

## Provisions on The Merger And Division of Enterprises with Foreign Investment

Article 1 These Provisions are formulated in accordance with the Company Law of the People's Republic of China and the laws and administrative regulations concerning enterprises with foreign investment for the purpose of regulating the acts relating to the merger and division of enterprises with foreign investment and protecting the legitimate rights and interests of the investors and creditors thereof.

Article 2 These Provisions shall apply to the merger or division of Chinese-foreign equity joint ventures, incorporated Chinese-foreign contractual joint ventures, foreign-capital enterprises and joint stock limited companies with foreign investment (hereinafter referred to as companies) that have been set up within the territory of the People's Republic of China in accordance with the laws of the land.

The merger of such a company with a Chinese-invested company shall be handled with reference to the relevant laws, administrative regulations and these Provisions.

Article 3 The term "merger" as used in these Provisions refers to the consolidation through the conclusion of agreements into one company of two or more companies in accordance with the relevant provisions of the Company Law.

The merger of companies may be achieved in two forms: merger by absorption or merger by new establishment.

Merger by absorption refers to a company that absorbs other companies as its own future components, the absorbing company continues to exist while the participating ones are dissolved.

Merger by new establishment refers to the merging of two or more companies into a new company, with all the participating companies dissolved after the establishment of the new company.

Article 4 The term "division" as used for the purpose of these Provisions refers to the splitting up of a company into two or more companies in accordance with the relevant provisions of the Company Law and on the resolution of the organ of supreme power of the company.

The division of a company may take the form of division by continued existence or division by dissolution.

Division by continued existence refers to the division of a company where the original company exists after it has been split up into two or more companies, and more than one new companies have been set up thereafter.

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Division by dissolution refers to the division of a company where the original company has been split up into two or more companies, and more than two new companies are established thereafter.

Article 5 The merger or division of companies shall be carried out in strict observance of the laws and administrative regulations of China and these Provisions, and on the basis of the principle of free, equal and fair competition, and the public interests of society and the legitimate rights and interests of the creditors shall not be jeopardized.

The merger or division of companies must be in conformity with the provisions in the Interim Provisions on Orienting Foreign Investments and the Catalog of Guidance to Industries for Foreign Investment, and it shall not lead to the sole ownership, controlling interest or predominance of foreign investors in the companies of the industries where sole ownership, controlling interest or predominance of foreign investors are prohibited.

Where the merger or division of a company has resulted in changes in the line of business it has operated in and its business scope, such a merger or division shall have to conform to the provisions of the relevant laws, administrative regulations and the pertinent industrial policies and the necessary procedures of examination and approval must be performed.

Article 6 The merger or division of a company shall be in compliance with the provisions promulgated by such administrative departments as the Customs, tax and foreign exchange control. The companies that have either survived the division or emerged from the merger as newly established companies shall continue to enjoy the treatment for enterprises with foreign investment the original companies enjoyed upon the verification by the examining and approving departments and such administrative departments as the Customs, tax and foreign exchange control.

Article 7 The merger or division of a company shall be examined and approved by the original examining and approving authorities and the procedures of registration relating to the establishment, changes or cancellation thereof shall be executed by the relevant registration department.

Where there are two or more examining and approving departments or registration departments over the companies to be merged, the registration department authorized by the competent department of foreign trade and economic relations and the state administration for industry and commerce (hereinafter referred to as the SAFIAC) in the locality where the companies are located shall act as the examining and approving and registration authorities.

Where the total amount of investment of the companies to be merged exceeds the authority of the original examining and approving department or that of the examining and approving department in the locality where the merged company is situated, the examination and approval shall be

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performed by the examining and approving department that has the corresponding authority to do so.

Where at least one of the companies to be merged is a joint stock company, the merger shall be examined and approved by the Ministry of Foreign Trade and Economic Relations (hereinafter referred to as the MOFTEC) of the People's Republic of China.

Article 8 The opinions of the examining and approving departments in the localities where the company to be dissolved or to be established is situated shall be solicited with regard to the dissolution of the original companies or the establishment of new companies in other places.

Article 9 No merger or division shall be effected before the investors of the company have come current with their investment contributions in accordance with the provisions in their contracts or Article of association, and provided the conditions for cooperation, and the company has become operative in either production or business.

Article 10 The company that emerges from the merger between two or more liability limited companies shall be a liability limited company.

The company that emerges from the merger of two or more joint stock companies shall be a joint stock company. The company emerging from the merger between a listed joint stock company and a limited liability company shall be a joint stock company. The company that emerges from the merger between an unlisted joint stock company and a limited liability company may either be a joint stock company or a limited liability company.

