



PROCEDURES FOR LIQUIDATION OF FOREIGN-FUNDED ENTERPRISES

(Approved by the State Council on June 15, 1996 and promulgated by Decree No.2 of The Ministry of Foreign Trade and Economic Cooperation on July 9, 1996)

Chapter 1 General Provisions

Article 1 This set of procedures are formulated in accordance with relevant laws to ensure the smooth progress of the process of liquidation of the foreign-funded enterprises (FFE), protect the rights and interests of the creditors and investors and safeguard the social and economic order related to the liquidation.

Article 2 These procedures apply to the liquidation of the Sino-foreign equity and contractual joint ventures and wholly foreign-owned enterprises (hereinafter referred to as FFEs) set up within the People's Republic of China. The liquidation of FFEs, which have been declared bankrupt according to law shall be handled in line with relevant laws and administrative regulations on liquidation due to bankruptcy.

Article 3 FFEs that are competent to organize by themselves liquidation committees for their own liquidation may proceed to liquidation in accordance with the stipulations on the general liquidation of this set of procedures. But for FFEs that are incompetent to do so or which that have met with difficulties in general liquidation processes their power organs such as the board of directors or joint management committee (hereinafter referred to as power organ), investors or creditors may apply to departments in charge of examining and approving the FFEs for a special

liquidation. If approved, the liquidation of a FFE concerned liquidation in accordance with stipulations on special liquidation in this set of procedures. The liquidation of a FFE, which has been closed according to law, should proceed in accordance with the stipulations on special liquidation in this set of regulations.

Article 4 Liquidations of FFEs should be proceeded in accordance with relevant State laws and administrative regulations, on the basis of the FFEs' approved contracts and articles of association under the principles of being fair, reasonable and protecting the rights and interests of the enterprise, investors and creditors.

Chapter 2 General Liquidation

Section 1 Duration of Liquidation

Article 5 Liquidation of a FFE should begin at the date of expiration of the operation term of the FFE, the date of the closure of the FFE as permitted by the examining and approving department, or the date of the termination of the contract of the FFE judged by the people's court or arbitrated by the arbitration agency.

Article 6 The duration of liquidation cannot exceed 180 days beginning from the starting day of the liquidation ending with the submission of the liquidation report by the FFE to the examining and approving department of the FFE. When there is the need to extend the duration of the liquidation due to special reasons, the liquidation committee should apply to the examining and approving department of the FFE 15 days before the end of the duration, and the extension cannot exceed 90 days.

Article 7 FFEs should not engage in any new business activities during the duration of the liquidation.

Section 2 Liquidation Organization

Article 8 The power organ of a FFE should organize a liquidation committee for the liquidation of the enterprise and the committee should be set up within 15 days beginning from the date of beginning of the liquidation.

Article 9 A liquidation committee should be made up of at least three people selected by the power organ or among members of the organ or employed from related professionals.

The liquidation committee should have a head member appointed by the power organ of the FFE. With the approval of the power organ the liquidation committee may employ staff to do the routine work of liquidation.

Article 10 Members of the liquidation committee should be changed in one of the following cases during the liquidation period:((1)The member violates laws;(2)Creditors ask to change under just reasons; and((3)The member dies or loses ability to act.

Article 11 The liquidation committee exercises the following terms of power during the liquidation period:(1)clearing enterprise's property, making of the balance sheet an detailed list of property and formulation of liquidation plan;(2) announcement to unknown creditors and notifications to known creditors in written form;(3)handling and clearance of the unfinished business of the enterprise;(4)working out of principles of evaluation and of computation of property;(5)clearing and payment of overdue taxes;(6)clearing of credits and debts;(7)handling of the property surplus after clearing and payment of the debt of the enterprise; and (8)participation in civil lawsuits on behalf of the enterprise.

