

REGULATIONS FOR THE IMPLEMENTATION OF THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON CHINESE-FOREIGN EQUITY JOINT VENTURES

(Promulgated by the State Council on September 20, 1983)

Chapter I General Provisions

Article 1 These Regulations are formulated with a view to facilitating the smooth implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (hereinafter referred to as the Law on Chinese-Foreign Equity Joint Ventures).

Article 2 Chinese-foreign equity joint ventures (hereinafter referred to as joint ventures) established within China's territory in accordance with the Law on Chinese-foreign Equity Joint Ventures are legal persons in China and are subject to the jurisdiction of Chinese laws and enjoy protection thereof.

Article 3 Joint ventures established within China's territory shall be able to promote the development of China's economy and the raising of scientific and technological levels for the benefit of socialist modernization. Joint ventures permitted to be established are mainly in the following industries:

- (1) energy development, the building material, chemical and metallurgical industries;
- (2) machine manufacturing, instrument and meter industries and offshore oil exploitation equipment manufacturing;
- (3) electronics and computer industries, and communication equipment manufacturing;
- (4) light, textile, foodstuffs, medicine, medical apparatus and packaging industries;
- (5) agriculture, animal husbandry and aquiculture;
- (6) tourism and service trades.

Article 4 Joint ventures to be applied for their establishment shall lay stress on economic results and shall comply with one or several of the following requirements:

- (1) they shall adopt advanced technical equipment and scientific managerial methods which help increase the variety, improve the quality and raise the output of products and save energy and materials;
- (2) they shall prove to be conducive to technical renovation of enterprises and be able to bring about quicker returns and bigger profits with less investment;
- (3) they shall help expand exports and thereby increase foreign currency receipts;
- (4) they shall help train technical and managerial personnel.

Article 5 Application for establishing joint ventures shall not be approved if they involve any of the following circumstances:

- (1) detriment to China's sovereignty;
- (2) violation of Chinese Law;

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- (3) nonconformity with the requirements of the development of China's national economy;
- (4) environmental pollution;
- (5) obvious inequity in the agreements, contracts and articles of association signed, impairing the rights and interests of one of the parties.

Article 6 Unless otherwise stipulated, the government department in charge of the Chinese joint venturer in a joint venture shall be the department in charge of the joint venture (hereinafter referred to as the department in charge). If a joint venture has two or more Chinese joint venturers which are under different departments or from different regions, the departments and regions concerned shall, through consultation, designate a department in charge. Departments in charge are responsible for providing guidance and assistance and exercising supervision over the joint ventures.

Article 7A joint venture has the right to independently conduct business operations and management within the scope as prescribed by Chinese laws and regulations, and by the agreement, contract and articles of association of the joint venture. The departments concerned shall provide support and assistance.

Chapter II Establishment and Registration

Article 8 The establishment of a joint venture in China is subject to examination and approval by the Ministry of Foreign Economic Relations and Trade of the People's Republic of China (hereinafter referred to as the MOFERT). Upon approval, an Approval Certificate shall be issued by the MOFERT. The MOFERT may entrust the people's governments in the related provinces, autonomous regions, and municipalities directly under the Central Government or relevant ministries or bureaus under the State Council (hereinafter referred to as the entrusted office) with the power to examine and approve the establishment of joint ventures that comply with the following conditions:

- (1) the total amount of investment is within the limit set by the State Council and the source of capital of the Chinese venturers has been ascertained;
- (2) no additional allocation of raw materials by the State is required and the national balance as to fuel, power transportation and foreign trade export quotas is not affected. The entrusted office, after approving the establishment of a joint venture, shall report the same to the MOFERT for the record. An Approval Certificate shall be issued by the MOFERT. (The MOFERT and the entrusted office will hereinafter be generally referred to as the examining and approving authorities.)

Article 9 The following procedures shall be followed in the establishment of a joint venture:

- (1) it is the Chinese joint venturer in a joint venture that shall submit to its department in charge a project proposal and a preliminary feasibility study report of the joint venture to be established with foreign joint venturer. The proposal and the preliminary feasibility study report, upon examination and approval by the department in charge, shall be submitted to the examining and approving authorities for final approval. The parties to the venture shall then

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conduct work centering around the feasibility study, and then proceed on this basis, to negotiate and sign joint venture agreement, contract and articles of association;

(2) when applying for the establishment of a joint venture, the Chinese joint venturer is responsible for the submission of the following documents to the examining and approving authorities:

- (a) a written application for the establishment of the joint venture;
- (b) the feasibility study report jointly prepared by the parties to the venture;
- (c) joint venture agreement, contract and articles of association signed by representatives authorized by the parties to the venture;
- (d) list of candidates for chairman and vice-chairman of board of directors and directors nominated by the parties to the venture;
- (e) written opinions concerning the establishment of the said venture of the department in charge and the people's government of the province, autonomous region or municipality directly under the Central Government where the joint venture is located. The aforesaid documents shall be written in Chinese. Documents (b), (c) and (d) may be written simultaneously in a foreign language agreed upon by the parties to the joint venture. Both versions are equally authentic.

