

Measures for Liquidation of Enterprise with Foreign Investment

Decree [1996] No.2 of the Ministry of Foreign Trade and Economic Cooperation

July 9, 1996

Chapter I General Provisions

Article 1 These Measures are formulated, according to provisions of relevant laws, for the purposes of guaranteeing the smooth conduction of liquidation of enterprise with foreign investment, protecting the legitimate rights and interests of creditors and investors and maintaining the social economic order.

Article 2 These Measures shall apply to liquidation of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises established in accordance with the law within the territory of the People's Republic of China (hereinafter referred to as enterprises). Enterprises declared bankruptcy in accordance with the law shall be handled in accordance with laws and regulations concerning bankruptcy and liquidation.

Article 3 Enterprises that can form a liquidation committee to conduct liquidation by themselves shall handle things in accordance with provisions of these Measures regarding ordinary liquidation. Where an enterprise cannot form a liquidation committee to conduct liquidation by itself or the liquidation conducted in accordance with provisions concerning ordinary liquidation has run into serious obstacles, the organ of power of the enterprise such as the board of directors or the joint management committee (hereinafter referred to as the organ of power of the enterprise), the investors or the creditors may apply to the examination and approval authorities of the enterprise for a special liquidation. With the approval of the examination and approval authorities of the enterprise, the liquidation shall be conducted in accordance with provisions of these Measures regarding special liquidation. Where an enterprise is ordered to be closed down and so is dissolved, the liquidation shall be conducted in accordance with provisions of these Measures regarding special liquidation.

Article 4 Liquidation of enterprises shall be conducted in accordance with provisions of relevant laws and regulations of the state, on the basis of the approved contract and articles of association of the enterprise and on the principle of fairness, reasonableness and protection of enterprises, investors and creditors.

Chapter II Ordinary Liquidation

Section 1 Term of Liquidation

Article 5 The date on which the period of operations of the enterprise expires or the examination and approval authorities of the enterprise approves the dissolution of the enterprise or the people's

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China Business Engine

Tel +86 21 52289730

Fax +86 21 5228-9730

Website

China site: www.cbize.com

Globe site: www.cbize.net

court or an arbitral authority makes a judgment or award to terminate the contract of the enterprise shall be considered as the starting date of the liquidation.

Article 6 The term of liquidation of an enterprise shall be 180 days, counting from the starting date of the liquidation to date on which the liquidation report is submitted to the examination and approval authorities of the enterprise. When there is a need to extend the term of liquidation due to some special reasons, the liquidation committee shall, 15 days before the expiration of the term of liquidation, submit an application for the extension to the examination and approval authorities of the enterprise. 90 days shall be the limit for extension.

Article 7 In its term of liquidation, an enterprise may not develop new business operations.

Section 2 Liquidation Organization

Article 8 The organ of power of the enterprise shall organize and establish a liquidation committee for the liquidation of the enterprise. The liquidation committee shall be established within 15 days from the starting date of the liquidation.

Article 9 The liquidation committee shall be composed of at least three persons, who shall be selected among members of the organ of power of the enterprise or engaged from relevant professional personnel by the organ of power of the enterprise. The liquidation committee shall have a chairman, which shall be appointed by the organ of power of the enterprise. With the approval of the organ of power of the enterprise, the liquidation committee may engage persons for handling daily routine.

Article 10 If any of the following circumstances occurs in duration of liquidation, the relevant member of the liquidation committee shall be replaced:

- (1) The member of the liquidation committee has committed illegal activities;
- (2) Any creditor requests with justified reasons the member of the liquidation committee be replaced; or
- (3) The member of the liquidation committee has died or has lost capacity.

Article 11 During liquidation, the liquidation committee shall exercise the following powers and functions:

- (1) liquidating the assets of the enterprise, working out a balance sheet and a detailed inventory of assets of the enterprise, and formulating a scheme of liquidation;
- (2) informing unknown creditors by announcement and notify the known creditors in writing;
- (3) disposing of and liquidate relevant unfinished business of the enterprise;
- (4) giving the basis for valuing and calculating the assets;
- (5) paying off taxes owed by the enterprise;

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- (6) clearing up claims and debts;
- (7) disposing of, after paying off the debts of the enterprise, its remaining assets; and
- (8) participating in civil lawsuits on behalf of the enterprise.