Article 12 The balance sheet, detailed list of property, the basic principles for property evaluation and computation and the liquidation plan, proposed by the liquidation committee, shall be reported to examining and approving

department of the FFE for record after appraisals by the enterprise's power organ.

Article 13 After the liquidation committee is set up, staff of the enterprise concerned should hand in accounting statements, financial books, list of property, name list of creditors and debtors, and other written materials related to the liquidation committee within a set deadline.

Article 14 The liquidation committee should perform its duty of liquidation according to law and handle related affairs under consulting principles.

Members of the liquidation committee perform according to their duties and should not take bribes by abusing their power, seek illegal income, or defalcate the property of the FFE.

Article 15 During the liquidation, the examining and approving department of the FFE and other competent departments may send people to attend the meetings about the liquidation of the enterprise and supervise upon the work concerned.

Section 3 Notice and Announcement of Liquidation

Article 16 Within 7 days beginning from the date of the start of the liquidation the FFE should notify the examining and approving department of the FFE, the department in charge of the enterprise, the customs, the foreign exchange administrative department, the enterprise registration department, taxation department and the bank where the FFE opens its account, of the name and address of the enterprise to be liquidated, the reason and the beginning date of the liquidation; FFEs with State-owned assets should also notify the competent State assets administrative department, the enterprise registration department, taxation department and the bank where the FFE opens its account, of the name and address of the enterprise to be liquidated, the

reason and the beginning date of the liquidation; FFEs with State-owned assets should also notify the competent State assets administrative department.

Article 17 The liquidation committee should notify the known creditors with their credit amount in written form within 10 days beginning from the date of the setting up of the committee, and publish the announcement at least twice in a national newspaper, a local provincial or city newspaper within 60 days beginning from the date of its setting up. The first announcement should be published within 10 days beginning from the date of its setting up.

The liquidation announcement should specify the name and address of the enterprise, the reason and beginning date of the liquidation, the mail address of the liquidation committee and names of its members and person for liaison.

Article 18 The creditors should report their credits to the liquidation committee within 30 days beginning from the date of receiving the notice and those who receive no notice, within 90 days beginning from the date of the first announcement published.

Article 19 The creditors should report their credits with the amount and relevant certificate of the credit within the set term.

Failures of reports by creditors within the set terms shall be settled as followings: (1) Credit claims of the known creditors should be listed to be handled in the liquidation; and (2) Credit of unknown creditors may be claimed and paid before the end of the distribution of the enterprise's surplus property; but after the end of the distribution of the enterprise's surplus property, the claims are regarded as abandoned.

Section 4 Credits, Debts and Repayment

Article 20 The liquidation committees should register the credit claims reported by creditors and notify the creditors in written form of the results of the checkups of the claims.

Article 21 If the creditors have objections to the results of the checkups provided by the liquidation committees, they may ask the committees to make re-checks to the credit claims within 15 days beginning from the date of receiving the written notices. If the creditors still have objections to the re-checked results, they may bring a lawsuit before the local people's court within 15 days beginning from the date of receiving the written notices about the result of the re-checks; if the creditors and the FFEs concerned have agreed to settle the matters through an arbitration the matters shall be submitted to arbitration. During the judicial proceedings or arbitration, the liquidation committee must not distribute the disputed properties.

Article 22 For any property gains and losses discovered in stocking property, sales, unpayable debts, or unreceivable credits as well as any incomes and losses during the liquidation period, the liquidation committees should provide written explanations and certificates of evidence to power organs of the FFEs and put the related amounts into gains or losses of the liquidation.

Article 23 The following liquidation expenses should enjoy priority in payments from the liquidated property: (1) expenses incurred through management, sales and distribution of the enterprise property during the liquidation; (2) expenses incurred through announcements, lawsuits and arbitration; and (3) other expenses incurred during the liquidation period.

Article 24 Creditors with claims for property guaranteed credits before the starting date of the liquidation enjoy priority of repayment from the guaranteed properties. The part of the claims in exceed of guaranteed property may be paid in the

order set in the Article 25 of this set of this set of regulations.

