

THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON JOINT VENTURES USING CHINESE AND FOREIGN INVESTMENT

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Article 1 With a view to expanding international economic cooperation and technological exchange, the People's Republic of China permits foreign companies, enterprises, other economic entities or individuals (hereinafter referred to as "foreign participants") to incorporate themselves, within the territory of the People's Republic of China, into joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as "Chinese participants") on the principle of equality and mutual benefit and subject to authorization by the Chinese Government.

Article 2 The Chinese Government protects, by the legislation in force, the resources invested by a foreign participant in a joint venture and the profits due him pursuant to the agreements, contracts and articles of association authorized by the Chinese Government as well as his other lawful rights and interests.

All the activities of a joint venture shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China.

Article 3 A joint venture shall apply to the Foreign Investment Commission of the People's Republic of China for authorization of the agreements and contracts concluded between the parties to the venture and the articles of association of the venture formulated by them, and the commission shall authorize or reject these documents within three months. When authorized, the joint venture shall register with the General Administration for Industry and Commerce of the People's Republic of China and start operations under licence.

Article 4 A joint venture shall take the form of a limited liability company.

In the registered capital of a joint venture, the proportion of the investment contributed by the foreign participant(s) shall in general not be less than 25 per cent.

The profits, risks and losses of a joint venture shall be shared by the parties to the venture in proportion to their contributions to the registered capital.

The transfer of one party's share in the

registered capital shall be effected only with the consent of the other parties to the venture.

Article 5 Each party to a joint venture may contribute cash, capital goods, industrial property rights, etc., as its investment in the venture.

The technology or equipment contributed by any foreign participant as investment shall be truly advanced and appropriate to China's needs. In cases of losses caused by deception through the international provision of outdated equipment or technology, compensation shall be paid for the losses.

The investment contributed by a Chinese participant may include the right to the use of a site provided for the joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese participant, the joint venture shall pay the Chinese Government for its use.

The various contributions referred to in the present article shall be specified in the contracts concerning the joint venture or in its articles of association, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.

Article 6 A joint venture shall have a board of directors with a composition stipulated in the contracts and the articles of association after consultation between the parties to the venture, and each director shall be appointed or removed by his own side. The board of directors shall have a chairman appointed by the Chinese participant and one or two vice-chairmen appointed by the foreign participant(s). In handling an important problem, the board of directors shall reach decision through consultation by the participants on the principle of equality and mutual benefit.

The board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the joint venture, all fundamental issues concerning the venture, namely, expansion projects, production and business programmes, the budget, distribution of profits, plans concerning manpower and pay scales, the termination of business, the appointment or hiring of the president, the vice-

president(s), the chief engineer, the treasurer and the auditors as well as their functions and powers and their remuneration, etc.

The president and vice-president(s) (or the general manager and assistant general manager(s) in a factory) shall be chosen from the various parties to the joint venture.

Procedures covering the employment and discharge of the workers and staff members of a joint venture shall be stipulated according to law in the agreement or contract concluded between the parties to the venture.

Article 7 The net profit of a joint venture shall be distributed between the parties to the venture, in proportion to their respective shares in the registered capital, after the payment of a joint venture income tax on its gross profit pursuant to the tax laws of the People's Republic of China and after the deductions therefrom as stipulated in the articles of association of the venture for the reserve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture.

A joint venture equipped with up-to-date technology by world standards may apply for a reduction of or exemption from income tax for the first two to three profit making years.

A foreign participant who reinvests any part of his share of the net profit within Chinese territory may apply for the restitution of a part of the income taxes paid.

Article 8 A joint venture shall open an account with the Bank of China or a bank approved by the Bank of China.

A joint venture shall conduct its foreign exchange transactions in accordance with the Foreign Exchange Regulations of the People's Republic of China.

A joint venture may, in its business operations, obtain funds from foreign banks directly.

The insurances appropriate to a joint venture shall be furnished by Chinese insurance companies.

Article 9 The production and business programmes of a joint venture shall be filed with the authorities concerned and shall be implemented through business contracts.

In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc., a joint venture should give first priority to Chinese sources, but may also acquire them directly from the world market with its own foreign exchange funds.

A joint venture is encouraged to market its products outside China. It may distribute its export products on foreign markets through

direct channels or its associated agencies or China's foreign trade establishments. Its products may also be distributed on the Chinese market.

Wherever necessary, a joint venture may set up affiliated agencies outside China.

Article 10 The net profit which a foreign participant receives as his share after executing his obligations under the pertinent laws and agreements and contracts, the funds he receives at the time when the joint venture terminates or winds up its operations, and his other funds may be remitted abroad through the Bank of China in accordance with the foreign exchange regulations and in the currency or currencies specified in the contracts concerning the joint venture.

A foreign participant shall receive encouragement for depositing in the Bank of China any part of the foreign exchange which he is entitled to remit abroad.

Article 11 The wages, salaries or other legitimate income earned by a foreign worker or staff member of a joint venture, after payment of the personal income tax under the tax laws of the People's Republic of China, may be remitted abroad through the Bank of China in accordance with the foreign exchange regulations.

Article 12 The contract period of a joint venture may be agreed upon between the parties to the venture according to its particular line of business and circumstances. The period may be extended upon expiration through agreement between the parties, subject to authorization by the Foreign Investment Commission of the People's Republic of China. Any application for such extension shall be made six months before the expiration of the contract.

Article 13 In cases of heavy losses, the failure of any party to a joint venture to execute its obligations under the contracts or the articles of association of the venture, force majeure, etc., prior to the expiration of the contract period of a joint venture, may result in termination of the contract before the date of expiration by consultation and agreement between the parties and through authorization by the Foreign Investment Commission of the People's Republic of China and registration with the General Administration for Industry and Commerce. In cases of losses caused by breach of the contract(s) by a party to the venture, the financial responsibility shall be borne by the said party.

Article 14 Disputes arising between the parties to a joint venture which the board of