

Regulations of the People's Republic of China for Controlling the Registration of Enterprises As Legal Persons

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Chapter I General Provisions

Article 1 In accordance with relevant provisions of the General Principles of the Civil Law of the People's Republic of China, the present Regulations are formulated with a view to establishing a system for controlling the registration of enterprises as legal persons, confirming their status as such, safeguarding their legitimate rights and interests, stamping out illegal business operations, and preserving social and economic order.

Article 2 Any of the following enterprises which are qualified as legal persons shall register as such in accordance with the relevant provisions of the present Regulations:

- (1) enterprises owned by the whole people;
- (2) enterprises under collective ownership;
- (3) jointly operated enterprises;
- (4) Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises established within the territory of the People's Republic of China;
- (5) privately operated enterprises;
- (6) other enterprises required by the law to register as legal persons.

Article 3 Those enterprises applying for registration as legal persons shall be given Business Licenses for Enterprises as Legal Persons and the status of legal persons when their applications for registration have been examined and approved by the authorities in charge of the registration of enterprises as legal persons and their legitimate rights and interests shall be protected by laws of the State.

Those enterprises, which are required by law to register as legal persons but which have not gone through the procedures of examination and approval registration by the authorities in charge of the registration of enterprises as legal persons, shall not be allowed to engage in business operations.

Chapter II Registration Authorities

Article 4 The authorities in charge of the registration of enterprises as legal persons (hereinafter referred to as the registration authorities) are the State Administration for Industry and Commerce and administrative departments for industry and commerce at various levels. Registration authorities at various levels shall perform their functions according to law under the leadership of

higher registration authorities and be free from unlawful interference.

Article 5 The registration of national corporations, enterprise groups and corporations handling import-export business set up with the approval of the State Council or departments authorized by the State Council shall be examined and approved by the State Administration for Industry and Commerce. The registration of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises shall be examined and approved by the State Administration for Industry and Commerce or by local administrative departments for industry and commerce authorized by the State Administration for Industry and Commerce.

The registration of son (or branch) companies of national corporations, enterprises, enterprise groups or companies handling import-export trade established with the approval of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government or departments authorized by them shall be examined and approved by the administrative departments for industry and commerce of the provinces, autonomous regions and municipalities directly under the Central Government. The registration of other enterprises shall be examined and approved by the administrative departments for industry and commerce of the cities or counties (districts) where the enterprises are located.

Article 6 Registration authorities at various levels shall institute a file of the registration of enterprises as legal persons and a system for tabulating statistics relating to such registration, and collect basic information about the registration of enterprises as legal persons so as to serve the development of a planned commodity economy.

Registration authorities shall offer, in a planned manner and according to the needs of society, the service of providing the public with data about the registration of enterprises as legal persons.

Chapter III Conditions for Registration and Entities to Apply for Registration

Article 7 Entities applying for registration as enterprises as legal persons must satisfy the following conditions, i.e. having:

- (1) name, organization and articles of association;
- (2) fixed sites for business operations and essential facilities;
- (3) funds and employees in conformity with State regulations and in line with their scale of production, operation or service;
- (4) ability to bear civil liabilities independently;
- (5) a scope of business in conformity with the provisions of the relevant laws, regulations and policies of the State.

Article 8 The application of an enterprise for registration as a legal person shall be filed by the person responsible for establishing the enterprise.

The registration as a legal person of a jointly operated enterprise which bears civil liabilities independently shall be applied for by the person responsible for initiating the said enterprise.

Chapter IV Items of Registration

Article 9 The major items to be registered for an enterprise as a legal person are: name, residence, site for business operation, legal representative, economic nature, scope of business, mode of operation, registered capital, number of employees, duration of operation and subdivisions.

Article 10 An enterprise as a legal person shall use only one name. The name to be used by the enterprise as a legal person in its application for registration shall be examined by the registration authorities and, after it is approved and registered, the enterprise as a legal person shall enjoy the right to the exclusive use of the registered name within a definite limit.