Article 11 Where a joint stock company is merged with another joint stock company or the company emerging from the merger becomes a limited liability company, the merged company's registered capital shall be the sum total of the amounts of the registered capital of the original companies.

Where a joint stock company emerges from the merger of a limited liability company with a joint stock company, the registered capital of the company after the merger shall be the amount of equity into which the net asset amount of the original limited liability company is converted on the basis of the net asset as contained in each share of the joint stock company which is to emerge from the merger and the amount of equity of the original joint stock company.

Article 12 The proportions of equity of the investors in the new company that emerges from the merger of companies in accordance with Paragraph 1 of Article 11 of these Provisions shall, in keeping with the relevant state provisions, be determined through consultation among the various investors or be set forth in their contracts or Articles of association of the new company on the basis of the outcome of the valuation of the values of the equity of the investors in the original

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companies. However, the proportion of equity of the foreign investor shall not be less than 25% of the registered capital of the emerging company.

Article 13 The amounts of the registered capital of the companies emerging from the division shall be determined by the organ of supreme power of the original company in accordance with the provisions of the laws, administrative regulations governing enterprises with foreign investment and the provisions of the relevant registration department. However, the sum total of the registered capital of the companies that come into being as a result of the division shall be the total amount of the registered capital of the original company.

Article 14 The proportions of equity of the various investors in the new companies emerging from the division shall be determined by the investors in the contracts or Article s of association of the new companies. However, the proportion of equity of the foreign investor in a new company shall not be less than 25% of the registered capital of the new company after the division.

Article 15 The date of incorporation of the new company derived from the merger shall be that of the absorbing company if the company is formed by absorption merger; the date of incorporation of the new company derived from the merger shall be the date on which the registration department approves the registration of the incorporation and issues the business license if the new company is formed through merger by new establishment.

The date of incorporation of the new company established as a result of the division shall be the date on which the registration department approves the registration of its incorporation and issues the business license.

Article 16 The merger or division involving listed joint stock companies shall conform to the pertinent laws and administrative regulations and the provisions on listed companies of the state securities regulatory authorities and be subjected to the necessary procedures for examination and approval.

Article 17 The merger between a foreign-invested company and a domestic Chinese-invested company must be in conformity with the provisions of the relevant laws and administrative regulation governing the utilization of foreign investment in China and with the requirements of the industrial policies, and must meet the following conditions:

1. The Chinese company to be merged with must either be a limited liability company or a joint stock company set up in accordance with the norms of the Company Law of the People's Republic of China;
2. The investors of the new company emerging from the merger shall satisfy the qualification requirements as contained in the relevant laws, administrative regulations and sector regulations for investors in the relevant industry the new company is engaged in;

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3. The equity proportion of foreign investors in the new company shall be no less than 25% of the registered capital of the new company resulting from the merger; and
4. All the parties to the merger agreement shall see to it that the original employees of the companies to be merged are fully re-employed or reasonably re-assigned to jobs.

Article 18 The absorbing company shall be the applicant for a merger by absorption, while the applicant for a merger by new establishment shall be designated and determined by all the parties to the merger.

The applicant shall submit the following documents to the examining and approving department:

1. the letter of merger application and the merger agreement signed by the legal representatives of the various companies;
2. the resolutions on the merger by the organs of supreme power of the companies;
3. the contracts and Article s of association of the companies;
4. photocopies of the documents of approval and business licenses of the companies;
5. the asset inspection reports prepared and issued by the statutory Chinese asset inspection agencies to the companies party to the merger;
6. the asset and liability statements and the inventories of the properties of the companies party to the merger;
7. the audit reports of the previous year for the companies party to the merger;
8. a name list of the creditors of the companies party to the merger;
9. the contract and Article s of association of the company emerging from the merger;
10. a name list of the members of the organ of supreme power of the company emerging from the merger; and
11. other documents the examining and approving department may require.

Article 19 The agreement on the merger of companies shall contain the following major items:

1. the titles, addresses and legal representatives of the parties to the agreement;
2. the title, address and legal representative of the company emerging from the merger;
3. the total investment and registered capital of the company after the merger;
4. the form of merger;
5. the inheritance plans for the credit and debts of the parties to the merger agreement;
6. the method of placements for the employees;
7. liabilities for the breach of the agreement;
8. methods for dispute settlement;
9. the date and place for the signature of the agreement; and
10. other items that the parties to the agreement think must be provided for.