Article 25 After payments for the expenses of the liquidations are made repayments should be in order of: (1) employees wages and labour insurance fees; (2) State taxes; and (3) other debts.

Article 26 FFEs properties must not be distributed before payments of liquidation expenses and debts surplus properties of the FFEs after payments of liquidation expenses and debts should be distributed according to the actual investment percentages of the investors except the cases as stipulated by laws, administrative regulations or enterprise contracts and articles of association.

Article 27 Should FFEs properties not be able to make up for payments for debts, the liquidation committees should apply to the people's court for announcing the bankruptcy of the enterprises; enterprises being announced bankruptcy according to law shall be handled in accordance with relevant laws and administrative regulations on the liquidation of the bankrupt enterprises.

Article 28 Following actions of the FFEs are invalid within 180 days beginning from the date of starting liquidation: (1) free transfers of enterprise property; (2) sales of enterprise property at abnormally low prices; (3) provision of property guarantee for debts which originally have no property guarantees; (4) repayment of undue debts in advance; and (5) abandonments of credits of FFEs concerned.

None of the Chinese or overseas investors has the power to handle the enterprise property beginning from the starting date till the end of the liquidation.

Section 5 Appraisal, Pricing and Handling of the Liquidated Property

Article 29 Appraisals and pricings of the liquidated property should be made in accordance with: (1) the stipulations of contracts and articles of associations of the enterprises if there are any; (2) decisions of the Chinese and overseas investors through consultations with approvals by examining and approving department of FFEs if without any stipulations defined in (1); (3) decisions made by the liquidation committee in accordance with relevant State regulations and also opinions of the asset appraisal agency with approvals by examining and approving department of FFEs if without any stipulations defined in (1) and decisions defined in (2); and (4) decisions of the court or the arbitration commission if terminations of the contract of the enterprise are upon judgments of the contract of the enterprise are upon judgments of the court or rulings of the arbitration commission.

Article 30 When the liquidated properties are put on sale, investors of the FFEs should enjoy priority for the purchase with the actual purchase to be made by the part who gives the higher offer.

Section 6 Termination of Liquidation

Article 31 A liquidation committee shall prepare a liquidation report after completing all the work set in the liquidation plan. The report concerned shall include: (1) the reason, time and procedures of the liquidation; (2) results of the handling of the credits and debts by the committee; and (3) results of the handling of the liquidated property.

Article 32 A liquidation report shall be reported to examining and approving department of the FFE concerned for record after its confirmation by the power organ of the enterprise.

Article 33 The liquidation committee shall cancel the registration of the enterprise with the taxation and customs administrations within 10 days beginning from the date of handing in the

liquidation report to the examining and approving department of FFEs.

Within 10 days, beginning from the date of the cancellation of registration as stipulated in the preceding clause, the liquidation committee shall send the liquidation report together with the certificates to certify the cancellation of registration issued by the taxation and customs administrations to the registration office of FFEs cancel the registration of the enterprise, hand over the business license and announce the termination of the enterprise in a national newspaper and a local provincial or city newspaper.

Article 34 Upon the termination of a liquidation, the various accounting vouchers, books and statements kept by the liquidation committee should be handed over to: (1) The Chinese partner in cases of Sino-overseas joint equity and contractual ventures and if there are two or more Chinese partners, to the one that is appointed by the department in charge of FFEs for keeping of documents; and (2) the accounting evidences, books and report forms shall be kept by a unit appointed by the examining and approving department before the process of cancellation of registration of FFEs in cases of wholly overseas owned enterprises.

Chapter III Special Liquidation

Article 35 Special liquidation of an enterprise should be started on the day when the examining and approving department of FFEs approves the special liquidation of the enterprise or when the enterprise is ordered to be shut down by law.

