. A wholly foreign-owned enterprise may be given a loan needed for its operation from a bank of the DPRK or a financial institution of a foreign country.

Article 58. A wholly foreign-owned enterprise shall keep its financial accounting documents for 5 years (until the termination of the enterprise in case of financial statements and documents of fixed assets).

Chapter 6. Labour Administration

Article 59. Labour Administration of a wholly foreign-owned enterprise shall be done according to the labour-related laws and regulations of the DPRK for foreign-invested enterprises.

Article 60. A wholly foreign-owned enterprise shall employ nationals of the DPRK. Foreigners may be employed for management positions or as technicians or skilled workers for special jobs.

Article 61. In case of employment of nationals of the DPRK, a wholly foreign-owned enterprise shall enter into a contract for employment with the labour exchange agency of the Zone, and in case of employment of foreigners, the enterprise shall obtain an approval of the central trade guidance organ through the labour exchange agency.

Article 62. The enterprise shall not dismiss before the expiry of the contract the nationals of the DPRK, whom it has employed.

In case of dismissal before the expiry of the contract, the enterprise shall seek agreement with the trade union and labour exchange agency.

Article 63. A wholly foreign-owned enterprise shall conduct activities aimed at raising technical qualifications and skills of its employees.

Article 64. Salary standards of the employees of a wholly foreign-owned enterprise shall be subject to the labour-related laws and regulations of the DPRK on foreign-invested business.

Article 65. The employees of a wholly foreign-owned enterprise may form a trade union.

Article 66. Trade unions shall be allowed to engage in:

1. Education of employees in the spirit of commitment to labour discipline and economic tasks,
2. Dissemination of scientific knowledge and sponsoring of sports and cultural events,
3. Conclusion, and supervision of the implementation, of bargains with the wholly foreign-owned enterprise in respect of labour management, compensation and security,
4. Coordination of labour disputes arising between the employer and the employed, and
5. Representation in any discussions over the rights and interests of employees to give advice or recommendation.

Article 67. A wholly foreign-owned enterprise shall deal with matters concerning rights and interests of employees in consultation with a representative of the trade union.

Article 68. A wholly foreign-owned enterprise shall provide the trade union with conditions for its activities.

Article 69. A wholly foreign-owned enterprise shall provide the trade union with the working fund at the following rates every month:

1. Equivalent to 2 per cent of the sum total of the monthly salary of all employees, in case the employees number up to 500,
2. Equivalent to 1.5 per cent of the sum total of the monthly salary of all employees, in case the employees number from above 500 up to 1,000, and
3. Equivalent to 1 per cent of the sum total of the monthly salary of all employees, in case the employees number more than 1,000.

Chapter 7. Duration and Dissolution

Article 70. Duration of a wholly foreign-owned enterprise shall be specified in the letter of business approval.

It shall be calculated from the date when the enterprise is registered.

Article 71. In order to extend duration, an application shall be filed with the central trade guidance organ 6 months before the term expires, through the Zone Administration.

The Zone Administration shall examine the application and hand it over to the central trade guidance organ together with its comments.

The central trade guidance organ shall approve or disapprove the application within 30 days of receipt of the application.

Article 72. A wholly foreign-owned enterprise shall register the changed duration with the relevant organ within 20 days from the date of approval of the application.

Article 73. A wholly foreign-owned enterprise shall be dissolved in the following cases:

1. The term of operation expires,
2. The continued operation is deemed impossible due to force majeure like natural calamities,
3. An enterprise determines so due to impossible redemption of loss,
4. The court of law decides so, or
5. An enterprise severely violates the laws and regulations.

Article 74. In case of dissolution, an application for that purpose shall be submitted to the central guidance organ, through the Zone Administration.

The date on which the approval for dissolution is given shall be deemed the date of dissolution.

Article 75. A wholly foreign-owned enterprise shall make public the dissolution and notify the creditors and debtors of it within 10 days from the approval of dissolution.

Article 76. A wholly foreign-owned enterprise shall submit the list of liquidation committee members to the central trade guidance organ for approval within 15 days from the declaration of dissolution, and organize the liquidation committee.

The liquidation committee shall commence its work within one week from the date of organization.

Article 77. The liquidation committee shall include the following persons:

1. A representative of the wholly foreign-owned enterprise,
2. A representative of the creditor,
3. A representative of the financial organ,
4. The investor, and
5. The other necessary members.

Article 78. The liquidation committee shall carry out the following work:

1. To convene a meeting of creditors,
2. To take over and place under its custody the property of the enterprise and its official seal,
3. To determine claims and debts and prepare the balance sheet and the inventory,
4. To evaluate the assets of the enterprise,
5. To prepare the plan of liquidation,
6. To pay tax and clear all claims and debts,
7. To take stock of the remaining property, and
8. To handle other matters relating to liquidation.

Article 79. A wholly foreign-owned enterprise shall not be allowed to dispose of any of the property at its own will before the liquidation is over.

Claims to the liquidation property of the enterprise shall be done in the order of expenses relating to liquidation, tax, remuneration of the employees and its debt.

Article 80. Upon liquidation, the liquidation committee shall prepare a report for the central trade guidance organ (the relevant court in case of dissolution caused by the bankruptcy of an enterprise), surrender the certificate of registration and business licence to the Zone Administration, cancel the business and tax registration and close the account of the enterprise with the bank concerned.

Article 81. Dissolution caused by the bankruptcy of an enterprise shall be subject to the laws and regulations of the DPRK relating to the bankruptcy of a foreign-invested enterprise.

Chapter 8. Supervision and Settlement of Dispute

Article 82. The Zone Administration shall supervise and control business activities of a wholly foreign-owned enterprise, under the guidance of the central trade guidance organ.

It shall strengthen its supervision and control so that wholly foreign-owned enterprises conduct business activities without deviation.

Article 83. In case of violation of these regulations, administrative sanctions such as fine, suspension of operation and dissolution of enterprise shall be imposed, and in case of severe breach, criminal law shall be invoked.

Article 84. Any disagreement concerning a wholly foreign-owned enterprise shall be settled through consultation.

A case of dispute that cannot be solved through consultation shall be brought to, and settled by, the arbitration agency or court of the DPRK.

Article 85. If a wholly foreign-owned enterprise has a complaint in relation to business activities, it may file a petition.

The case shall be settled within 30 days from the date of its receipt.