Article 20 A company that is to be dissolved due to the merger with another company shall apply to its original examining and approving department for the dissolution resulting from the merger prior to the submission of the required documents in accordance with the provisions in Article 18

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of these Provisions to the examining and approving departments if it has two or more original examining and approving departments.

The original examining and approving departments shall, within 15 days as of receipt of the relevant application for dissolution as prescribed in the preceding paragraph, reply in writing as to whether they approve or disprove the application for dissolution. Failure of the examining and approving departments to reply within 15 days shall be taken as consent from the examining and approving departments of the dissolution of the company.

Where the examining and approving departments have, within the prescribed time limit, replied in writing that they disproved the dissolution of the company, the company to be dissolved shall submit the application for dissolution to the competent department of foreign trade and economic cooperation at a higher level over both the original examining and approving departments and the examining and approving department of corporate mergers. The competent department of foreign trade and economic cooperation shall adjudicate on the dissolution within 30 days as of the date of receipt of the application for dissolution of the company concerned.

The approval of the dissolution of the company concerned shall be automatically invalidated if the examining and approving department has not granted consent or approval of the merger of the companies.

Article 21 A company to be divided up shall submit the following documents to the examining and approving department:

1. a letter of application for the division of the company signed by its legal representative;
2. the resolution of the organ of supreme power of the company on its division;
3. the agreement on the division of the company signed by the company to remain in existence and the company to be established (hereinafter referred to as parties to the division agreement) following the division of the company;
4. the contract and Article s of association of the company;
5. photocopies of the approval certificate and business license of the company;
6. the asset examination report prepared by the statutory asset examination agency of China;
7. the asset and liability statement and the asset inventory of the company;
8. a name list of the company's creditors;
9. the contracts and Article s of association of the companies emerging from the division;
10. name lists of the members of the organs of supreme power of the companies emerging from the division; and
11. other documents required by the examining and approving department.

Where a new company is to be set up in a different place as a result of the division of the company, the company must also submit to the examining and approving department the written comments

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on the establishment of the new company by the examining and approving department in the place where the new company is to be located.

Article 22 The agreement on the division of a company shall mainly consist of the following items:

1. the tides, addresses and legal representatives proposed by the parties to the division agreement;
2. the total amount of investment and registered capital of the companies after the division;
3. the mode of division;
4. the partitioning plan of the assets of the company to be divided up as agreed to by the parties to the division agreement;
5. the inheritance plans of the parties to the division agreement for the credit and debts of the company to be divided up;
6. the employee settlement plan;
7. liabilities for the non-performance of the agreement;
8. method of dispute settlement;
9. date and place for the signing of the agreement; and
10. other items that the parties to the division agreement believe should be provided for.

Article 23 The surviving company after the merger or the newly established company shall take over all the credits and debts of the company that has been dissolved because of the merger. The new companies emerging from the division shall take over the credits and debts of the original company in accordance with the division agreement.

Article 24 The examining and approving department shall, within 45 days as of the date of receipt of the documents as prescribed in Article s 18 or 21 of these Provisions, make a preliminary written reply as to whether it agrees to the proposed merger or division.

Where the Ministry of Foreign Trade and Economic Cooperation is the examining and approving department of corporate mergers, the MOFTEC may, upon receipt of the documents as listed in the preceding paragraph, organize the relevant departments and agencies to hear the case of proposed corporate merger and conduct investigations into the company and the related market if the MOFTEC thinks that the corporate merger tends towards industry monopoly or it may constitute a predominant position in the market for particular commodities or services, which will hamper fair competition. The time limit for examination and approval as prescribed in the preceding paragraph shall then be extended to 180 days.

Article 25 The companies to be merged or divided shall, within 10 days as of the date of receipt of the preliminary reply from the examining and approving department consenting the proposed merger or division, send out letters of notification to the creditors, and shall, within 30 days have

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the announcement carried three times in nationally circulated newspapers at or above the provincial level.

The companies shall explain the inheritance plan for the existing debts of the companies in the letters of notification and announcement mentioned above.

Article 26 The creditors of the companies shall, within 30 days as of the date of receipt of the letters of notification as prescribed in Article 25 of these Provisions or within 90 days as of the first publication of the announcement in the absence of the letters of notification, have the right to demand that the companies in question revise their inheritance plans for the existing debts or demand that they come current with the debt payments or they provide corresponding financial guarantees.

If creditors of the companies have failed to exercise the rights as prescribed in the preceding paragraph within the stipulated time limits, it shall therefore be construed that the creditors have agreed to the inheritance plans for the existing credit and debts of the companies to be merged or divided, and that the propositions of the creditors shall not in any way affect the merger or division processes of the companies.

