

Foreign Investment Industrial Guidance Catalogue (Amended in 2011)

Promulgated by the National Development and Reform Commission and Ministry of Commerce on December 24 2011 and effective as of January 30 2012.)

The *Foreign Investment Industrial Guidance Catalogue (Amended in 2007)* promulgated by the National Development and Reform Commission and Ministry of Commerce on October 31 2007 shall be repealed simultaneously.)

Order of the NDRC and MOFCOM No.12

CATALOGUE OF INDUSTRIES IN WHICH FOREIGN INVESTMENT IS ENCOURAGED

Agriculture, Forestry, Animal Husbandry and Fisheries

- 1) Cultivation, development and production with respect to edible oils, flavourings and industrial raw materials that are from woody plants.
- 2) Development of cultivation technologies for green and organic vegetables (including edible fungi, watermelons and musk melons), dried and fresh fruits, and tea, and production of products thereof.
- 3) Development of new cultivation technologies for crops such as sugar crops, fruit trees and pasturage, and production of products thereof.
- 4) Production of flowers and plants and the construction and operation of nursery centres.
- 5) Planting of rubber, oil palm, sisal and coffee.
- 6) Growing and breeding of traditional Chinese medicine materials (limited to equity and cooperative joint ventures).
- 7) Mulching and comprehensive utilisation of crop straw and the development and production of organic fertiliser resources.
- 8) Forest (bamboo) planting and breeding of improved varieties, and breeding of new varieties of polyploid trees.

外商投资产业指导目录 (2011年修订)

(国家发展和改革委员会、商务部于二零一一年十二月二十四日发布，自二零一二年一月三十日起施行。)

2007年10月31日国家发展和改革委员会、商务部发布的《外商投资产业指导目录(2007年修订)》同时废止。

发改委、商务部令 第12号

鼓励外商投资产业目录

农、林、牧、渔业

1. 木本食用油料、调料和工业原料的种植及开发、生产
2. 绿色、有机蔬菜(含食用菌、西甜瓜)、干鲜果品、茶叶栽培技术开发及产品生产
3. 糖料、果树、牧草等农作物栽培新技术开发及产品生产
4. 花卉生产与苗圃基地的建设、经营
5. 橡胶、油棕、剑麻、咖啡种植
6. 中药材种植、养殖(限于合资、合作)
7. 农作物秸秆还田及综合利用、有机肥料资源的开发生产
8. 林木(竹)营造及良种培育、多倍体树木新品种培育

- (9) Breeding of aquaculture brood stock (not including precious and fine varieties unique to China).
- (10) Construction and operation of ecological environment protection projects such as the planting of trees and grasses to prevent and treat desertification and prevent water loss and soil erosion.
- (11) Breeding of aquaculture products, deep water net-pen breeding, industrialisation aquaculture, and ecological mariculture.

2. Mining

- (1) Exploration for, and development of, coalbed methane, and utilisation of mine gas (limited to equity and cooperative joint ventures).
- (2) Risk exploration and development of petroleum and natural gas (limited to equity and cooperative joint ventures).
- (3) Development of oil/gas pools (fields) in low permeability formations (limited to equity and cooperative joint ventures).
- (4) Development and application of new technologies for increasing the crude oil recovery factor and of other relevant new technologies (limited to equity and cooperative joint ventures).
- (5) Development and application of new technologies for petroleum exploration and development such as geophysical prospecting, drilling, logging, downhole operation, etc. (limited to equity and cooperative joint ventures).
- (6) Exploration and development of non-conventional oil resources, such as oil-bearing shale, oil sands, heavy oil and ultra-heavy oil (limited to equity and cooperative joint ventures).
- (7) Exploration for, and mining and dressing of, iron ore and manganese ore.
- (8) Development and application of new technologies that increase the utilisation rate of mine tailings and the comprehensive application of technologies for the restoration of mine ecologies.
- (9) Exploration for and development of non-conventional natural gas resources, such as shale gas and marine gas hydrates (limited to equity and cooperative joint ventures).

3. Manufacturing

- (1) Processing of Agricultural Non-staple Foodstuffs.

9. 水产苗种繁育 (不含我国特有的珍贵优良品种)
10. 防治荒漠化及水土流失的植树种草等生态环境保护工程建设、经营
11. 水产品养殖、深水网箱养殖、工厂化水产养殖、生态型海洋增养殖

二、采矿业

1. 煤层气勘探、开发和矿井瓦斯利用 (限于合资、合作)
2. 石油、天然气的风险勘探、开发 (限于合资、合作)
3. 低渗透油气藏 (田) 的开发 (限于合资、合作)
4. 提高原油采收率及相关新技术的开发应用 (限于合资、合作)
5. 物探、钻井、测井、录井、井下作业等石油勘探开发新技术的开发与应用 (限于合资、合作)
6. 油页岩、油砂、重油、超重油等非常规石油资源勘探、开发 (限于合资、合作)
7. 铁矿、锰矿勘探、开采及选矿
8. 提高矿山尾矿利用率的新技术开发和应用及矿山生态恢复技术的综合应用
9. 页岩气、海底天然气水合物等非常规天然气资源勘探、开发 (限于合资、合作)

三、制造业

- (一) 农副食品加工业

PRC Sino-foreign Equity Joint Venture Law (2nd Revision)

(Adopted at the 4th Session of the 9th National People's Congress on, and effective as of, March 15 2001.)

Article 1: In order to expand international economic cooperation and technological exchange, the People's Republic of China shall permit foreign companies, enterprises, other economic organisations or individuals (hereafter "Foreign Parties"), after approval by the Chinese government, to organise within the territory of the People's Republic of China joint ventures with Chinese companies, enterprises or other economic organisations (hereafter "Chinese Investors") on the principles of equality and mutual benefit.

