

Detailed Rules for the Implementation of the Law of PRC on Sino-Foreign Contractual Joint Ventures

(Approved by the State Council of the People's Republic of China on August 7, 1995 and Promulgated by the Ministry of Foreign Trade and Economic Cooperation on September 4, 1995)

Chapter I General Provisions

Article 1 These detailed rules are formulated in accordance with the Law of the People's Republic of China on Sino-Foreign Contractual Joint Ventures.

Article 2 The establishment of a Sino-foreign contractual joint venture (hereinafter referred to as contractual JV) within the Chinese territory shall conform to the national development policy and industrial policy, and abide by the State instructive directory on foreign investment.

Article 3 Contractual JVs shall independently carry out its business activities and management the scope stipulated in the contractual JV agreement, and contract and articles of association, and are not subject to interference from any organization or individual.

Article 4 A contractual JV may be one with or without the Chinese legal person status.

Those without shall follow relevant special regulations stipulated in Chapter IX of this detailed rules.

Article 5 Unless otherwise regulated by laws and decrees, the administrative authority of a contractual JV is the administrative department of the Chinese party.

In cases there are more than two Chinese parties, one administrative department shall be appointed through consultations between the examination and approval authorities and the departments concerned.

The administrative department shall coordinate relevant affairs of the venture and provide assistance according to law.

Chapter II Establishment of a Contractual JV

Article 6 The establishment of a contractual JV is subject to examination and approval by the Ministry of Foreign Trade and Economic Cooperation (Moftec), or authorized departments of the State Council and local people's governments.

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The establishment of contractual JVs shall be examined and approved by authorized departments of the State Council and local people's governments if the joint ventures are of the following conditions:

- (1) The total amount of investment falls within the limit set by the State Council for examination by authorized departments of the State Council and local people's governments.
- (2) The investment fund is raised independently, and contraction and production conditions of the venture dose not need State balance.
- (3) The venture's export dose not need to obtain export quotas or licenses issued by relevant State administrative departments; or if export quotas and licenses are needed, it has been granted approval by State administrative departments prior to filing the project proposal.
- (4) Other cases where the establishment of a contractual JV shall be examined and approved by authorized departments of the State Council and local people's governments.

Article 7 To establish a contractual JV, the Chinese party shall submit the following documents to the examination and approval authorities:

- (1) Project proposal for establishing a contractual JV, together with the documents of approval handed out by the administrative departments;
- (2) Feasibility report jointly prepared by all parties, together with the documents of approval handed out by the administrative departments;
- (3) Contractual JV agreement, contract and articles of association signed by the legal representatives venture, or their proxies, of all parties of the venture;
- (4) Business licenses of all parties of the venture, their registration certificates, credit certificates and valid certificates of the legal representatives; in case the foreign party is a natural person, valid certificates of identification, curriculum vitae and credit conditions;
- (5) List of candidates for the chairman, deputy-chairman, directors of the board of the contractual JV, or the director, deputy director and members of the joint management committee;
- (6) Other documents required by the examination and approval authorities.

Except for documents listed in item (4) that need to be submitted by the foreign parties, the aforesaid documents must be submitted in the Chinese language; Documents listed in items(2),(3) and (5) may be simultaneously submitted in foreign language agreed upon by all parties of venture.

The examination and approval authorities shall decide whether to approve the application or not within 45 days from receipt of all required documents. The authorities have the right to demand mending and revision of the submitted documents within a set time if they think the documents are incomplete or have inappropriate parts.

Article 8 Morftec shall issue approval certificates to the contractual JVs approved for establishment by it and government departments authorized by the State Council.

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Local people's governments authorized by the State Council shall issue approval certificates to the ventures it has approved for establishment, and shall put relevant approval documents on the record of Moftec within 30 days from the approval date.

Approved contractual JVs shall apply for registration with the administrative authorities for industry and commerce, and obtain business licenses according to law.

Article 9 Applications for the establishment of contractual JVs shall not be approval on any one of the following conditions:

- (1) Detrimental to national sovereignty and public interests;
- (2) Hazardous to national security;
- (3) Causing pollution on environment;
- (4) Other conditions that run against laws, decrees or the national industrial policy.

Article 10 The contractual JV agreement mentioned in this detailed rules refers to the written document whose principles and major points governing the JV establishment are agreed upon and concluded by all parties.