Article 12 The balance sheet and detailed inventory of assets worked out by the liquidation committee, the basis given by the liquidation committee for valuing and calculating the assets and the scheme of liquidation formulated by the liquidation committee shall be submitted to the examination and approval authorities of the enterprise for filing after being confirmed by the organ of power of the enterprise.

Article 13 After the liquidation committee has been formed, relevant personnel of the enterprise shall, within the time limit prescribed by the liquidation committee, submit to the liquidation committee the accounting statements, account books, list of property, list of creditors and debtors and other liquidation-related information of the enterprise.

Article 14 The liquidation committee shall perform the liquidation obligations in accordance with the law and handle liquidation affairs on the principle of consultation.

Members of the liquidation committee shall be devoted to their duties and may not accept bribes or seek for illegal income by taking advantage of their position and power, or embezzle any assets of the enterprise.

Article 15 During liquidation, the examination and approval authorities of the enterprise and other relevant competent authorities may send attendants to conferences concerning liquidation of the enterprise, so as to conduct supervision over the liquidation work of the enterprise.

Section 3 Notice and Announcement

Article 16 The enterprise shall, within seven days from the starting date of the liquidation, notify in writing the name and address of the enterprise, the reason for the liquidation and the starting date of the liquidation to the examination and approval authorities and the department in charge of the enterprise, the customs, the authorities for foreign exchange control, the registration authorities, tax authorities and the bank with which the enterprise has its account, etc., and to the administrative department for state property if the enterprise holds state property.

Article 17 The liquidation committee shall, within 10 days of its establishment, notify in writing the known creditors to lodge claims and, within 60 days of its establishment, make announcement at least twice in a newspaper of national circulation and a local provincial or municipal newspaper. The first announcement shall be made within 10 days of the establishment of the liquidation committee. The liquidation announcement shall state the name and address of the enterprise, the reason for liquidation, the starting date of liquidation, the address of the liquidation committee, the list of members of the liquidation committee and the contact person.

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Article 18 Creditors shall, within 30 days of the receipt of the notice, or within 90 days of the first announcement if no notice has been received, lodge claims with the liquidation committee.

Article 19 Creditors shall lodge claims within the specified time limit and submit documents supporting the amount of claim and other certificates related to the claim. In case a creditor fails to lodge claims within the specified time limit, the following provisions shall be applied:

- (1) Claims of known creditors shall be included in the liquidation; and
- (2) Unknown creditors may lodge claims anytime before the distribution of the remaining assets of the enterprise is brought to an end; the failure to do so shall be deemed as abandonment of claims.

Section 4 Claims, Debts and Clearing

Article 20 The liquidation committee shall make registration of claims lodged by creditors and, after verifying the claims, notify the creditors in writing of the verification results.

Article 21 Creditors who call in question the verification result given by the liquidation committee on claims may, within 15 days after the receipt of the written notice, apply to the liquidation committee for re-verification. Creditors who call in question the result of re-verification may, within 15 days after the receipt of the written notice regarding the re-verification result, bring a lawsuit with the people's court in the place of the domicile of the enterprise; in case of an arbitration agreement concluded between the enterprise and the creditor, the creditor shall apply for arbitration in accordance with the law. During proceedings or arbitration, no assets under disputes may be distributed by the liquidation committee.

Article 22 The liquidation committee shall state reasons in writing and give proof to the organ of power of the enterprise for the inventory profits, inventory losses, disposal of property, insolvent obligations or nonrecoverable claims, and income or losses incurred during the liquidation period, and count them into liquidation profits and losses.

Article 23 The following liquidation expenses shall be covered as the first priority with the assets subject to liquidation:

- (1) expenses needed for the administration, disposal and distribution of the assets subject to liquidation of the enterprise;
- (2) costs of announcement, litigation and arbitration; and
- (3) other expenses needed to pay during the liquidation.

Article 24 With respect to secured claims established before the starting date of liquidation, the creditor shall have priority in getting payment with the collateral. Where the amount of a secured claim exceeds the amount obtained through the disposal of the collateral, the unpaid part of the claim shall be paid in the order stipulated in Article 25 of these Measures.