Those who apply for establishing Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures or foreign-capital enterprises shall apply to the registration authorities for registering the names of the enterprises before their contracts and articles of association are examined and approved.

Article 11 The legal representative of an enterprise as a legal person, which has been registered after examination and approval by a registration authority, shall be the signatory who exercises functions and powers on behalf of the enterprise. The signature of the legal representative shall be submitted to the registration authority for the record.

Article 12 The registered capital of an enterprise as a legal person represents the total value of the property the State entrusts to it for operation and management or that of the property owned by the enterprise itself.

When an enterprise as a legal person registers for starting operations, the discrepancy between the sum of capital it applies for registration and the sum of capital it actually possesses shall be handled in accordance with specific regulations of the State.

Article 13 The scope of business of an enterprise as a legal person shall be in harmony, with its capital, sites, equipment, employees and technical force. It may focus on one line of business as its main operation while engaging in other operations simultaneously in accordance with relevant regulations of the State. An enterprise as a legal person shall engage in operations within the scope of business as approved in registration.

Chapter V Registration for Starting Operations

Article 14 An enterprise as a legal person shall apply to a registration authority for registration for starting operations within 30 days after the approval of the department in charge of it or that of an authority for examination and approval. For an enterprise which does not have a department in charge or authority for examination and approval, its application for registration for starting operations shall be examined by a registration authority. The registration authority shall make a decision of approval or disapproval of the application for registration within 30 days after receiving it.

Article 15 An enterprise as a legal person shall submit the following papers when applying for registration for starting operations:

- (1) an application for registration signed by the person responsible for its establishment;
- (2) the document of approval issued by the department in charge or the authority for examination and approval;
- (3) its articles of association;
- (4) a certificate of its creditworthiness, a certificate of the verification of its capital or a guarantee for its capital;
- (5) a certificate of the identity of the principal responsible person of the enterprise;
- (6) a certificate of the right to use the residence and site for operation;
- (7) other relevant papers and certificates.

Article 16 When the application filed by an entity for starting operations as an enterprise as a legal person has been examined and approved by a registration authority and a Business Licenses for Enterprises as a Legal Person is received, the enterprise shall be considered as established. The enterprises as a legal person may henceforth have its official seal made, open a bank account, sign contracts and conduct business operations by dint of its Business License. The registration authority may, after a check-up, issue duplicates of the Business License, if the enterprise as a legal person needs them for its business operations.

Chapter VI Changes in Registration

Article 17 An enterprise as a legal person shall apply for making changes in its registration whenever it changes its name, residence, site, legal representative, economic nature, scrape of business, mode of operation, registered capital or duration of operation and whenever it increases or disbands its branches.

Article 18 An enterprise as a legal person shall apply to the registration authority for making changes in its registration within 30 days after the changes are approved by the department in charge or by the authority for examination and approval.

Article 19 An enterprise as a legal person shall apply to the registration authority for making changes in its registration, or for registration for starting operations or for cancelling its registration, whenever it is split up, or merged with others or moved elsewhere, within 30 days after these changes are approved by the department in charge or by the authority for examination and approval.

Chapter VII Cancellation of Registration

Article 20 An enterprise as a legal person shall go through the procedures for cancelling its registration with the registration authority when it closes down, is dissolved, declares bankruptcy or terminates its business operations for other reasons.

Article 21 Whenever an enterprise as a legal person is to cancel its registration, it must submit an application signed by its legal representative, a document of approval issued by the department in charge or by the authority

for examination and approval, a certificate showing the completion of the clearing up of its liabilities, or a document showing that a liquidation organization will be responsible for clearing up its creditor's rights and liabilities. The registration authority, after examining and approving the application, shall recall the Business License for Enterprise as a Legal Person, duplicates of the License, take over the official seal of the enterprise, and notify the banks at which it has opened an account of the cancellation of its registration.