Article 10 Upon receipt of the documents stipulated in Article 9 (2), the examining and approving authorities shall, within 3 months, decide whether to approve or disapprove them. Should anything inappropriate be found in any of the aforementioned documents, the examining and approving authorities shall demand an amendment within a limited time. Otherwise, no approval shall be granted.

Article 11 The applicant shall, within one month as of the receipt of the Approval Certificate, register with the administrative department for industry and commerce of the province, autonomous region or municipality directly under the Central Government in accordance with the provisions of the Measures of the People's Republic of China for the Administration of the Registration of Chinese-Foreign Equity Joint Ventures (hereinafter referred to as registration administration office). The date of the issuance of its business licence is the date of the formal establishment of the joint venture.

Article 12 Any foreign investor who intends to establish a joint venture in China but is unable to find a specific co-operator in China may submit a preliminary plan for the joint venture project and entrust the China International Trust and Investment Corporation (CITIC) or a trust and investment corporation of a trust and investment corporation of a province, autonomous region or municipality directly under the Central Government, or a relevant government department or a non-governmental organization, to recommend Chinese co-operators.

Article 13 The "joint venture agreement" mentioned in this Chapter refers to the document agreed upon by the parties to the joint venture on some major points and principles governing the

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establishment of the joint venture. "Joint venture contract" refers to the document agreed upon and concluded by the parties to the joint venture on their mutual rights and obligations. "Articles of association" refers to the document agreed upon by the parties to the joint venture specifying the purpose, organizational principles and method of management of the joint venture in compliance with the principles of the joint venture contract. Where the joint venture agreement comes into conflict with the contract, the latter shall prevail. The parties to the joint venture may agree to sign the contract and articles of association only, without signing an agreement.

Article 14 A joint venture contract shall include the following main items:

- (1) the names, the countries of registration, the legal addresses of parties to the joint venture, and the names, positions and nationalities of the legal representatives thereof;
 - (2) name of the joint venture, its legal address, purpose and the scope and scale of business;
 - (3) total amount of investment and registered capital of the joint venture, amount, proportion and forms of investment to be contributed by each party to the joint venture, the time limit for contributing investment, stipulations concerning incomplete contributions, and assignments of investments;
 - (4) the proportion of profit to be shared and losses to be borne by each party;
 - (5) the composition of the board of directors, the distribution of the number of directors, and the responsibilities, powers and means of employment of the general manager, deputy general manager and high-ranking managerial personnel;
 - (6) the main production equipment and technology to be adopted and their source of supply;
 - (7) the ways and means of purchasing raw materials and selling finished products, and the ratio of products sold within Chinese territory to those sold abroad;
 - (8) arrangements for receipts and expenditures in foreign currency;
 - (9) principles governing the handling of finance, accounting and auditing;
 - (10) stipulations concerning labour management, wages, welfare, and labour insurance;
 - (11) the duration of the joint venture, its dissolution and the procedures for liquidation;
 - (12) the liabilities for breach of contract;
 - (13) ways and procedures for settling disputes between the parties to the joint venture;
 - (14) the language(s) used for the contract and the conditions for putting the contract into force.
- The annex to the contract of a joint venture shall be equally authentic as the contract itself.

Article 15 Chinese laws shall apply to the conclusion, validity, interpretation and execution of a joint venture contract, as well as to the settlement of disputes.

Article 16 The Articles of association of a joint venture shall include the following main items:

- (1) the name of the joint venture and its legal address;
- (2) the purpose, business scope and duration of the joint venture;
- (3) the names, countries of registration and legal addresses of parties to the joint venture, and the names, positions and nationalities of the legal representatives thereof;
- (4) the total amount of investment, registered capital of the joint venture, each party's investment proportion, stipulations concerning the assignment of investment, the proportions of profit distribution and losses to be borne by parties to the joint venture;

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- (5) the composition of the board of directors, its responsibilities, powers and rules of procedure, the term of office of the directors, and the responsibilities of its chairman and vice-chairman;
- (6) the setting up of management organizations, rules for handling routine affairs, the responsibilities of the general manager, deputy general manager and other high-ranking managerial personnel, and the method of their appointment and dismissal;
- (7) principles governing financial, accounting and auditing systems;
- (8) dissolution and liquidation;
- (9) procedures for amendment of the articles of association.

Article 17 The agreement, contract and articles of association shall come into force upon approval by the examining and approving authorities. The same applies to amendments thereof.

Article 18 The examining and approval authorities and the registration administration office are responsible for supervising and checking on the execution of the joint venture contracts and articles of association.

Chapter III Form of Organization and Registered Capital

Article 19 A joint venture is a limited liability company. Each party to the joint venture is liable to the joint venture within the limit of the capital subscribed by it.

Article 20 The total amount of investment (including loans) of a joint venture refers to the sum of capital construction funds and the circulating funds needed for the joint venture's production scale as stipulated in the contract and the articles of association of the joint venture.

Article 21 The registered capital of a joint venture refers to the total amount of investment registered at the registration administration office for the establishment of the joint venture. It shall be the total amount of investment subscribed by parties to the joint venture. The registered capital shall generally be represented in Renminbi, or may be in a foreign currency agreed upon by the parties to the joint venture.

Article 22 A joint venture shall not reduce its registered capital during the term of the joint venture.

