

REGULATIONS FOR THE IMPLEMENTATION OF THE D.P.R.K.
ON WHOLLY FOREIGN-OWNED ENTERPRISES

(Approved by the Decision of the Administration
Council of the D.P.R.K. on March 29, 1994)

SUBJECT: WHOLLY FOREIGN-OWNED ENTERPRISES

ISSUING-DEPT: ADMINISTRATION COUNCIL

ISSUE-DATE: 03/29/1994

IMPLEMENT-DATE: --/--/1994

LENGTH: 4821 words

TEXT:

Chapter 1. General Provisions

Article 1. These regulations are intended to ensure the proper implementation of the Law of the D.P.R.K. 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 Free Economic and Trade Zone (hereinafter called the Zone). A wholly foreign-owned enterprise is a form of business whereby the investor establishes an enterprise with his own investment and has the right of independent management. Korean nationals residing outside the territory of the D.P.R.K. are also allowed to set up and run a wholly foreign-owned enterprise inside the Zone.

Article 3. A wholly foreign-owned enterprise shall become a body corporate of and be legally protected by the D.P.R.K. The investor and the wholly foreign-owned enterprise shall respect and strictly observe the laws and regulations of the D.P.R.K.

Article 4. The establishment and operation of a wholly foreign-owned enterprise shall be subject to these regulations. Any item which is not provided for in these regulations shall be subject to the relevant laws and regulations of the D.P.R.K.

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

Article 6. A wholly foreign-owned enterprise shall make in the Korean language financial documents and other documents to be submitted to institutions and enterprises of the D.P.R.K and, If they are made in a foreign language, Korean translation shall be given.

Chapter 2. Establishment of a Wholly Foreign-owned Enterprise

Article 7. The investor is allowed to set up a wholly foreign-owned enterprise in the following sectors:

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

Article 8. A wholly foreign-owned enterprise is not allowed to be set up unless it satisfies at least any one of the following conditions; 1 . It should be equipped with hi-tech and modern technologies and production facilities. 2. It should be able to produce internationally competitive goods. 3 . It should be able to raise the quality of its products up to international standards.

Article 9. The establishment of a wholly foreign-owned enterprise is not allowed in the following cases:

- 1 . In case it may endanger or hinder the security of the D.P.R.K.
2. In case it may have an adverse effect on public health, landscape and resources of the country.
3. In case it uses equipment and production processes which are outdated economically and technologically
4. In case products it makes have no or small demand locally and internationally.
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 ideological emotions of the people and the mode of life.

Article 1. The establishment of a wholly foreign-owned enterprise is not allowed in the following sectors:

- 1 . Publishing, press and broadcasting sectors.
2. Telecommunication sectors.

3. Other sectors where the establishment of a wholly foreign-owned enterprise is prohibited by the State.

Article 11. When the investor goes through formalities for the establishment of a wholly foreign-owned enterprise, he may do so either personally or through his agent.

Article 12. The investor wishing to set up a wholly foreign-owned enterprise shall submit the application for its establishment to the provincial administration and economic committee (hereinafter called the Zone Authority). The application shall state the name, address, and position of the investor, the name, nationality and position of the general manager of the enterprise, the name of the enterprise, the type of business. Range and amount of products, amount of total investment, registered capital, name of bank, 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 staffing, area of construction and desired location. Water, power, and materials needed, annual production plans, period of operation and other necessary information, and shall be accompanied by the memorandum and articles of association, feasibility study report, proving documents of the investor, list of equipment and materials to be contributed. Introductory descriptions and manuals on industrial property rights and technical know-how to be supplied, certificates on financial position of the investor and other necessary documents.

Article 13. The memorandum and articles 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. President, chief accountant, and auditor, period of operation, procedures for dissolution, liquidation and amendment of the memorandum, and other necessary information.

Article 14. The memorandum and articles of association of a wholly foreign-owned enterprise shall be valid only if it has been approved by the body which had examined and approved its establishment.

Article 15. 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 works, kinds and needs of major materials, data on marketing employment and technical training plans, estimations of expected profitability in phases and other necessary data.