The contractual JV contract mentioned in this detailed rules refers to the written document agreed upon and concluded by all parties on their rights and obligations for establishing the venture.

The contractual JV articles of association mentioned in this detailed rules refers to the written document drafted according to the joint venture contract and agreed upon by all parties on matters including the organizational principles, operation and management methods.

In case the contractual JV agreement and the articles of association contradict with the contractual JV, the contract shall prevail.

It is not absolutely necessary for cooperative parties to formulate contractual JV agreement.

Article 11 The contractual JV agreement, contract, articles of association take effect upon the issuing date of approval certificate handed out by the examination and approval authorities.

Consent of the examination and approval authorities shall be obtained to make any major change to the agreement, contract, and articles of association within the term of cooperation.

Article 12 The contractual JV contract shall include the following items:

- (1) Names, registration localities, and addresses of all parties, as well as names, professions and nationalities of the legal representatives(or name, nationality, and address, in case the foreign party is a natural person).

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- (2) Name, address, and business scope of the contractual JV.
- (3) Total amount of investment, registered capital of the venture, ways and time limit for all parties to contribute investment or provide cooperation input.
- (4) Assignment of the investment contributed by all parties or conditions for transfer.
- (5) Distribution of earnings or products between all parties and ways to share risks and losses.
- (6) Composition of the board of directors or joint management committee, and distribution of the number of directors of the board or committee members between the parties, and duties, appointment and dismissal of the general manager and other high-ranking managerial personnel.
- (7) Main production facilities and technologies adopted, and their sources of supply.
- (8) Arrangement for product sales in and outside China.
- (9) Arrangement for the venture's foreign exchange income and expenditure.
- (10) The venture's duration, dissolution and liquidation.
- (11) Other obligations of all parties and their liabilities for breach of contract.
- (12) Principles for handling finance, accounting and auditing.
- (13) Settlement of disputes between the parties.
- (14) Procedures for modifying the JV contract.

Article 13 The contractual JV articles of association shall include the following items:

- (1) Names and address of the venture;
- (2) Business scope and cooperation term;
- (3) Names, registration localities and addresses of all parties, as well as names, professions and nationalities of the legal representatives (or name, nationality and address in case the foreign participant is a natural person);
- (4) Total amount of investment, registered capital of the venture, ways and time limit for each party to contribute investment or provide cooperation input;
- (5) Distribution of earnings or products between all parties and ways to share risks and losses;
- (6) Composition, duties and powers, and rules of procedures for the board of directors or the joint management committee, term of office for the directors of the board or committee members, and duties of the chairman, deputy-chairman of the board or the director, deputy-director of the joint management committee;
- (7) Formation, duties and powers, and rules of procedures for the operation and management organization, and duties, appointment and dismissal of the general manager and other high-ranking managerial personnel;
- (8) Labor management regulations on employment, training, labor contract, salaries, social insurance, welfare and labor protection;
- (9) Rules for finance, accounting and auditing;
- (10) Ways for dissolution and liquidation;
- (11) Procedures for modifying the articles of association.

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Chapter III Organizational Formation & Registered Capital

Article 14 The contractual JV that is accorded Chinese legal person status by law is a limited liability company. Unless otherwise stipulated in the contractual JV contract, each party is responsible for the venture within the limit of the investments or cooperation conditions it contributes.

The contractual JV is liable to the venture's debts with all its assets.

Article 15 The total amount of investment of a contractual JV refers to the total sum of capital required by the production and operation scale regulated in the JV contract and articles of association.

Article 16 The registered capital of a contractual JV refers to the total sum of capital agreed to be contributed by all parties and registered with the administrative authorities for industry and commerce for establishing the venture.

The registered capital can be presented either in RMB or in one freely convertible foreign currency agreed upon by all parties.

The registered capital of a contractual JV shall not be decreased within the term of cooperation. In case it is absolutely necessary to decrease the registered capital because of changes in the total amount of investment and production and operation scale, approval shall be obtained from examination and approval authorities.

Chapter IV Investment & Conditions for Cooperation

Article 17 Each party shall contribute its investment or cooperation input to the contractual JV according to laws, decrees and contractual JV contract.

Article 18 The investment or cooperation input contributed by all parties may be provided in cash or in kind or other property rights such as industrial property rights, technical know-how, land-use rights, etc.

Asset appraisal shall be conducted according to relevant laws and decrees if the investment or cooperation input of the Chinese party is State-owned assets.