Article 23 If one party to the joint venture intends to assign all or part of its investment subscribed to a third party, consent shall be obtained from the other party to the joint venture, and approval from the examining and approving authorities is required. When one party assigns all or part of its investment to a third party, the other party has preemptive right. When one party assigns its investment subscribed to a third party, the terms of assignment shall not be more favourable than those to the other party to the joint venture. No assignment shall be effective should there be any violation of the above stipulations.

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Article 24 Any increase, assignment or other disposal of the registered capital of a joint venture shall be approved at a meeting of the board of directors and submitted to the original examining and approving authorities for approval. Registration procedures for changes shall be handled at the original registration administration office.

Chapter IV Ways of Contributing Investment

Article 25 Each joint venturer may invest in cash or may contribute buildings, factory premises, equipment or other materials, industrial property, proprietary technology, or right to the use of a site, appraised at appropriate prices, as investment. If the investment is in the form of buildings, premises, equipment or other materials, industrial property or proprietary technology, the prices shall be determined through consultation by the parties to the joint venture on the basis of fairness and reasonableness, or they shall be evaluated by a third party accepted and invited by the parties to the joint venture.

Article 26 The foreign currency contributed by the foreign joint venturer shall be converted into Renminbi according to the exchange rate quoted by the State Administration of Foreign Exchange Control of the People's Republic of China (hereinafter referred to as the State Administration of Foreign Exchange Control) on the day of its submission or be cross exchanged into the foreign currency as agreed upon. Should the cash Renminbi contributed by the Chinese joint venturer be converted into foreign currency, it shall be converted according to the exchange rate quoted by the State Administration of Foreign Exchange Control on the day of its submission.

Article 27 The machinery, equipment and other materials contributed as investment by the foreign joint venturer shall meet the following conditions:

- (1) they are indispensable to the production of the joint venture;
- (2) China is unable to manufacture them, or can manufacture them only at too high a price, or their technical performance and time of availability cannot meet the requirement;
- (3) the price fixed shall not be higher than the current international market price for similar equipment or materials.

Article 28 The industrial property or proprietary technology contributed by the foreign joint venturer as investment shall meet one of the following conditions:

- (1) capable of manufacturing new products urgently needed in China or products suitable for export;
- (2) capable of markedly improving the performance, quality of existing products and raising productivity;
- (3) capable of notably saving raw materials, fuel or power.

Article 29 Foreign joint ventures who contribute industrial property or proprietary technology as

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investment shall present relevant documentation on the industrial property or proprietary technology, including photocopies of the patent certificates or trademark registration certificates, statements of validity, their technical characteristics, practical value, the basis for calculating the price and the price agreement signed with the Chinese joint ventures. All these shall serve as an annex to the contract.

Article 30 The machinery, equipment or other materials, industrial property or proprietary technology contributed by foreign joint venturer as investment shall be examined and approved by the department in charge of the Chinese joint venturer and then submitted to the examining and approving authorities for further approval.

Article 31 The parties to the joint venture shall pay in all the investment subscribed according to the time limit stipulated in the contract. Delay in payment or partial delay in payment shall be subject to a payment of investment on arrears or a compensation for the loss as defined in the contract.

Article 32 After the investment is paid by the parties to the joint venture, a Chinese registered accountant shall verify it and provide a certificate of verification, in accordance with which the joint venture shall issue to them investment certificates, which include the following items: name of the joint venture; date, month and year of the establishment of the joint venture; names of the joint venturers and the investment contributed; date, month and year of the contribution of the investment; and date, month and year of the issuance of investment certificates.

Chapter V Board of Directors and Management Structure

Article 33 The highest authority of the joint venture shall be its board of directors, which shall decide all major issues concerning the joint venture.

Article 34 The board of directors shall consist of no less than three members. The distribution of the number of directors shall be determined through consultation by the parties to the joint venture with reference to the proportions of investment contributed. The directors shall be appointed by the parties to the joint venture. The chairman of the board shall be appointed by the Chinese joint venturer and its vice-chairman by the foreign joint venturer. The term of office for the directors is four years. Their term of office may be renewed with the re-appointment by the parties to the joint venture.

Article 35 The board of directors shall convene at least one meeting every year. The meeting shall be called and presided over by the chairman of the board. Should the chairman be unable to call the meeting, he shall authorize the vice-chairman or a director to call and preside over the meeting. The chairman may convene an interim meeting on the suggestion of more than one-third of the directors. A board meeting requires a quorum of over two-thirds of the directors. Should a director

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be unable to attend, he may make a proxy authorizing someone else to represent him and vote in his stead. A board meeting shall usually be held at the location of the joint venture's legal address.

Article 36 Decisions on the following items shall be made only after being unanimously agreed upon by the directors present at the board meeting:

- (1) amendment to the articles of association of the joint venture;
- (2) suspension or dissolution of the joint venture;
- (3) increase in or assignment of the registered capital of the joint venture;
- (4) merger of the joint venture with other economic organization. Decision on other matters may be made according to the rules of procedure stipulated in the articles of association.

Article 37 The chairman of the board is the legal representative of the joint venture. Should the chairman be unable to perform his duties, he shall authorize the vice-chairman of the board or a director to represent the joint venture.