Article 16. The list of equipment and materials to be contributed shall include their names, specifications, units, amounts, uses, unit prices, total prices, manufacturer, countries from which they are imported and other necessary data and shall be accompanied by the introductions or manuals of them.

Article 17. 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 18. Screening of a proposed wholly foreign-owned enterprise shall be done by the External Economic Body of the Administration Council, which includes the External Economic Commission (hereinafter referred to as the External Economic Body) and the Zone Authority. The External Economic Body shall screen and approve infrastructure construction projects whose total investment is greater than 200 won and non infrastructure projects whose total investment is greater than 100 won. The Zone Authority shall screen and approve infrastructure construction projects whose total investment is not greater than 200 won and non-infrastructure projects whose total investment is not greater than 100 won. The External Economic Body may screen and approve projects with a small investment depending on the importance of the project in question.

Article 19. If the Zone Authority receives an application for . The establishment of a wholly foreign-owned enterprise to be screened and approved by the External Economic Body, it shall, within 1 days from the receipt of the application deliver the application accompanied by its opinion to the External Economic Body.

Article 20. The External Economic Body and the Zone Authority(hereinafter referred to as "the screening body") shall, within 8 days from the receipt of the application for the establishment of a wholly foreign-owned enterprise, have consultations with relevant bodies, screen the project and give a notice of approval or rejection to the applicant.

Article 21. The investor shall, within 3 days from the receipt of the notice of approval, register his enterprise with and have a certificate of business registration issued by the Zone Authority. In case an enterprise is to be registered, an application for business registration shall be submitted. The application shall state the name, address, nationality and position of the investor, the name and address of the enterprise, the name, nationality and position of the general manager, total investment registered capital, expected date of operation and other necessary information and shall be accompanied by a copy of the document approving the establishment of the enterprise. 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 body corporate of the D.P.R.K.

Article 22. A wholly foreign-owned enterprise shall, within 2 days from its business registration, make tax registration with the financial organ based at the place of business of the enterprise according to the laws and regulations relating to taxation on foreign-invested businesses and foreign individuals.

Article 23. A wholly foreign-owned enterprise may open or set up, in the Zone or in a foreign country, its branches, representative offices, agencies, detached offices or subsidiaries, and associate itself with institutions or enterprises of the D.P.R.K. or with companies of a foreign country. In case of opening or setting up branches, representative offices, agencies, detached offices or subsidiaries and the like, approval shall be obtained for it from the relevant screening body.

Article 24. A wholly foreign-owned enterprise may entrust construction work if necessary, to a relevant construction body of the D.P.R.K.

Chapter 3. Procedures and Method of Investment

Article 25. A wholly foreign-owned enterprise shall invest the registered capital equivalent to the amount separately determined depending on the size of the total investment.

The amount of total investment shall be the total sum of the fixed assets and circulating properties of the enterprise. The registered capital is the total sum of the investment as has been registered with the Zone Authority.

Article 26. The size of the registered capital shall be determined as follows;

- 1 . not less than 65% of the amount of total investment if the amount of total investment is not greater than 600 won,
2. not less than 45% of the amount of total investment if the amount of total investment is greater than 600 won and not greater than 200 won (not less than 4,1, won if the amount of total investment is greater than 600 won and not greater than 900 won),
3. not less than 35% of the amount of total investment if the amount of total investment is greater than 200 won and not greater than 600 won (not less than 9,5, won if the amount of total investment is greater than 200 won and not greater than 2700 won),
4. not less than 3% of the amount of total investment if the amount of total investment is greater than 600 won (not less than 2600 won if the amount of total investment is greater than 600 won and not greater than 7700 won).

Article 27. A wholly foreign-owned enterprise may increase its registered capital or convey it to another person. In case of increase or conveyance of the registered capital, approval shall be obtained for it from the screening body and upon the approval being given, registration shall be made of the change with the Zone Authority.

A wholly foreign-owned enterprise may not reduce its registered capital.

Article 28. Investment may take the form of cash, property in kind, technical know-how, industrial property right and the like. In this case the price of the property in kind, technical know-how or industrial property right shall be decided by the investor on the basis of the international market price prevailing at the moment and shall thereafter be approved by the screening body.