Article 27 The applicant of the companies to be merged or the company to be divided shall, at the end of the 90-day period as of the date of the first publication of the announcements, submit the following documents to the examining and approving departments in the absence of objections from the creditors:

1. certificates of the three-time publication in newspapers of the announcements of corporate merger or division;
2. certificates of the notification of the companies to their creditors;
3. an explanation of the companies on the disposal of their credits and debts; and
4. other documents the examining and approving department may require.

Article 28 The examining and approving department shall, within 30 days as of the date of receipt of the documents as listed in Article 27 of these Provisions, decide whether it approves or disproves the proposed merger or division.

Article 29 Where the corporate merger is achieved by absorption, the accepting company shall have the approval certificate for enterprises with foreign investment altered at the original examining and approving department and have the alteration registered at the registration department; the participating company shall have its approval certificate for enterprises with foreign investment withdrawn at the original examining and approving department and have the cancellation of the company registered at the registration department.

Where the merger is achieved by new establishment, the parties to the merger shall have their approval certificates for enterprises with foreign investment withdrawn at the original examining

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and approving departments and have the cancellation of their companies registered at the registration department; the new company emerging from the merger shall, through its applicant, acquire the approval certificate for enterprises with foreign investment from the examining and approving department and have the establishment of the company registered at the registration department.

Where the corporate division is achieved through continued existence, the company that is to continue to exist shall have the approval certificate for enterprises with foreign investment altered at the examining and approving department and have the alteration registered at the registration department; the newly established companies shall acquire the approval certificate for enterprises with foreign investment from the examining and approving department and have the establishment of the companies registered at the registration department.

Where the corporate division is achieved through dissolution, the original company shall have the approval certificate for enterprises with foreign investment withdrawn at the original examining and approving department and have the cancellation of the company registered at the registration department; the newly established companies shall acquire the approval certificates for enterprises with foreign investment from the examining and approving department and have the establishment of the new companies registered at the registration department.

Article 30 Applicants of the companies to be merged or the companies to be divided shall, within 30 days as of the date of approval of the merger or division, go through the procedures relating to the cancellation, alteration or the attainment of the approval certificates for enterprises with foreign investment at the examining and approving departments for the companies that are dissolved, continue to exist or to be newly established as a result of the merger or division.

Article 31 Companies shall, as of the date of dissolution, alteration or the attainment of the approval certificates for enterprises with foreign investment, have the cancellation, alteration or establishment registered at the registration department in accordance with the provisions in the Regulations of the People's Republic of China on the Administration of the Registration of the Legal Persons of Companies and the Regulations of the People's Republic of China on the Administration of the Registration of Companies and other pertinent provisions.

The registration of the establishment of companies shall proceed upon completion of the registration of the alteration or cancellation of the companies in question.

The settlement plans for the properties of the companies concerned and the inheritance plans for the credits and debts thereof as written into the merger agreement or division agreement, and the documents issued by the examining and approving departments approving the merger or division of the companies shall be regarded as the liquidation reports required for the registration of the cancellation.

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Article 32 The parties to the merger or division shall bear the corresponding legal responsibility if they have failed to go through the procedures relating to the registration of the establishment, upon completion of the registration of cancellation or alteration, of new companies emerging from the merger or division.

Article 33 The contracts or Article s of association the investors of the company have signed after due revision following the merger or division of the company shall be effective as of the date of the alteration or the issuance of the approval certificate for enterprises with foreign investment by the examining and approving department.

Article 34 A company that is to continue to exist or a company to be established after the merger or division shall, within 30 days as of the date of alteration or the acquisition of the business license, issue letters of notification on the change of creditors and debtors to the creditors or debtors of the companies that have been dissolved because of the merger or division, and have the announcement carried in nationally circulated newspapers at or above the provincial level.

Article 35 The company to continue to exist or to be established after the merger or division shall, within 30 days as of the date of the acquisition of replacement business license or a new business license, go through the corresponding procedures at the departments such as taxation, Customs, land administration and foreign exchange control.

Article 36 The assignment of equity rights that occurs in the process of the merger or division of companies shall be governed by the relevant laws, administrative regulations and the provisions on the change of the equity rights of the investors of enterprises with foreign investment.

Article 37 The merger or division of the companies set up by investors from Hong Kong, Macao and Taiwan in other parts of the country shall be handled with reference to these Provisions.

Article 38 These Provisions shall be interpreted by the Ministry of Foreign Trade and Economic Cooperation and the State Administration for Industry and Commerce.

Article 39 These Provisions shall enter into force as of October 1,1999.

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