Article 22 An enterprise as a legal person, which fails to start operations 6 months after receiving its Business License for Enterprise as a Legal Person or which has ceased its operations for a year, shall be regarded as having closed down, and the registration authority shall recall its Business License for Enterprises as a Legal Person, duplicates of the License, take over its official seal and notify the banks at which it has opened an account of the cancellation of its registration.

Chapter VIII Announcement, Annual Check-up and Control of Certificates

Article 23 The registration authority shall issue registration announcements whenever an enterprise as a legal person starts operations, changes its name or cancels its registration. No other organ shall be entitled to issue such announcements without the approval of the registration authority.

Article 24 A system for conducting annual check-up shall be instituted to administer the registration of enterprises as legal persons. An enterprise as a legal person shall submit its annual check-up report, its balance sheet or statement of assets and liabilities to the registration authority at the time it prescribes. The registration authority shall check up the major items contained in the registration of the enterprise as a legal person.

Article 25 The Business License for Enterprises as a Legal Person issued by the registration authority is the certificate of an enterprise as a legal person. Except the registration authority, which may withhold or cancel it in accordance with the legal procedures, no other organ or individual is entitled to take over, detain or destroy it.

An enterprise as a legal person, which has lost its Business License for Enterprise as a Legal Person or duplicates of the License, must announce the loss in a newspaper before it can apply for a replacement.

The Business License for Enterprise as a Legal Person and its duplicates may not be forged, altered, leased, lent, sold or reproduced without permission.

Article 26 An enterprise as a legal person shall pay registration and annual check-up fees according to the rules when it registers for starting operations and applies for making changes in its registration and when it receives the annual check-up. The fees to be charged on registration for starting operations shall be 1 millesimal of the sum of the enterprise's registered capital; in cases where the registered capital exceeds 10 million yuan, the fees to be charged on the portion in excess of the said sum shall be 0.5 millesimal of it; in cases where the registered capital exceeds 100 million yuan, no fees shall be

charged on the portion in excess of the said sum. The minimum registration fee shall be 50 yuan. Fees to be charged on making changes in the registration and conducting the annual check-up shall be prescribed by the State Administration for Industry and Commerce.

Chapter IX Control of the Registration of Business Operations by Institutions and Scientific and Technological Public Organizations

Article 27 When institutions or scientific and technological public organizations establish enterprises qualified as legal persons in line with relevant regulations of the state, the applications for registration shall be filed by the enterprises. They may engage in business operations only after their applications for registration have been approved by the registration authorities and after they have received their respective Business Licenses for Enterprise as a Legal Person.

Article 28 Institutions, which are run like enterprises in accordance with relevant regulations of the State and which no longer receive operating funds from the State, or scientific and technological public organizations which are established for business operations, shall apply for registration if they are qualified to be enterprises as legal persons. They may engage in business operations only after their applications have been approved by the registration authorities and they have received their respective Business Licenses for Enterprise as a Legal Person.

Chapter X Supervision and Control

Article 29 The registration authorities shall exercise the following functions of supervision and control over enterprises as legal persons according to law:

- (1) supervising the registration for starting operations, the application for making changes and the cancellation of registration by enterprises as legal persons according to regulations;
- (2) supervising the conduct of business operations by enterprises as legal persons in line with the items of registrations, articles of association and contracts;
- (3) supervising the compliance of enterprises as legal persons and their legal representatives with laws, regulations and policies of the State;
- (4) stopping, investigating or dealing with illegal business operations of enterprise as legal persons; protecting their legitimate rights and interests.