Article 2: The Chinese government shall protect, in accordance with the law, the investment by a Foreign Party in a joint venture and the profits due it pursuant to the agreements, contracts and articles of association authorised by the Chinese government as well as its other lawful rights and interests.

A joint venture shall observe the laws and regulations of the People's Republic of China in all its activities.

The state shall not nationalise or expropriate joint ventures. Under special circumstances, in accordance with the public interest, a joint venture may be expropriated according to the procedure prescribed by law, in which case appropriate compensation shall be given.

Article 3: Joint venture agreements, contracts and articles of association concluded by the parties to a joint venture shall be reported to the state foreign economic relations and trade administrative department (hereafter, the "Approval Authority") for examination and approval. The Approval Authority shall decide, within 30 days, whether or not to approve a joint venture. Once approved, a joint venture shall be registered with the state industry and commerce administrative department, a business licence shall be obtained and operations shall begin.

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

The proportion of the investment contributed by the Foreign Party in the registered capital of a joint venture shall in general not be less than 25%.

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.

中华人民共和国中外合资经营企业法 (第二次修正)

(第九届全国人民代表大会第四次会议于一九九一年三月十五日通过施行。)

第一条 中华人民共和国为了扩大国际经济合作和技术交流,允许外国公司、企业和其它经济组织或个人(以下简称外国合营者),按照平等互利的原则,经中国政府批准,在中华人民共和国境内,同中国的公司、企业或其它经济组织(以下简称中国合营者)共同举办合营企业。

第二条 中国政府依法保护外国合营者按照经中国政府批准的协议、合同、章程在合营企业的投资,应分得的利润和其它合法权益。

合营企业的一切活动应遵守中华人民共和国法律、法规的规定。

国家对合营企业不实行国有化和征收;在特殊情况下,根据社会公共利益的需要,对合营企业可以依照法律程序实行征收,并给予相应的补偿。

第三条 合营各方签订的合营协议、合同、章程,应报国家对外经济贸易主管部门(以下称审查批准机关)审查批准。审查批准机关应在三个月内决定批准或不批准。合营企业经批准后,向国家工商行政管理主管部门登记,领取营业执照,开始营业。

第四条 合营企业的形式为有限责任公司。

在合营企业的注册资本中,外国合营者的投资比例一般不低于百分之二十五。

合营各方按注册资本比例分享利润和分担风险及亏损。

A party may only assign its share in the registered capital with the agreement of the other parties to the venture.

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

The technology or equipment contributed by a Foreign Party as investment shall be truly advanced and appropriate to China's needs. Compensation shall be paid where losses are caused by fraud through the intentional provision of outdated equipment or technology.

The investment contributed by a Chinese Investor may include the right to use a site provided for the joint venture during the term of its operation. Where the right to use a site does not constitute a part of the investment by the Chinese Investor, the joint venture shall pay fees to the Chinese government for use of the site.

The various contributions referred to in this Article shall be specified in the contract concerning a 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 consultation.

Article 6: A joint venture shall establish a board of directors. The size and composition of the board of directors shall be determined through negotiations between the parties to the joint venture, and shall be stipulated in the contract and articles of association. Members of the board of directors shall be appointed and replaced by the parties to the joint venture. The chairman of the board and the vice-chairman of the board shall be determined through negotiation between the parties to the joint venture or elected by the board of directors. Where the post of chairman of the board is assumed by the Chinese party or the Foreign Party to the joint venture, [a member of] the other party shall assume the post of vice-chairman. The board of directors shall make major decisions concerning the joint venture based on the principles of equality and mutual benefit.

The powers and functions of the board of directors shall be to discuss and decide in accordance with the provisions of the articles of association of the joint venture, all major problems concerning the venture, namely, development plans, production and business plans, the budget, distribution of profits, manpower and pay scale plans, the termination of business and the appointment or recruitment of the general manager, the deputy general manager, the chief engineer, the chief accountant and the auditor as well as their functions and powers and their remuneration, etc.

The general manager and deputy general manager shall be chosen from the parties to the joint venture.

Matters concerning the employment, discharge, remuneration, benefits, labour protection, labour insurance, etc. of the workers and staff of a joint venture shall be stipulated in accordance with the law through the conclusion of a contract.

合营者的注册资本如果转让必须经合营各方同意。

第五条 合营企业各方可以现金、实物、工业产权等进行投资。

外国合营者作为投资的技术和设备，必须确实是适合我国需要的先进技术和设备。如果有有意落后的技术和设备进行欺骗，造成损失的，应赔偿损失。

中国合营者的投资可包括为合营企业经营期间提供的场地使用权。如果场地使用权未作为中国合营者投资的一部分，合营企业应向中国政府缴纳使用费。

上述各项投资应在合营企业的合同和章程中加以规定，其价格（场地除外）由合营各方评议商定。

第六条 合营企业设董事会，其人数组成由合营各方协商，在合同、章程中确定，并由合营各方委派和撤换。董事长和副董事长由合营各方协商确定或由董事会选举产生。中外合营者的一方担任董事长的，由他方担任副董事长。董事会根据平等互利的原则，决定合营企业的重大问题。

董事会的职权是按合营企业章程规定，讨论决定合营企业的一切重大问题：企业发展规划、生产经营活动方案、收支预算、利润分配、劳动工资计划、停业，以及总经理、副总经理、总工程师、总会计师、审计师的任命或聘请及其职权和待遇等。

正副总经理（或正副厂长）由合营各方分别担任。

合营企业职工录用、辞退、报酬、福利、劳动保护、劳动保险等事项，应当依法通过订立合同加以规定。