Article 38 A joint venture shall establish a management office which shall be responsible for the day-to-day management and operations. The management office shall have a general manager and several deputy general managers who assist the general manager in his work.

Article 39 The general manager shall carry out the decisions of the board meeting and organize and conduct the day-to-day management and operations of the joint venture. Within the scope of authorization by the board, the general manager shall, externally, represent the joint venture, and internally, have the right to appoint and dismiss his subordinates and exercise other powers as authorized by the board.

Article 40 The general manager and deputy general managers shall be engaged by the board of directors of the joint venture. These positions may be held either by Chinese or foreign citizens. At the instance of the board of directors, the chairman, vice-chairman or other directors of the board may concurrently be the general manager, deputy general managers or other high-ranking managerial personnel of the joint venture. In handling major issues, the general manager shall consult with the deputy general managers. The general manager or deputy general managers shall not hold posts concurrently as general manager or deputy general managers of other organizations' commercial competition against their own joint venture.

Article 41 In case of graft or serious dereliction of duty on the part of the general manager, deputy general managers or other high-ranking managerial personnel, they may be dismissed at any time by a decision of the board of directors.

Article 42 Establishment of branch offices (including sales offices) outside China or in regions of Hong Kong or Macao is subject to approval by the MOFERT.

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Chapter VI Introduction of Technology

Article 43 The introduction of technology mentioned in this Chapter refers to the acquisition of necessary technology by the joint venture by means of technology transfer from a third party or a joint venturer.

Article 44 The technology to be introduced to the joint venture shall be appropriate and advanced and enable the venture's products to display conspicuous social economic results domestically or to be competitive on the international market.

Article 45 The right of the joint venture to do business independently shall be maintained when concluding such technology transfer agreements, and relevant documentations shall be provided by the technology exporting party with reference to the provisions of Article 29 of these Regulations.

Article 46 The technology transfer agreements concluded by a joint venture shall be examined and agreed to by the department in charge of the joint venture and then submitted for approval to the examining and approving authorities. Technology transfer agreements shall comply with the following stipulations:

- (1) Fees for the use of technology shall be fair and reasonable. Payments are generally made in royalties, and the royalty rate shall not be higher than the obtaining standard international rate, which shall be calculated on the basis of net sales of the products turned out with the relevant technology or in other reasonable ways agreed upon by both parties.
- (2) Unless otherwise agreed upon by both parties, the technology exporting party shall not put any restrictions on the quantity, price or region of sale of the products that are to be exported by the technology importing party.
- (3) The term for a technology transfer agreement is generally not longer than 10 years.
- (4) After the expiration of a technology transfer agreement, the technology importing party shall have the right to continue to use the technology.
- (5) Conditions for mutual exchange of information on the improvement of technology by both parties of the technology transfer agreement shall be reciprocal.
- (6) The technology importing party shall have the right to buy the equipment, parts and raw materials needed from sources they deem suitable.
- (7) No irrational restrictive clauses prohibited under Chinese law and regulations shall be included.

Chapter VII Right to the Use of Site and Fees

Article 47 Joint ventures shall practise economy in the use of land for their premises. Any joint venture requiring the use of a site shall file an application with local departments of the municipal (county) government in charge of land and obtain the right to use a site after securing approval and

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signing a contract. The acreage, location, purpose and contract period and fee for the right to use a site (hereinafter referred to as site use fee), rights and obligations of the two contracting parties and penalty provisions for breach of contract shall be stipulated in explicit terms in the contract.

Article 48 If the Chinese joint venturer already has the right to the use of site for the joint venture, it may use the right as part of its investment. The monetary equivalent of this investment shall be the same as the site use fee otherwise paid for acquiring a site of similar conditions.

Article 49 The standards for site use fee shall be set by the people's governments of the province, autonomous region or municipality directly under the Central Government where the joint venture is located in the light of the purpose of use, geographic and environmental conditions, expenses for requisition, demolition and resettlement and the joint venture's requirements for infrastructure, and filed with the MOFERT and the state department in charge of land for the record.

Article 50 Joint ventures engaged in agriculture and animal husbandry may, with the consent of the people's governments of the province, autonomous region or municipality directly under the Central Government, pay a percentage of the joint venture's revenues from its business operations as site use fees to the local department in charge of land. Projects of a development nature in economically under-developed areas may receive special preferential treatment in respect of site use fees with the consent of the local people's government.

Article 51 The rates of site use fees shall not be subject to adjustment in the first 5 years beginning from the day the land is used. After that, the interval in between the necessary adjustments to be made according to the development of the economy, changes in supply and demand, and changes in geographic and environmental conditions shall not be less than three years. Site use fee as part of the investment by the Chinese joint venture shall not be subject to adjustment during the contract period.

Article 52 The fee for the right to the use of a site obtained by a joint venture according to Article 47 of these Regulations shall be paid annually from the day to use the land stipulated in the contract. For the first calendar year, the venture will pay a half-year fee if it has used the land for over 6 months; if less than 6 months, the site use fee shall be exempted. During the contract period, if the rate of site use fee is adjusted, the joint venture shall pay it according to the new rate from the year of adjustment.

Article 53 Joint ventures that have permission to use a site shall only have the right to the use of it but no ownership. Assignment of the right to use land is forbidden.

