

Law of the People's Republic of China on Chinese-Foreign Joint Ventures

(Adopted by the Second Session of the Fifth National People's Congress on July 1, 1979, first amended according to the Resolution on Revising the Law of the People's Republic of China on Chinese-Foreign Joint Ventures adopted by the Third Session of the Seventh National People's Congress on April 4, 1990 and amended for the second time according to the Resolution on Revising the Law of the People's Republic of China on Chinese-Foreign Joint Ventures adopted by the Fourth Session of the Ninth National People's Congress on March 15, 2001)

Article 1 With a view to expanding international economic cooperation and technical exchange, the People's Republic of China permits foreign companies, enterprises, other economic organizations or individuals (hereinafter referred to as "foreign partner in a joint ventures") to join with Chinese companies, enterprises or other economic organizations (hereafter referred to as "Chinese partner in a joint ventures") to establish joint ventures in the People's Republic of China in accordance with the principle of equality and mutual benefit and subject to approval by the Chinese government.

Article 2 The Chinese government protects, in accordance with the law, the investment of foreign partner in a joint ventures, the profits due them and their other lawful rights and interests in a joint venture, pursuant to the agreement, contract and articles of association approved by the Chinese government. All the activities of a joint venture shall comply with the stipulations of the laws and legal regulations of the People's Republic of China. The state shall not nationalize or take over joint ventures; under special circumstances and according to the needs of social public interests, the state may requisite joint ventures according to legal procedures with due compensation.

Article 3 The joint venture agreement, contract and articles of association signed by the parties to the venture should be submitted to the competent foreign economic and trade department of the state (hereafter referred to as the "examining and approving organ") for examination and approval; and the examining and approving organ shall, within three months, decide whether to approve or disapprove them. After approval, the joint venture should register with the competent administration department for industry and commerce, obtain a license to do business and start operation.

Article 4 A joint venture shall take the form of a limited liability company. The proportion of the investment contributed by the foreign joint venture(s) should generally not be less than 25 percent of the registered capital of a joint venture. The parties to the venture shall share the profits, risks and losses in proportion to their respective contribution to the registered capital. No assignment of the registered capital of a joint venture participant shall be made without the consent of the other parties to the venture.

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Article 5 Each party to a joint venture may make its investment in cash, in kind or in industrial property rights, etc. The technology and the equipment that serve as the investment of the foreign partner in a joint venture must be advanced technology and equipment that actually suit our country's needs. If the foreign partner in a joint venture causes losses by deception through the intentional use of backward technology and equipment, it shall pay compensation for these losses. The investment of a Chinese partner in a joint venture may include the right to the use of a site provided for the joint venture during the period of its operation. If the right to the use of the site does not constitute a part of a Chinese partner's investment, the joint venture shall pay the Chinese government a fee for its use. The various investments referred to above shall be specified in the joint venture contract and articles of association, and the value of each (excluding that of the site) shall be jointly assessed by the parties to the venture.

Article 6 A joint venture shall have a board of directors, which shall have its size and composition stipulated in the contract and the articles of association after consultation between the parties to the venture, and the directors shall be appointed and replaced by the parties to the venture. The chairman and vice-chairmen of the board shall be decided by the parties to the venture through consultation or elected by the directors of the board. The office of chairman of the board shall be assumed by one side of the venture, and that of the vice-chairman, by the other party. The board of directors shall decide major problems of the joint venture in accordance with the principle of equality and mutual benefit. The board of directors is empowered, pursuant to the provisions of the articles of association of the joint venture, to discuss and decide all major problems of the joint venture: expansion programs, proposals for production and operating activities, the budget for revenues and expenditures, distribution of profits, plans concerning manpower and pay scales, the termination of business and the appointment or employment of the president, the vice-president(s), the chief engineer, the treasurer and the auditors, as well as their powers and periods of employment, etc. The offices of president and vice-president(s) (or factory manager and deputy manager(s)) shall be assumed by the respective parties to the venture. Matters such as the employment, dismissal, payment, welfare, labor protection and labor insurance of the staff and workers of joint ventures shall be provided for in contracts reached in accordance with the law.