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Article 25 After the prior deduction of liquidation expenses from the assets subject to liquidation, payment shall be made in the following order:

- (1) wages and labor insurance premiums of the staff and workers;
- (2) taxes; and
- (3) other debts.

Article 26 No assets of the enterprise may be distributed before the liquidation expenses have been covered and the debts of the enterprise have been paid off. Subject to other stipulations by laws, regulations or contracts or articles of association of the enterprise, the remaining assets of the enterprise after paying off the liquidation expenses and all the debts shall be distributed in proportion to the actual investments by the investors.

Article 27 If the liquidation committee finds during the liquidation that the assets of the enterprise are insufficient to pay off its debts, it shall apply to the people's court for a declaration of bankruptcy of the enterprise; the enterprise having been declared bankruptcy in accordance with the law shall be treated in accordance with laws and regulations concerning bankruptcy liquidation.

Article 28 The following acts committed by the enterprise within 180 days before the starting date of the liquidation shall be null and void: (1)voluntarily convey assets of the enterprise; (2)abnormally undersell property of the enterprise; (3)give property security for debts on which there was no property security; (4)pay off debts that has not become due; and (5)waive claims of the enterprise. From the starting date of the liquidation to the closing of the liquidation, neither Chinese nor foreign investors may dispose of the property of the enterprise.

Section 5 Assessment and Disposition of Assets Subject to Liquidation

Article 29 The assessment of assets subject to liquidation shall be conducted in accordance with the following provisions:

- (1) Where there are stipulations in the contract or articles of association of the enterprise, such stipulations shall be observed;
- (2) Where no stipulations have been made in the contract or articles of association of the enterprise, the decision shall be made through consultation by the Chinese and foreign investors and submitted to the examination and approval authorities of the enterprise for approval;
- (3) Where no stipulations have been made in the contract or articles of association of the enterprise, nor agreement can be reached through consultation by the Chinese and foreign investors, the liquidation committee shall make the determination in accordance with relevant provisions of the state and with reference to the opinions given by an assets assessing institute and submit it to the examination and approval authorities of the enterprise for approval; and

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(4) Where the people's court judges or an arbitration organ awards an termination of the contract of the enterprise and specifies the measures for assessing the assets subject to liquidation, such measures shall be applied.

Article 30 When assets subject to liquidation are sold off, the investors of the enterprise shall have priority in making purchase and the assets shall be sold to whoever makes the highest offers.

Section 6 The Closing of Liquidation

Article 31 The liquidation committee shall, after finishing the work defined by the scheme of liquidation, work out a liquidation report, which shall include the following contents:

- (1) reasons for liquidation and term and process of the liquidation;
- (2) the outcome of disposition of claims and debts; and
- (3) the outcome of disposition of assets subject to liquidation.

Article 32 The liquidation report shall, after confirmed by the organ of power of the enterprise, be submitted to the examination and approval authorities of the enterprise for filing.

Article 33 The liquidation committee shall, within 10 days from the date on which the liquidation report is submitted to the examination and approval authorities of the enterprise, go through the cancellation formalities with the tax authorities and the customs. The liquidation committee shall, within 10 days after the formalities prescribed by the preceding paragraph are completed, go through the cancellation formalities with, and hand in the business license to the registration authorities of the enterprise by submitting the liquidation report together with the cancellation certificates issued by tax authorities and the customs, and be responsible for making announcement of the termination of the enterprise on a newspaper of national circulation and a local provincial or municipal newspaper.

Article 34 After closing the liquidation and before going through the cancellation formalities, the enterprise shall, in accordance with the following provisions, turn over various accounting vouchers, account books, accounting statements and so on it keeps: (1) In the case of a Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture, the Chinese investor shall be responsible for the custody; where there are more than one Chinese investor, the department in charge of the enterprise shall designate one of them to take charge of the custody; or (2) In the case of a foreign-capital enterprise, the examination and approval authorities of the enterprise shall designate a unit to take charge of the custody.

Chapter III Special Liquidation

Article 35 The date on which the examination and approval authorities of the enterprise approves the special liquidation or the date on which the enterprise is ordered to close down shall be

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considered as the starting date of the liquidation.

Article 36 For special liquidation of an enterprise, the examination and approval authorities of the enterprise or a department entrusted thereby shall organize Chinese and foreign investors, representatives from relevant departments and relevant professional personnel to form a liquidation committee.