Article 29. Property in kind, industrial property right or technical know-how and the like which is contributed shall satisfy the following conditions:

- 1 . It shall be owned by 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 2% of the registered capital.

Article 3. A wholly foreign-owned enterprise shall ask the foreign commodities inspection body to inspect machinery and equipment which it brings in as a contribution. The foreign commodities inspection body shall inspect the machinery and equipment according to a written request and issue a certificate of inspection. A wholly foreign-owned enterprise shall provide conditions for the inspection of the machinery and equipment by the foreign commodities inspection body.

Article 31. The investor shall invest the registered capital within the following time limits:

1 . in case the investment is to be made at one time within 6 months from the receipt of the certificate of business registration,

2. in case the investment is to be made in several phases within 2 years from the receipt of the certificate of business registration , in which case the initial investment shall be made within 9 days from the receipt of the certificate of business registration in the amount of not less than 15% of the registered capital, and the next investment immediately following the initial investment shall be made within such time limit as is mentioned in the application for the establishment of the wholly foreign-owned enterprise.

3. if the initial investment has not been made within the specified period of time, or if the next investment has not been made until 3 days have elapsed after the expiry of the specified time limit, the written approval for the establishment of the wholly foreign-owned enterprise and the certificate of business registration shall automatically lose effect, in which case the enterprise shall return to the Zone Authority its certificate of business registration and the certificate of cancellation of tax registration issued by the financial division of the Zone Authority and thereafter cancel the registration of the enterprise.

Article 32. If the investor is not able to invest the registered capital within the specified time limit, he shall apply to the screening body for the extension of this time limit.

Article 33. A wholly foreign-owned enterprise may reinvest, wholly or partly, its legal profits earned from the operation of the enterprise. In this case income tax which 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 which has been refunded shall be repayable.

Article 34. Whenever the wholly foreign-owned enterprise invests the registered capital, it shall submit to the screening body a report certifying the investment. This report shall be issued by the certified public accountant.

Chapter 4. Production and Circulation

Article 35. A wholly foreign-owned enterprise shall have business license in order to be able to carry out business transactions, The enterprise shall have the business license issued before the expected date of the start-up specified in the application for business registration. The business license shall be issued by the Zone Authority. In order to obtain a business license, an application for business license shall be submitted to the Zone Authority. The application shall state necessary information and shall be accompanied by a report certifying the investment issued by the certified public accountant, documents issued by a relevant body guaranteeing the safety and environmental aspects of the production processes and facilities and a sample of the product. The Zone Authority shall, within 15 days from the receipt of the application examine it and issue or reject to issue the business license.

Article 36. Business activities of wholly foreign-owned enterprise shall be limited to such activities as are allowed by its memorandum of association. The enterprise shall draft production and import and export plans by itself and register them with the Zone Authority.

Article 37. A wholly foreign-owned enterprise may purchase materials needed for its operation either in the territory of the D.P.R.K. or bring them in from a foreign country; it may export its products or sell them in the territory of the D.P.R.K. If the enterprise is to purchase materials produced by an institution or an enterprise of the D.P.R.K. or sell its products in the territory of the D.P.R.K. the enterprise shall do so through a relevant trading agency of the D.P.R.K. In case the enterprise is to purchase materials (except office items, furniture and the like) produced by an institution or an enterprise of the D.P.R.K. directly through a distribution network or sell its products directly through a distribution network, approval shall be obtained for it from the External Economic Body.

Article 38. No customs duty shall be imposed on materials brought in as a contribution or to be used for the production and operation by a wholly foreign-owned enterprise and on materials which the enterprise produces by itself and exports.

Article 39. A wholly foreign-owned enterprise may commission a relevant trading agency of the D.P.R.K. to export its products.

Article 4. Prices of export and import goods (including fees for technical service) of a wholly foreign-owned enterprise shall be based on international market prices prevailing at the moment. Prices of commodities which are sold in the Zone shall be determined by an agreement between the seller and the buyer. Prices of all commodities which are sold in the territory of the D.P.R.K. .Outside the Zone and prices of some mass consumption goods inside the Zone shall be determined by the State pricing body. A wholly foreign-owned enterprise shall not realize export and import goods at a price which is higher or lower than the international market price for purpose of lax evasion.