Chapter VIII Planning, Purchasing and Selling

Article 54 A joint venture shall work out a capital construction plan (including labour force

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required for the construction, building materials, water, power and gas supply) according to the approved feasibility study report, and the plan shall be included in the capital construction plan of the department in charge of the joint venture, which shall give priority in arranging supplies and ensured the execution of the plan.

Article 55 Funds earmarked for capital construction of a joint venture shall be put under unified management of the bank where the venture has opened an account.

Article 56 A joint venture shall work out a production and operating plan in accordance with the scope of operation and scale of production stipulated in the contract. The plan shall be carried out with the approval of the board of directors and filed with the department in charge of the joint venture for the record. Departments in charge of the joint ventures and planning administration departments at all levels shall not prescribe mandatory production and operation plans for joint ventures.

Article 57 In its purchase of required machinery, equipment, raw materials, fuel, parts, means of transport and office equipment, etc. (hereinafter referred to as materials), a joint venture has the right to decide whether it buys them in China or from abroad. However, where the terms are the same, it shall give first priority to purchasing them in China.

Article 58 Joint ventures can purchase materials in China through the following channels:

- (1) those under planned distribution shall be brought into the supply plan of the departments in charge of joint ventures and supplied by materials and commercial departments or production enterprises according to contracts;
- (2) those handled by materials and commercial departments shall be purchased from these departments;
- (3) those freely circulating on the market shall be purchased from production enterprises or their sale or commission agencies;
- (4) those export items handled by foreign trade corporations shall be purchased from the appropriate foreign trade corporations.

Article 59 The materials needed for office and daily use for joint ventures can be purchased in China without quantity restrictions.

Article 60 The Chinese Government encourages joint ventures to sell their products on the international market.

Article 61 Products of joint ventures that are urgently needed or to be imported by China can be mainly sold on the Chinese market.

Article 62 A joint venture has the right to export its products itself or entrust the sale-agencies of

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the foreign joint venturer or Chinese foreign trade corporations with sales on a commission or distribution.

Article 63 Within the scope of business stipulated in the contract, a joint venture may import machinery, equipment, parts, raw materials and fuel needed for its production. A joint venture shall make a plan every year for items on which import licenses are required by the stipulation of the State, and apply for them every 6 months. For machines, equipment and other objects a foreign joint venturer has contributed as part of its investment, import licenses can be applied for directly with the documents approved by the examining and approving authorities. For materials the import of which is beyond the stipulated scope of the contract, separate applications for import licenses according to State regulations are required. A joint venture has the right to export its products by itself, whereas for those products which require export licenses under the stipulation of the State, the joint venture shall make an export plan every business year and apply for the needed licenses every 6 months.

Article 64 A joint venture may sell its products on the Chinese market in the following ways:

- (1) For those items under planned distribution, the departments in charge of joint ventures will bring them into the distribution plan of the materials administration departments, which sell them to designated users according to plan.
- (2) For those items handled by materials and commercial departments, the materials and commercial departments will place orders with the joint ventures.
- (3) For the excess of those purchased by plan of the above two categories, the joint venture has the right to sell them by itself or entrust sales to the relevant units.
- (4) For products of a joint venture that Chinese foreign trade companies need to import, the joint venture may sell them to these trade companies and shall be paid in foreign currency.

Article 65 Materials purchased and services needed in China by joint ventures shall be priced according to the following stipulations:

- (1) The six raw materials - gold, silver, platinum, petroleum, coal and timber - that are used directly in production for export shall be priced according to the international market prices provided by the State Administration of Foreign Exchange Control or foreign currency or
- (2) When purchasing export or import commodities handled by Chinese foreign trade companies, the suppliers and buyers shall negotiate the price, with reference to the prices on the international market, and foreign currency shall be paid.
- (3) The prices for purchasing coal used as fuel and oil for motor vehicles, which are needed for manufacturing products to be sold domestically, as well as materials other than those listed in (1) and (2) of this Article, and the fees charged for water, electricity, gas, heat, goods transportation, services, engineering, consultancy service and advertisement, etc. provided to joint ventures, shall be treated equally with state-owned enterprises and paid in Renminbi.

Article 66 Prices of products of a joint venture for sale on the Chinese domestic market, except

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those items approved by the price control department for appraisal of prices with reference to the prices on the international market, shall correspond with State-set prices, be priced according to equality and paid in Renminbi. Prices fixed by a joint venture for its products shall be filed with departments in charge of joint ventures and of price control for the record. Prices of export products of a joint venture will be fixed by the joint venture itself and shall be filed with departments in charge of joint ventures and of price control for the record.

Article 67 A joint venture, in its economic exchanges with another Chinese economic organization, shall undertake economic responsibilities and settle disputes over contract in accordance with relevant laws and the contract concluded between the two parties.

Article 68 A joint venture shall fill in statistical forms on production, supply and marketing in accordance with relevant regulations, and file them with the departments in charge, statistics departments and other departments concerned for the record.

Chapter IX Taxes

Article 69 Joint ventures shall pay taxes according to the stipulations of relevant laws of the People's Republic of China.

Article 70 Staff members and workers employed by joint ventures shall pay individual income tax according to the Individual Income Tax Law of the People's Republic of China.