Article 37 The liquidation committee shall have a chairman, which shall be nominated by the examination and approval authorities of the enterprise or the department entrusted thereby. During the special liquidation, the chairman of the liquidation committee shall exercise the functions and powers of the legal representative of the enterprise, and the liquidation committee shall exercise the functions and powers of the organ of power of the enterprise.

The liquidation committee shall handle liquidation affairs and is accountable to the examination and approval authorities of the enterprise.

Article 38 The liquidation committee may convene conferences of the organ of power of the enterprise and conferences of creditors to discuss specific matters related to liquidation.

Article 39 All creditors are members of the conference of creditors. Members of the conference of creditors shall have voting power, but creditors who have claims secured by property and have not waived the priority in getting repayment shall not. The chairman of the conference of creditors shall be nominated by the examination and approval authorities of the enterprise or the department entrusted thereby from among the creditors having voting power.

Article 40 The conference of creditors shall be convened by the liquidation committee. The liquidation committee shall, within 15 days before the conference, notify creditors in writing. A creditor who cannot attend the conference of creditors shall entrust another person by written authorization as his agent to attend the conference.

Article 41 The conference of creditors shall exercise the following functions and powers:

- (1) examining supporting materials given by creditors for their claims, and the amount and guarantee situation of claims; and
- (2) finding out about the situation of the clearing of debts and convey to the liquidation committee the opinions of creditors with respect to the scheme of liquidation and the situation of the clearing of debts.

Article 42 The scheme of liquidation and liquidation report worked out by the liquidation committee must be confirmed by the examination and approval authorities of the enterprise.

Article 43 Matters which are not covered by this chapter concerning special liquidation shall be handled by applying provisions of Chapter II of these Measures.

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Chapter IV Legal Liability

Article 44 If an enterprise develops new business activities during the period of liquidation, the registration authorities of the enterprise shall order the enterprise to make corrections and may impose a fine between 10,000 and 100,000 yuan.

Article 45 Where an enterprise fails to notify creditors or make announcement in accordance with the provisions of Article 17 of these Measures, the registration authorities of the enterprise shall order the enterprise to make corrections and may impose a fine between 10,000 and 100,000 yuan.

Article 46 If a Chinese or foreign investor, in violation of the provisions of Paragraph 2, Article 28 of these Measures, dispose of the property of the enterprise in the period of liquidation, the examination and approval authorities of the enterprise shall order a restoration to the original state or order the investor to return the disposed property to the enterprise; where any damage is caused, the investor shall bear the compensation responsibility.

Article 47 Where a liquidation committee fails to submit the liquidation report for filing to the examination and approval authorities of the enterprise or fails to submit the liquidation report to the registration authorities of the enterprise in accordance with the provisions of Article 32 or 33 of these Measures, or conceals important facts or omits major matters when submitting the liquidation report, the examination and approval authorities and the registration authorities of the enterprise shall order the liquidation committee to make corrections. If the liquidation committee fails to go through the cancellation formalities for the enterprise in accordance with the provisions of Article 33 of these Measures, the registration authorities of the enterprise shall revoke its business license and make announcement.

Article 48 Where an enterprise under liquidation conceals assets, makes false balance sheet or false inventory of assets or distributes the assets of the enterprise before the payment of liquidation expenses and the debts of the enterprise, the examination and approval authorities and the registration authorities of the enterprise shall order the enterprise to make corrections and the registration authorities of the enterprise shall impose a fine between one and five percent of the amount of assets concealed or the amount of the assets distributed before all debts of the enterprise are paid off; the person in charge directly responsible and other person directly responsible shall be imposed a fine between 10,000 and 100,000 yuan.

Article 49 If a member of a liquidation committee takes advantage of his position and power to play favoritism and commit irregularities, seek for illegal earnings or embezzle the assets of the enterprise, the examination approval authorities and the registration authorities of the enterprise shall order the person to return the embezzled assets and the registration authorities of the enterprise shall confiscate the illegal earnings and may impose a fine between one and five times

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the illegal earnings.

Article 50 Those violating provisions of these Measures and committing a crime shall be investigated for criminal responsibility.

Chapter V Supplementary Provisions

Article 51 These Measures shall enter into force as of the date of promulgation.

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China Business Engine
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Fax +86 21 5228-9730

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