Article 41. A wholly foreign-owned enterprise shall regularly keep records of items relating to the storage and use of imported materials and to the export of its products.

Chapter 5. Accounting

Article 42. A wholly foreign-owned enterprise shall do its accounting according to the accounting regulations applying to foreign-invested enterprises.

Article 43. 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 exchange control body shall be given.

Article 44. A wholly foreign-owned enterprise shall open an account of Korean won and accounts of foreign currencies with the Foreign Trade Bank of the D.P.R.K. The enterprise may open its accounts with another bank of the D.P.R.K. or with a bank of a foreign country upon agreement being reached 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 foreign exchange control body the records of receipt and payment and the account statement produced by the relevant bank.

Article 45. A fiscal year for a wholly foreign-owned enterprise shall be from January 1 to December 31 of each calendar year. In the year of establishment the fiscal year shall be from the date of establishment to December 31 of the same year and in the year of termination, the fiscal year shall be from January 1 of the same year to the date of termination.

Article 46. A wholly foreign-owned enterprise shall pay tax subject to laws and regulations on taxation on foreign-invested business and foreign individuals.

Article 47. 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 the taxable income. The reserve fund shall be created by saving 5% of the annual taxable income until the amount of the fund amounts to 25% 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 48. A wholly foreign-owned enterprise shall settle its financial accounts quarterly and yearly. The quarterly financial statements shall be delivered to the screening body within 15 days after the end of assessment quarterly and the yearly financial statements within 2 months after the end of the assessment year. 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. Annual financial statements shall be attested by the certified public accountant.

Article 49. A wholly foreign-owned enterprise may remit legal profits and other incomes earned from the operation of the enterprise and the money remaining after the liquidation of the enterprise according to the laws and regulations of the D.P.R.K. on foreign exchange control.

Article 5. A wholly foreign-owned enterprise may be given a loan needed for its operation from a bank of the D.P.R.K. or a financial institution of a foreign country.

Article 51. A wholly foreign-owned enterprise shall keep its financial accounting documents for 5 years (until the termination of the enterprise in the case of financial statements and documents on fixed assets depreciation).

Article 52. A wholly foreign-owned enterprise may have its financial statements audited by a public accountant of the D.P.R.K. or by a public accountant of a foreign country.

Chapter 6. Labour Administration

Article 53. A wholly foreign-owned enterprise shall, in principle, employ nationals of the D.P.R.K. Foreigners may be employed for managerial positions or as technicians or skilled workers in special jobs.

Article 54. In the case of employment of nationals of the D.P.R.K., a wholly foreign-owned enterprise shall enter into a contract for employment with the labour service agency which is based at the place where the enterprise is located and in the case of employment of foreigners, the enterprise shall reach an agreement upon it with the External Economic Body.

Article 55. If the enterprise is to dismiss before the expiration of the contract, the nationals of the D.P.R.K. Which it has employed the enterprise shall do so subject to the conditions of the contract upon agreement being reached with the labour service agency.

Article 56. A wholly foreign-owned enterprise shall conduct activities aimed at raising technical qualifications and skills of its employees.

Article 57. Salary standards of the employees of a wholly foreign-owned enterprise shall be subject to the labour regulations on foreign-invested businesses.

Article 58. Employees of wholly foreign-owned enterprises have rights to the trade union movement.

Article 59. Trade unions are allowed to engage in:

1. education of employees in the spirit of commitment to labour discipline and economic tasks,
2. politico-ideological orientation of employees, dissemination of scientific knowledge and sponsoring of sports and cultural events,
3. conclusion and supervision of the implementation of collective bargains with the wholly foreign-owned enterprise concerned in respect of labour management, compensation and labour 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 and recommendation.

Article 6. 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 61. A wholly foreign-owned enterprise shall provide the trade union with conditions. to work and act.