Article 7 Staff and workers of joint ventures shall establish their trade union organizations, conduct trade union activities and safeguard their lawful rights and interests according to the law. Joint ventures shall provide necessary conditions for the activities of the trade unions within the enterprises.

Article 8 After payment, pursuant to the provisions of the tax laws of the People's Republic of China, of the joint venture income tax on the gross profit earned by the joint venture and after deduction from the gross profit of a reserve fund, a bonus and welfare fund for staff and workers, and a venture expansion fund, as provided in the articles of association of the joint venture, the net profit should be distributed to the parties to the joint venture in proportion to their respective contributions to the registered capital. A joint venture may enjoy preferential treatment of tax

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reduction or exemption in accordance with state tax laws and administrative regulations. A foreign partner in a joint venture that reinvests in China its share of the net profit may apply for refund of a part of the income taxes already paid.

Article 9 A joint venture shall open a foreign exchange account with a bank approved by the state foreign exchange administration or other financial organs for handling foreign exchange businesses, with its business license. The pertinent foreign exchange transactions of a joint venture shall be conducted in accordance with the regulations on foreign exchange control of the People's Republic of China. In its operating activities a joint venture may directly raise funds from foreign banks. The various kinds of insurance coverage of a joint venture shall be furnished by insurance companies within Chinese territory.

Article 10 In its purchase of required raw and processed materials, fuels, etc. within the approved business scope, a joint venture may make the purchases from Chinese market or the international market according to the principle of being fair and rational. A joint venture is encouraged to market its products outside China. Export products may be distributed to foreign markets through the joint venture directly or through associated agencies, and they may also be distributed through China's foreign trade agencies. Products of the joint venture may also be distributed in the Chinese market. Whenever necessary, a joint venture may establish branches outside China.

Article 11 The net profit that the foreign side in a joint venture receives after fulfilling its obligations under the laws and various agreements and contracts, the funds it receives at the time of the joint venture's scheduled expiration or early termination, and any other funds, may be remitted abroad in accordance with the foreign exchange regulations and in the currency specified in the joint venture contract. The foreign side in a joint venture shall be encouraged to deposit in the Bank of China the foreign exchange that it is entitled to remit abroad.

Article 12 The wages, salaries and other legitimate income earned by the foreign staff and workers of a joint venture, after payment of individual income tax under the tax laws of the People's Republic of China, may be remitted abroad in accordance with the foreign exchange regulations.

Article 13 The contract period of a joint venture may be decided through consultation by the parties to the venture according to its particular line of business and circumstances. The joint ventures of some trades should decide their contract periods; and the joint ventures of other trades may or may not decide their contract periods. If the parties to a joint venture with a prescribed contract period agree to extend the period, an application for extension of the contract should be made six months before its original expiration date. The examining and approving organ should make a decision within one month from the day of receiving the application.

Article 14 In case of heavy losses, failure of a party to fulfill the obligations prescribed by the contract and the articles of association, force majeure, etc., the contract may be terminated through

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consultation and agreement by the parties to the venture, subject to approval of the examining and approving organ and to registration with the industry and commerce administrations of the state. In cases of any losses caused by a breach of contract, the party violating the contract shall assume financial responsibility.

Article 15 Disputes arising between the parties to a joint venture that the board of directors cannot settle through consultation may be settled through mediation or arbitration by a Chinese arbitration agency or through arbitration by another arbitration agency agreed upon by the parties to the venture. In cases where the parties of a joint venture have not made any stipulations on arbitration in their contract or have not reached an agreement on arbitration in writing afterward may take proceedings to the people's court.

Article 16 This law shall come into force on the day of promulgation.



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