Article 36 For the special liquidation of an enterprise, a liquidation committee shall be set up by the approving department of FFEs or another department authorized by it with the participation of Chinese and overseas investors of the

enterprise, representatives of relevant departments and professionals concerned.

Article 37 The liquidation committee should have a head appointed by the examining and approving department of FFEs or a department entrusted by it. During the special liquidation, the head of the committee shall exercise the functions and powers of legal representative of the enterprise and the liquidation committee shall exercise the functions and powers of the enterprise's power organ.

A liquidation committee should handle affairs related to liquidation and report its work to the examining and approving department.

Article 38 A liquidation committee may call meetings of the enterprise's power organs for the creditors to discuss the details about the liquidation.

Article 39 All creditors should be in title of participation and voting in the meeting of the creditors except those who have the property guarantee and have not given up their priority of receiving the repayment. Chairman of a creditors meeting should be appointed from among the creditors who have the right to vote by the examining and approving department of FFEs or the department entrusted by it.

Article 40 A liquidation committee is responsible for calling up the creditors meetings when doing so, the clearing committee should notify the creditors in written form in 15 days before the meeting is held. Those creditors who cannot attend the meeting should entrust their agents in a written form to attend.

Article 41 A creditors meeting exercises the following functions and powers: (1) check the evidences of claims, amount of credits, and guarantee about the credits; and (2) check the fact of debt repayment and according to which

propose to the liquidation committee scheme for the liquidation on behalf of the creditors.

Article 42 The liquidation scheme and report worked out by the liquidation committee shall be confirmed by the examining and approving department of FFEs.

Article 43 The stipulations in Chapter II of this set of this set of regulations should apply to the special liquidations in cases without any special stipulations as set in this chapter.

Chapter IV Legal Liabilities

Article 44 Engagement in new business operations by a FFE concerned during the liquidation period shall be ordered a correction and may also be imposed a fine between RMB10,000 yuan and RMB100,000 yuan by the department concerned in charge of registration of FFEs.

Article 45 An enterprise concerned failing to notify or make announcement on the liquidation to creditors in violation of the stipulations in Article 17 of this set of regulations shall be ordered to correct and may be imposed a fine between RMB10,000 by the enterprise registration department.

Article 46 Chinese and overseas investors disposing the enterprise property during a liquidation period in violation of the stipulation in the second clause of Article 28 of this set of regulations shall be ordered to restore to the original state or repatriate the disposed properties and compensate to losses if any by the examining and approving department of FFEs.

Article 47 A liquidation committee in violation of stipulations in articles 32 and 33 of this set of regulations of failing to send the liquidation report to the examining and approving department of FFEs and registration department for record, or

having department important facts held up or omitted in the report, shall be ordered to correct by the examining and approving and registration departments of FFEs.

A liquidation committee failing to go through the formalities of writing off the enterprise in violation of the stipulations in Article 33 of this set of regulations shall be revoked its business license by the registration department accompanied with an announcement.

Article 48 An enterprise which hides property during a liquidation, give false records or balance sheets or property lists or distributes its property before paying the liquidation expenses and repaying its debts should be ordered to correct by the examining and approving and registration departments of FFE and imposed a fine between 1% and 5% of the value of the hidden property or the property distributed by the enterprise before repaying all its debts and a fine between RMB10,000 yuan and RMB100,000 yuan shall be imposed on persons who have direct responsibility and other responsible persons.

Article 49 Liquidation committee members who abuse their power to seek illegal incomes or intrude the enterprise properties shall be ordered to return intruded properties by the examining and approving and registration departments of FFEs and be confiscated the income they obtain by violating laws and regulations, and may be imposed a fine between 2 and 6 times their illegal incomes by the enterprise registration department.

Article 50 Those who violate the stipulations of this set of regulations and commit crimes shall be investigated and affixed their responsibilities for the crimes.

Chapter V Supplementary Provisions

Article 51 This set of regulations goes into effect as of the dated of its promulgation.