Article 71 Joint ventures shall be exempt from Customs duties and consolidated industrial and commercial tax on the following imported materials:

- (1) machinery, equipment, parts and other materials (materials here and hereinafter mean required materials for the joint venture's construction on the factory site and for installation and reinforcement of machines) which are part of the foreign joint venture's share of investment according to the provisions of the contract;
- (2) machinery, equipment, parts and components, and other materials imported with funds from the joint venture's total investment;
- (3) machinery, equipment, parts and components, and other materials imported by the joint venture with the additional capital and with the approving authorities, of which China cannot guarantee production and supply;
- (4) raw materials, auxiliary materials, components, parts and packaging materials imported by the joint venture for the production of export goods. Duties and taxes shall be paid or paid retroactively according to regulations when the above-mentioned duty-tax-free materials are approved for sale inside China or diverted to the production of items to be sold on the Chinese domestic market.

Article 72 Except those export items restricted by the State, products of a joint venture for export

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shall be exempt from consolidated industrial and commercial tax, subject to the approval by the Ministry of Finance of the People's Republic of China. A joint venture may apply for reduction of or exemption from consolidated industrial and commercial tax for a certain period of time for products that are sold on the domestic market when it has difficulty to pay such tax in its initial period of production.

Chapter X Foreign Exchange Control

Article 73 All matters concerning foreign exchange for joint ventures shall be handled according to the Interim Regulations on Foreign Exchange Control of the People's Republic of China and relevant regulations.

Article 74 On the strength of the business license issued by the State Administration for Industry and Commerce of the People's Republic of China, a joint venture may open foreign exchange deposit accounts and Renminbi deposit accounts with the Bank of China, or any other designated bank. The bank handling the accounts of the joint venture shall monitor its receipts and expenditures. All foreign exchange incomes of a joint venture must be deposited in the foreign exchange deposit account in the bank where an account has been opened; all payments by the joint venture in foreign exchange are to be effected from its foreign exchange deposit account. The deposit interest rate shall be set according to the announced rates by the Bank of China.

Article 75 A joint venture shall in general maintain a balance between its foreign exchange receipts and expenditures. When a joint venture whose products are mainly sold on the domestic market under its approved feasibility study report and contract sustains an imbalance of its foreign exchange receipts and expenditures, the imbalance shall be remedied by the people's government of a relevant province, autonomous region or municipality directly under the Central Government or the department in charge under the State Council from their own foreign exchange reserves. If the imbalance defies solution through such adjustment, it shall be solved through inclusion into the plan after the examination and approval by the MOFERT in conjunction with the State Planning Commission of the People's Republic of China.

Article 76 A joint venture shall get permission from the State Administration of Foreign Exchange Control or one of its branches to open a foreign exchange deposit account with an overseas bank or one in Hong Kong or Macao, and report to the State Administration of Foreign Exchange Control or one of its branches its foreign exchange receipts and expenditures, and provide bank statements.

Article 77 Any branch office set up by a joint venture in a foreign country or in Hong Kong or Macao shall open an account with the Bank of China wherever there is a branch of the bank. The branch office shall submit its annual statement of assets and liabilities and annual profit report to the State Administration of Foreign Exchange Control or one of its branches through the joint

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venture.

Article 78 A joint venture may apply to the Bank of China for foreign currency loans and Renminbi loans according to business needs and according to the Provisional Regulations for Providing Loans by the Bank of China to Chinese-Foreign Equity Joint Ventures. Interest rates on loans to joint ventures are as announced by the Bank of China. A joint venture may also borrow foreign exchange as capital from banks abroad or in Hong Kong or Macao, but shall file a report with the State Administration of Foreign Exchange Control or one of its branches for the record.

Article 79 After foreign staff and workers or staff and workers from Hong Kong or Macao have paid income tax on their salaries and other legitimate incomes according to law, they may apply to the Bank of China for permission to remit out all the remaining foreign exchange after deduction of their living expenses in China.

Chapter XI Financial Affairs and Accounting

Article 80 The financial and accounting systems of a joint venture shall be instituted in accordance with China's relevant laws and procedures on financial affairs and accounting, and in consideration of the conditions of the joint venture, and then be filed with the local financial departments and tax authorities for the record.

Article 81 A joint venture shall employ a chief accountant to assist the general manager in handling the financial affairs of the enterprises. If necessary, a deputy chief accountant may be appointed.

Article 82 A joint venture shall (unless it is a small venture) appoint an auditor to be responsible for checking financial receipts, payments and accounts, and to submit reports to the board of directors and the general manager.

Article 83 The fiscal year of a joint venture shall coincide with the calendar year, i.e. from January 1 to December 31 on the Gregorian calendar.

Article 84 The accounting of a joint venture shall adopt the internationally used accrual basis and debit and credit accounting system in their work. All vouchers, account books, statistic statements and reports prepared by the enterprise shall be written in Chinese, or concurrently in a foreign language agreed upon by the parties.

Article 85 Joint ventures shall, in principle, adopt Renminbi as the standard accounting currency, however, a foreign currency may also be used as the standard accounting currency, if so agreed upon by the parties concerned.