In a contractual JV that is accorded by law the status of a Chinese legal person, the foreign party's investment shall generally be no less than 25 percent of the venture's registered capital.

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In a contractual JV without the status of a Chinese legal person, specific requirements for investment or cooperation input contributed by each party shall be regulated by Moftec.

Article 19 The investment or cooperation input contributed by each party shall be the property or property right under its ownership, and shall not be mortgaged or set as any other form of guarantee.

Article 20 The contractual JV contract shall set down time limit for all parties to contribute investment or cooperation input according to laws and decrees to meet the venture's operation and production requirements.

In case a party fails to contribute the investment or cooperation input according to the contractual JV contract, the administrative authorities for industry and commerce shall set a time limit for it to fulfill its obligations; if the aforesaid party still fails to fulfill its obligations upon expiration of the time limit, the examination and approval authorities shall withdraw and nullify the venture's approval certificate, and the administrative authorities for industry and commerce shall revoke the business license and make an annunciation.

Article 21 The party that fails to contribute investment or cooperation input according to the contract JV contract shall be liable for breach of contract to the other party that has made the contribution according the contract.

Article 22 An accountant registered in China shall verify the investment or cooperation input contributed by the parties and issue a verification certificate by which the contractual JV shall issue investment certificates to all parties. The investment certificates shall include the following items:

- (1) Name of the contractual JV;
- (2) Establishment date of the JV;
- (3) Name of each party;
- (4) Contents of the investment or cooperation input contributed by each party;
- (5) Dates of contribution of the investment or cooperation input by each party;
- (6) Serial number and issuing date of the investment certificate.

Copies of the investment certificates shall be put on the record of the examination and approval authorities, and administrative authorities for industry and commerce.

Article 23 In case one party intends to transfer all or part of its rights with the venture to the other party or to the third party, written consent shall be obtained from the other party of the venture, and application shall be filed with the examination and approval authorities.

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The examination and approval authorities shall decide whether to approve the application or not within 30 days after receiving transfer documents.

Chapter V Organizational Institution

Article 24 A contractual JV shall set up a board of directors or a joint management committee, which is the power organ of the venture and shall make decisions on major issues pertaining to the venture according to the articles of association.

Article 25 The board of directors or joint management committee shall consist of no fewer than three members. Distribution of the number of directors of the board or members of the committee shall be decided upon through consultation by all parties with reference to the proportion of investment or cooperation input.

Article 26 Appointment and replacement of the directors of the board or members of the committee shall be made separately by respective parties of the venture.

Ways of appointing the chairman, deputy-chairman of the board or the director, deputy-director of the committee shall be regulated in the articles of association.

Where the Chinese or foreign party is appointed as the chairman of the board or director of the committee, the other party shall be the deputy-chairman or deputy-director.

Article 27 Term of office for the director of the board or the member of the committee shall be regulated in the articles of association, each term shall not exceed three years.

Upon expiration of a term, the director of board or committee member may renew his or her term provided his/her party continues the appointment.

Article 28 The board of directors or joint management committee shall convene at least one meeting each year, called and presided over by the chairman of the board or the director of the committee.

In case the chairman or the director is unable to call the meeting due to special reasons, he or she shall authorize the deputy-chairman of the board or deputy-director of the committee or other director of the board or committee member to call and preside over the meeting.

A meeting of the board of directors or joint management committee may be convened upon a proposal by more than one-third of the directors of the board or the committee members.

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A meeting of the board of directors or joint management committee should be participated by more than two-thirds of the directors of the board or committee members. In case a director of the board or committee member is unable to attend the meeting, a proxy shall be appointed in writing to participate and vote.

A resolution of the meeting shall be passed by at least half or the total members of the board or committee.

The director of the board or committee member who fails to attend the meeting either in person or through a proxy without a reasonable excuse shall be regarded as having attended the meeting and abstained from voting.

Notice shall be given to all members of the board or the joint management committee 10 days prior to a meeting of the board of directors or joint management committee.

A resolution of the board of directors of joint management committee may also be made in the form of correspondence.

Article 29 Unanimous agreement is required of all the members of the board of directors or joint management committee for making any resolution on the following matters:

- (1) Modification of the articles of association;
- (2) Increase or decrease of the registered capital;
- (3) Dissolution of the JV;
- (4) Assets mortgage of the JV;
- (5) Merger, split-up or change of organization from of the JV;
- (6) Other matters that require unanimous agreement of the meeting of the board or joint management committee for a resolution.