Article 62. A wholly foreign-owned enterprise shall provide the trade union with the working fund at the following rates every month:

- 1 . equivalent of 2% of the sum total of the monthly salary of all employees in case the employed numbers up to 5,
2. equivalent of 15% of the sum total of the monthly salary of all employees in case the employed numbers from above 5 up to 1, and
3. equivalent of total of the sum total of the monthly salary of all employees in case the employed numbers more than 100.

Chapter 7. Term of Operation and Dissolution

Article 63. The period of operation of the wholly foreign-owned enterprise shall be calculated from the date on which the certificate of registration is issued. Article 64. In order to extend the period of operation, an application should be filed to and approved by the screening body 6 months before the term expires. The screening body shall approve or disapprove the application within 3 days from the receipt of the application.

Article 65. A wholly foreign-owned enterprise shall register the changed term of operation with the Zone Authority within 2 days from the date of the application approved.

Article 66. A wholly foreign-owned enterprise may dissolve in the following cases where-

1. The term of operation expires,
2. The continued operation is deemed impossible due to force majeure like natural calamities,
3. An investor determines so due to impossible redemption of loss,
4. The certificates of establishment and registration are canceled, and
5. The court of law decides so.

Article 67. In case of dissolution, an application for that purpose shall be submitted to the Zone Authority.

If the enterprise concerned was licensed by it, the Zone Authority shall review the application and directly approve or disapprove the dissolution, and if the said enterprise was screened by the

External Economic Body the Zone Authority shall hand over the application together with its comments to the External Economic Body. The date on which approval is given by the screening body shall be deemed that of dissolution.

Article 68. A wholly foreign-owned enterprise shall make public and notify the creditors and debtors of the dissolution of the enterprise within 1 days from the date of the dissolution approved.

Article 69. A wholly foreign-owned enterprise shall submit the list of the liquidation committee to the screening body for approval within 15 days from the date of proclamation of the dissolution. The liquidation committee shall commence its work within one week from the date of approval.

Article 7. The liquidation committee shall include in principle the following persons:

- 1 . A person in charge of the wholly foreign-owned enterprise,
- 2 . A representative of the creditors,
- 3 . A representative of the screening body,
4. A public accountant and
5. A lawyer.

Article 71. 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,
3. To determine claims and debts and prepare the balance sheet and the list of property,
4. To evaluate the property 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 72. All expenses spent on liquidation shall be primarily redeemed from the remaining property of the enterprise.

Article 73. A wholly foreign-owned enterprise is not allowed to dispose of any of the property at its own will before the liquidation is over. In case where the remaining property exceeds the amount of the registered capital, the liquidation committee shall pay the corporation income tax on that excess amount.

Article 74. Upon liquidation, the liquidation committee shall prepare the report for the screening body, surrender the certificate of registration and the business license to the Zone Authority to cancel the registration of business and tax and close the account of the enterprise with the bank concerned.

Chapter 8. Supervision and Settlement of Dispute

Article 75. The screening body can inspect the books and property of the wholly foreign-owned enterprise. Article 76. In case of committing the following offense in contravention of these regulations, the loss shall be compensated or a penalty of up to 1, won for the enterprise and up to 2, won for a foreign individual shall be imposed according to the severity of the matter:

- 1 . Breach of the procedure of registration,
2. Causing harm to the interests of the State and social cooperative organizations,
3. Failure in investment within prescribed period, and
4. Irregularity in export and import.

Article 77. In case of tax evasion or delayed tax payment a penalty for that purpose shall be imposed in accordance with laws and regulations on taxation on wholly foreign-owned enterprises and individuals.

Article 78. If the breach is severe in consequence, the enterprise concerned may be suspended from operation or dissolved.

Article 79. Any disagreement concerning transactions of the wholly foreign-owned enterprise shall be settled through consultation. A case of dispute shall be settled by the arbitral tribunal or the court of law of the D.P.R.K. according to the proper procedures.

Article 8. A wholly foreign-owned enterprise may appeal to the body concerned of the D.P.R.K. The body concerned shall settle the case within 3 days from the date of the appeal made. If the wholly foreign-owned enterprise is aggrieved at the result of settlement it may bring the case to the court of law within 10 days from the date of the settlement of appeal.

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