Article 86 In addition to the use of a standard accounting currency, joint ventures shall record

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accounts in currencies actually used in payments and receipts, if such currencies in cash, bank deposits, funds of other currencies, assets and liabilities, gains, expenses, etc. are inconsistent with the standard accounting currency. Joint ventures using a foreign currency in accounting shall work out a statement of accounts in Renminbi equivalents in addition to those in the foreign currency. Losses or gains in remittances resulting from differences in exchange rates shall be recorded as current gains or losses for the year in which they occur. No adjustments shall be made to a balance in a foreign currency account as the result of a recorded fluctuation in the exchange rate such a currency.

Article 87 Principles of profit distribution after payment of taxes in accordance with the Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures are as follows:

- (1) Allocations for reserve funds, bonuses and welfare funds for staff and workers and expansion funds of the joint venture. The proportion of allocations is to be decided by the board of directors.
- (2) Reserve funds which can be used to make up for the losses of the joint venture, or with the consent of the examining and approving authorities, to increase the joint venture's capital for the expansion of production.
- (3) After the funds specified in (1) of this Article have been deducted and if the board of directors decides to distribute the remaining profit, it shall be distributed proportionately to each party's investment.

Article 88 Profits may not be distributed before the losses of the previous year have been made up. Remaining profits from previous year (or years) may be distributed together with those of the current year.

Article 89 A joint venture shall submit quarterly and annual fiscal reports to parties to the joint venture, the local tax authority, department in charge of the joint venture and the financial department at the same level to those departments.

A copy of the annual fiscal report shall be submitted to the original examining and approving authorities.

Article 90 Only after being examined and certified by an accountant registered in China shall the following documents, certificates and reports be considered valid:

- (1) certificates of investment from all the parties to a joint venture (lists of assessed value agreed upon and signed by the parties to the joint venture and relevant written agreements shall be attached if investment involves materials, site use rights, industrial property and proprietary technology);
- (2) annual fiscal reports of the joint venture;
- (3) fiscal reports on liquidation of the joint venture.

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Chapter XII Staff and Workers

Article 91 The employment, recruitment, dismissal and resignation of staff and workers of joint ventures, and their salary, welfare benefits, labour insurance, labour protection, labour discipline and other matters shall be handled according to the Regulations of the People's Republic of China on Labour Management in Chinese-Foreign Equity Joint Ventures.

Article 92 Joint ventures shall make efforts to conduct professional and technical training of their staff and workers and establish a strict examination system so that they can meet the requirements of production and managerial skills in a modernized enterprise.

Article 93 The salary and bonus system of joint ventures shall be in accord with the principle of distribution to each according to his work, and more pay for more work.

Article 94 Salaries and remuneration of the general manager and deputy general manager(s), chief engineer, deputy chief engineer(s), chief accountant and deputy chief accountant, auditor and other high-ranking managerial personnel shall be decided upon by the board of directors.

Chapter XIII Trade Union

Article 95 Staff and workers of a joint venture have the right to set up grass-roots trade unions and carry on trade union activities in accordance with the Trade Union Law of the People's Republic of China (hereinafter referred to as Chinese Trade Union Law) and the Statute of the Trade Unions of China.

Article 96 Trade unions in joint ventures are representatives of the interests of the staff and workers. They have the power to sign, on behalf of the staff and workers, labour contracts with joint ventures and supervise the execution of these contracts.

Article 97 The basic tasks of the trade unions in joint ventures are: to protect the democratic rights and material interests of the staff and workers according to law; to help the joint ventures with the arrangement and rational use of welfare and bonus funds; to organize political, professional, scientific and technical studies, carry out literary, art and sports activities; and to educate staff and workers to observe labour discipline and strive to fulfil the economic tasks of the enterprises.

Article 98 Trade union representatives have the right to attend, without the right to vote, meetings of the board of directors held to discuss important issues such as development plans, production and operational activities of joint ventures and to air the opinions and demands of staff and workers. Trade union representatives have the right to attend, without the right to vote, meetings of the board of directors held to discuss and decide on awards and penalties to staff and workers, salary and wage system, welfare benefits, labour protection and labour insurance, etc. The board of directors shall heed the opinions of the trade union and win its co-operation.

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Article 99 A joint venture shall actively support the work of the trade union, and, in accordance with the stipulations of the Chinese Trade Union Law, provide housing and facilities for the trade union as offices, meeting- halls, and for organizing welfare, cultural and sports activities. The joint venture shall allot an amount of money totalling 2 per cent of all the salaries of the joint venture's staff and workers as trade union funds, which the trade union of the joint venture shall use according to the relevant administration rules for trade union funds formulated by the All-China Federation of Trade Unions.

Chapter XIV Duration, Dissolution and Liquidation

Article 100 The duration of a joint venture shall be decided upon through consultation among all the parties to the joint venture according to the actual on of a joint venture engaged in an ordinary project shall, in principle, be between 10 to 30 years. Duration for those engaged in projects requiring large amounts of investment, long construction cycles and low profit rates on the capital may be longer than 30 years.