Article 30 The registration authority may, in light of the circumstance, penalize an enterprise as legal person by warning, fine, confiscation of illegal earnings, suspension of business for consideration, or withholding or revoking the Business License for Enterprise as a legal Person, if it is involved in any of the following case:

- (1) concealing the true situation and resorting to deception in the course of registration or starting operations before the approval of its registration;
- (2) altering major items in the registration without permission or engaging in business operations beyond the scope of business as approved in registration;
- (3) failing to cancel registration according to the rules or failing to submit

the check-up report or receive the annual check-up;

(4) forging, altering, leasing, lending, transferring, selling or reproducing the Business License for Enterprise as a Legal Person or its duplicates without permission;

(5) withdrawing or transferring capital, concealing assets or dodging liabilities;

(6) engaging in illegal business operations.

While penalizing an enterprise as a legal person in line with the above provisions, the registration authority shall investigate its legal representative's administrative and economic responsibilities according to the seriousness of the violations of the law; judicial organs shall investigate the criminal responsibilities of those who have violated the criminal law.

Article 31 The registration authority shall ascertain the facts and act according to law when dealing with the illegal activities of an enterprise as a legal person and notify the parties concerned of its decision in writing.

Article 32 When an enterprise as a legal person disagrees with the penalty meted out but by the registration authority, it may appeal within 15 days after receiving the notice of penalty, to the immediate higher registration authority for reconsideration. The higher registration authority shall make a reconsideration decision within 30 days after receiving the appeal for reconsideration. The enterprise may file a suit in a people's court within 30 days after receiving the notice of reconsideration in it disagrees with the reconsideration decision. The registration authority may, in accordance with the prescribed procedures, ask the bank at which the enterprise has an account to transfer from its account the sum to be fined or confiscated as penalty, if it fails to appeal or to pay the fine or the confiscated sum at the expiry of the prescribed period.

Article 33 When an enterprise as a legal person has its business license revoked, the registration authority shall take over its official seal and notify the bank at which it has account of the cancellation of its registration, and the department in charge or a liquidation organization shall be responsible for settling its creditor's rights and liabilities.

Article 34 Any functionary of the department in charge, the authority for examination and approval or of the registration authority, who has violated the present Regulations, neglected his duties to a serious extent, abused his powers, practised graft and embezzlement, extorted and taken bribes or encroached on the legitimate rights and interests of an enterprise as a legal person, shall be given administrative or economic penalty in light of the circumstances; the judicial organ shall investigate, according to law, his criminal responsibility, if he violates the criminal law.

Chapter XI Supplementary Provisions

Article 35 When an enterprise as a legal person establishes a branch which is incapable of bearing civil liability independently, the registration of the branch shall be applied for by the enterprise. The branch shall receive a

Business License after the application is approved by the registration authority and may engage in business operations within the scope of business as approved in registration.

In accordance with relevant State regulations, administrative institutions depending on State funding or scientific and technological social bodies must apply for registration if they engage in business operations or establish enterprises not qualified; as legal persons. They shall receive Business Licenses after their applications are approved by the registration authorities and may engage in business operations within the scope of business as approved in registration.

The specific control of the registration involved shall be enforced with reference to the provisions of the present Regulations.

Article 36 For new enterprises to be established with the approval of relevant departments of the State Council or planning departments at various levels, if their preparations have been under way for more than 1 year, applications for the registration of the establishment shall be filed according to specific regulations.

Article 37 Enterprises qualified as legal persons, whose registration was approved by the registration authorities before the present Regulations are put into effect, are not required to go through the formalities again for registration as enterprises as legal persons.

Article 38 The State Administration for Industry and Commerce shall be responsible for interpreting the present Regulations; and the rules for their implementation shall also be formulated by the State Administration for Industry and Commerce.

Article 39 The present Regulations shall enter into force on July 1, 1988. The Regulations for Controlling the Registration of Chinese-Foreign Equity Joint Ventures promulgated by the State Council on July 26, 1980, the Regulations for Controlling the Registration of Industrial and Commercial Enterprises promulgated by the State Council on August 9, 1982, and the Interim Provisions for Controlling the Registration of Companies approved by the State Council on August 14, 1985 and promulgated by the State Administration for Industry and Commerce on August 25, 1985 shall all be abrogated on the same date.