Article 30 Rules of procedure and voting procedures of the meeting of board or joint management committee shall be regulated in the venture's articles of association except for the those regulated in this detailed rules.

Article 31 The chairman of the board or the director of the committee is the legal representative of the venture.

In case the chairman or director is unable to exercise the duty under certain circumstances, the deputy-chairman or deputy-director or other member of the board or joint management committee shall be authorized to represent the venture in external affairs.

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Article 32 The contractual JV shall appoint the general manager, to be in charge of the daily operation and management of the venture and accountable to the board of directors or joint management committee.

The general manager shall be appointed and dismissed by the board of directors or joint management committee.

Article 33 The general manager and other high-ranking management personnel may be Chinese or foreign citizens.

Members of the board of directors or joint management committee may concurrently hold the positions general manager and other high-ranking personnel of the venture upon appointment of the board of directors or joint management committee.

Article 34 In case of incompetence, graft or serious dereliction of duty on the part of the general manager or other high-ranking management personnel, the board of directors or joint management committee may resolve to dismiss them. If any loss is incurred to the venture, the person concerned shall be liable to the loss according to law.

Article 35 If a contractual JV chooses to entrust a third party to operate and manage the venture after its establishment, unanimous agreement of the board of directors or joint management committee is needed, and an entrustment operation and management contract with the entrusted party needs to be signed.

The JV shall then report for approval to the examination and approval authorities the resolution of the board or committee, the signed entrustment operation and management agreement, together with credit certificate of the entrusted party. The relevant authorities shall decide whether to approve the entrustment or not within 30 days from receiving relevant documents.

Chapter VI Material Purchase & Product Sales

Article 36 A contractual JV makes the production and operation plans by itself according to the approved business scope and operation scale.

The government authorities shall not force a venture to carry out any production and operation plan worked out by any governmental authority.

Article 37 A contractual JV may decide by itself, from in or outside the Chinese territory, the purchase of machinery, equipment, raw materials, fuel, parts, accessories, components, means of transportation and office facilities, etc. (hereinafter referred to as materials) for its own use.

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Article 38 The State encourages a contractual JV to sell its products on the world market.

A JV may either sell the products on the world market by itself or entrust foreign sales agencies or foreign trade companies in China to sell on commission.

The product prices of a contractual JV are subject to the venture's own decision according to law.

Article 39 Customs duty and import intermediary tax shall be exempted on the import of machinery, equipment, parts and other materials serving as the contribution of the foreign party, and machinery, equipment, parts and other materials for production and operation requirements with fund allocated from the total amount of investment of the venture.

In case the aforesaid duty -free materials are approved to be resold within China or put on sale on the domestic market, relevant taxes shall be levied or made up according to law.

Article 40 A contractual JV shall not export products at prices notably lower than the reasonable prices of similar products on the world market, nor import at prices notably higher than that of similar products on the world market.

Article 41 Product sales of a contractual JV shall abide by the stipulations of the approved contractual JV contract.

Article 42 To import or export products that are subject to license and quota control, a contractual JV shall go through the application formalities for license and quota in accordance with relevant State regulations.

Chapter VII Income Distribution and Investment Recovery

Article 43 The foreign and Chinese parties may distribute their income by distributing the profits, products or by other methods agreed upon by all parties.

In case of income distribution by distributing the products or by other methods, the amount of taxes due shall be calculated according to relevant tax laws.

Article 44 If the ownership of all fixed assets of a contractual JV is to be given to the Chinese party upon expiration of the term of cooperation as agreed upon by the Chinese and foreign parties in the contract, the foreign party may recover its investment during the term of cooperation in the following ways:

- (1) Based on the distributing according to investment or cooperation input, the contractual JV contract may regulate an enlarged ratio of income distribution in favor of the foreign party;

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- (2) Upon examination and approval of the finance and tax authorities according to State taxation regulations, the foreign party may recover its investment before the venture has paid its income tax:
- (3) Other investment recovery methods approved by the finance and tax authorities, and examination and approval authorities.

In case the foreign party recovers its investment within the term of cooperation according to the above paragraphs, the foreign and Chinese parties shall be liable to the debts of the venture in accordance with laws and the contractual JV contract.

