

# Provisions on the Merger and Division of Foreign-Invested Enterprises of the PRC

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## Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Company Law of the People's Republic of China and the laws and regulations on foreign investment enterprises, for the purpose of regulating the merger and division of foreign-invested enterprises, protecting the lawful rights and interests of investors, creditors, and employees, and promoting the optimization of enterprise organizational structure.

Article 2 — These Provisions shall apply to foreign-invested enterprises established within the territory of China, including Sino-foreign equity joint venture enterprises, Sino-foreign cooperative joint venture enterprises, foreign-invested enterprises limited by shares, and wholly foreign-owned enterprises (hereinafter collectively referred to as "enterprises").

Article 3 — For the purposes of these Provisions, "merger" means the combination of two or more enterprises into a single enterprise in accordance with the relevant provisions and through the conclusion of an agreement. Merger may take the form of merger by absorption or merger by new establishment. "Division" means the division of an enterprise into two or more enterprises in accordance with the relevant provisions. Division may take the form of division by separation or division by dissolution.

## **Chapter II — Merger of Enterprises**

Article 4 — In a merger by absorption, the absorbing enterprise shall continue to exist, and the absorbed enterprise shall be dissolved. In a merger by new establishment, all merging enterprises shall be dissolved and a new enterprise shall be established.

Article 5 — The registered capital of the enterprise after merger shall be determined in accordance with the following provisions: (1) in the case of a merger between a limited liability company and a company limited by shares, the registered capital after merger shall be the sum of the net assessed assets of the original enterprises; (2) where the parties to the merger contribute capital, the registered capital after merger shall be the sum of the registered capital of the original enterprises.

Article 6 — The investment proportion of each investor in the enterprise after merger shall be determined through negotiation by the investors, or assessed and verified by an accounting firm, and shall be specified in the merger agreement.

Article 7 — Where a merger involves a change in the type of enterprise or a change in the industry in which the enterprise operates, the matter shall comply with the laws, regulations, and industrial policies governing the type and industry of the enterprise after the change.

## **Chapter III — Division of Enterprises**

Article 8 — In a division by separation, the original enterprise shall continue to exist and shall separate a portion of its assets to establish a new enterprise. In a division by dissolution, the original enterprise shall be dissolved and two or more new enterprises shall be established.

Article 9 — The registered capital of each enterprise after division shall be determined through negotiation by the investors of the original enterprise, but the sum shall not exceed the registered capital of the original enterprise.

Article 10 — Where a division involves a change in the type of enterprise or the industry in which the enterprise operates, the matter shall comply with the provisions of Article 7 hereof.

## **Chapter IV — Approval and Registration**

Article 11 — The merger or division of enterprises shall be subject to the approval of the original approving authority. Where the enterprise after merger or division falls within a different approving authority by reason of a change in type or industry, the approval shall be obtained from the approving authority with jurisdiction over the enterprise after merger or division.

Article 12 — An application for merger or division shall be submitted together with the following documents: (1) the resolution on merger or division adopted by the board of directors of each enterprise; (2) the merger or division agreement signed by the legal representatives of the enterprises; (3) the contract and articles of association of the enterprise after merger or division; (4) the audited balance sheets and property inventories of the enterprises; (5) the list of creditors and debtors; (6) the employee resettlement plan; (7) the post-merger or post-division notice to creditors.

Article 13 — The approving authority shall complete the examination and shall decide to approve or disapprove the merger or division within 45 days from the date of receipt of all prescribed documents.

Article 14 — After obtaining the approval for merger or division, the enterprise shall handle the relevant registration formalities with the administrative department for industry commerce, including cancellation of registration, change of registration, or establishment of registration, within the prescribed time limit.

## **Chapter V — Creditor and Employee Protection**

Article 15 — Within 10 days after the adoption of the merger or division resolution, the enterprise shall notify its creditors and shall publish an announcement in a newspaper within 30 days. Creditors shall have the right to request the enterprise to pay off its debts or to provide corresponding security within 90 days from the date of receipt of the notice, or within 90 days from the date of the first announcement.

Article 16 — The enterprise after merger shall succeed to all claims and debts of the merging enterprises. The enterprises after division shall assume joint and several liability for the debts of the original enterprise, unless otherwise agreed between the enterprise and its creditors in writing prior to the division.

Article 17 — In the case of a merger or division, the employment contracts of the employees of the original enterprise shall be succeeded by the enterprise after merger or division. The employee resettlement plan shall be agreed upon by the employees or the employee representative congress of the original enterprise.

## **Chapter VI — Supplementary Provisions**

Article 18 — The merger and division of enterprises invested by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region shall be handled with reference to these Provisions.

Article 19 — The Ministry of Foreign Trade and Economic Cooperation and the State Administration for Industry and Commerce shall be responsible for the interpretation of these Provisions in accordance with their respective functions and duties.

Article 20 — These Provisions shall take effect as of November 22, 2001. The Provisional Provisions on the Merger and Division of Foreign-Invested Enterprises promulgated by the Ministry of Foreign Trade and Economic Cooperation on September 23, 1999 shall be repealed simultaneously.

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