Article 101 The duration of a joint venture shall be determined by all the parties to the joint venture in the agreement, contract and activities of association. The duration begins from the date when the joint venture is issued a business license. When all parties to a joint venture agree to extend the duration, the joint venture shall file an application for extending the duration signed by representatives authorized by the parties with the examining and approving authorities 6 months before the date of expiration of the duration. The examining and approving authorities shall give an official written reply to the applicant within one month as of the date of receipt of the application. Upon approval of the extension of the duration, the joint venture concerned shall go through registration formalities for the alteration in accordance with the Measures of the People's Republic of China for the Registration Administration of Chinese-Foreign Equity Joint Ventures.

Article 102 A joint venture may be dissolved in the following situations:

- (1) termination of duration of the venture;
- (2) inability to continue operations due to heavy losses;
- (3) inability to continue operations due to the failure of one of the contracting parties to fulfil its obligations prescribed in the agreement, contract and articles of association;
- (4) inability to continue operations due to heavy losses caused by force majeure such as natural calamities and wars;
- (5) failure to obtain the desired objectives of the operation and no prospects for future development;
- (6) occurrence of other reasons for dissolution as prescribed in the contract and articles of association.

In cases described in (2), (3), (4), (5) and (6) of this Article, the board of directors shall make an

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application for dissolution to the examining and approving authorities for approval. In the situation described in (3) of this Article, the party which has failed to fulfil its obligations prescribed in the agreement, contract and articles of association shall be liable for the losses arising therefrom.

Article 103 Upon announcement of the dissolution of a joint venture, its board of directors shall work out procedures and principles governing the liquidation and nominate candidates for the liquidation committee. It shall report to the department in charge of the joint venture for examination, verification and supervision of its liquidation.

Article 104 Members of a liquidation committee shall generally be selected from among the directors of a joint venture. In case the directors cannot serve or are unsuitable to be members of the liquidation committee, the joint venture may invite accountants and lawyers registered in China to do the job. When the examining and approving authorities deems necessary, it may send personnel to supervise the process. The liquidation expenses and remuneration for the members of the liquidation committee shall be given priority in the disbursements from the existing assets of the joint venture.

Article 105 The tasks of the liquidation committee are: to conduct thorough investigation of the property of the joint venture concerned, its credits and debts; to work out the statement of assets and liabilities and an inventory of its property; to put forward a basis on which its property is to be evaluated and calculated; and to formulate a liquidation plan. All these shall be carried out upon approval of the board of directors. During the process of liquidation, the liquidation committee shall represent the joint venture concerned in initiating legal action or responding thereto.

Article 106 A joint venture shall be liable for its debts with all of its assets. The remaining assets after the clearance of debts shall be distributed among the parties to the joint venture in proportion to each party's investment unless otherwise provided for in the agreement, contract and articles of association of the joint venture.

At the time when a joint venture is being dissolved, the portion of its net assets or remaining property that exceeds the value added to its registered capital is regarded as profit on which income tax shall be levied according to law. The foreign joint venturer shall pay income tax according to law on the portion of the net assets or remaining property due him that exceeds his investment when he remits it abroad.

Article 107 On the completion of the liquidation of a dissolved joint venture, the liquidation committee shall submit a liquidation report approved by a meeting of the board of directors to the original examining and approving authorities, go through formalities for cancelling its registration and hand in its business license to the original registration authorities.

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Article 108 After the dissolution of a joint venture, its account books and documents shall be left in the custody of the former Chinese joint venturer.

Chapter XV Settlement of Disputes

Article 109 Disputes arising over the interpretation or execution of the agreement, contract or articles of association between the parties to the joint venture shall, if possible, be settled through friendly consultation or mediation. If these means prove futile, the disputes shall be subject to arbitration or judicial settlement.

Article 110 Parties to a joint venture shall apply for arbitration in accordance with the relevant written agreement. They may submit the disputes to the Foreign Economic and Trade Arbitration Commission of the China Council for the Promotion of International Trade in accordance with its arbitration rules. With mutual consent of the parties concerned, arbitration can also be carried out by an arbitration agency in the country where the respondent is located or by one in a third country in accordance with the arbitration agency's rules.

Article 111 In the absence of a written agreement on arbitration between the parties to a joint venture, either party may bring a suit in a Chinese people's court.

Article 112 In the process of settling disputes, except for matters in dispute, parties to a joint venture shall continue to carry out other provisions stipulated by the agreement, contract and articles of association of the joint venture.

Chapter XVI Supplementary Provisions

Article 113 The Chinese departments in charge of visas shall provide facility by simplifying procedures for staff and workers from foreign countries or from Hong Kong or Macao (including their family members) who have frequent needs of entry and exit into and out of the China.

Article 114 The departments in charge of joint ventures shall make applications and go through the formalities for Chinese staff and workers going abroad for studies, business negotiations or training.

Article 115 Staff and workers from foreign countries or from Hong Kong or Macao working for a joint venture may bring in needed means of transport and office equipment with payment of Customs duties and consolidated industrial and commercial taxes according to regulations.

Article 116 Joint ventures set up in the special economic zones shall comply with the provisions otherwise provided, if any, in the laws and regulations adopted by the National People's Congress, its Standing Committee or the State Council.

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Article 117 The power to interpret these Regulations is vested in the Ministry of Foreign Economic Relations and Trade.

Article 118 These Regulations shall go into force as of the date of promulgation.



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