Article 45 The application that is put forward by the foreign party that chooses to first recover the investment according to (2), (3) of Article 44 shall state in details the total amount of investment to be recovered, recovery period and method, which shall be reported to the examination and approval authorities for approval after being approved by the finance and tax authorities.

The foreign party shall not first recover its investment before the venture has covered all of its losses.

Article 46 A contractual JV shall appoint an accountant registered in China to check and examine the accounts and certificates according to relevant State regulations.

The parties may jointly or individually appoint such an accountant, with the expense borne by the appointing party or parties.

Chapter VIII Term and Dissolution

Article 47 The term of cooperation of a contractual JV shall be decided upon through consultation of the foreign and Chinese parties and regulated in the JV contract.

If all parties agree to extend the term upon its expiration, an application for extension shall be filed with the examination and approval authorities 180 days prior to the expiration date, stating how the current contractual JV contract is carried out and reasons for extending the term, together with an agreement by all parties on issues such as rights and obligations of each party during the extension period.

The examination and approval authorities shall decide whether to approve the extension or not within 30 days from receiving the application.

Upon approval to extend the cooperation term, the JV shall go through registration formalities for the alteration with the approval documents. The extension term starts from the first day after the expiration date.

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If the contractual JV has stipulated that the foreign party first recovers its investment, and the investment recovery has been completed, the term of the venture shall not be extended upon expiration.

But in case the foreign party has increased its investment, application for extending the cooperation term may be filed with the examination and approval authorities according to the second paragraph of this article after consultation between the parties.

Article 48 A contractual JV shall dissolve under one of the following situations:

- (1) Expiration of the cooperation term;
- (2) Inability to continue operation due to heavy losses, or heavy losses caused by irresistible force;
- (3) Inability to continue operation due to the failure of one or more than one of the foreign and Chinese parties to fulfill the obligations put down in the JV contract and articles of association;
- (4) Occurrence of other reasons for dissolution described in the JV contract and articles of association;
- (5) The JV is ordered to close by law for having violated laws and decrees.

In cases described in (2) and (4), the board of directors or joint management committee of the JV shall make a dissolution application to the examination and approval authorities.

In cases described in (3), one or more than one of the foreign and Chinese parties that fails to fulfill the obligations described by the agreement, contract and articles of association shall be liable to the losses suffered by the other party or parties that has or have fulfilled the obligations.

The latter has the rights to apply for dissolution of the venture to the examination and approval authorities.

Article 49 The liquidation of a contractual JV shall be carried out in accordance with laws, decrees and stipulations of the contractual JV agreement, contract and articles of association.

Chapter IX Special Regulations on a Contractual JV Without the Legal Person Status

Article 50 A contractual JV without the legal person status together with all of its parties shall bear civil liabilities according to regulations of the civil laws of China.

Article 51 A contractual JV without the legal person status shall be register with the administrative authorities for industry and commerce the investment or cooperation input contributed by each of its party.

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Article 52 The investment or cooperation input contributed by each party of a JV without the legal person status shall be separately owned by each party.

Upon agreement by all parties, the investment or cooperation input may be jointly possessed by all the parties or part of which jointly possessed, part separately.

Properties accumulated by the venture in its operation process shall be jointly owned by all the parties.

The investment or cooperation input contributed by each party of a JV without the legal person status shall be jointly managed and put to use, no party shall dispose it on its own without the consent of the other party.

Article 53 A contractual JV without the legal person status shall set up a joint management body, which shall consist of delegates appointed by each party to collectively manage the venture on behalf of itself.

All major issues pertaining to the venture shall be decided by the joint management body.

Article 54 A contractual JV without the legal person status shall set up unified account books at its location; each party shall set up separately its own account books.

Chapter X Supplement

Article 55 Laws of the PRC shall be applied to contractual JV contract on its draft, powers, explanation, implementation and settlement of disputes.

Article 56 Relevant regulations of the laws, decrees shall be applied to the matters of a venture that are not stipulated in this detailed rules such as finance, accounting, auditing, foreign exchange, taxation, labor management, trade union, etc.

Article 57 Establishment of a contractual JV by companies, enterprises and other economic organizations or individuals from Hong Kong, Macao and Taiwan, and by Chinese citizens living abroad shall be handled with reference to this detailed rules.

Article 58 The detailed rules shall come into effect from the date of promulgation.

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