

## Law of the People's Republic of China on Sino-Foreign Contractual Joint Ventures

(Passed at the first session of the seventh National People's Congress on April 13, 1988;

Amended according to the Resolution on Amending the Law of the People's Republic of China on Sino-Foreign Contractual Joint Venture at the eighteenth session of the ninth National People's Congress on October 31, 2000)

Article 1 This law is formulated for the purpose of broadening foreign economic cooperation and technology exchange, and promoting foreign enterprises, other economic organizations or individuals (hereafter briefly referred to as "foreign party") to, under the principle of equality and mutual benefit, establish Sino-foreign contractual joint ventures (hereafter briefly referred to as "contractual joint venture") within the territory of China in combination with the enterprises or other economic organizations of the People's Republic of China (hereafter briefly referred to as "Chinese party").

Article 2 In establishing a contractual joint venture, both Chinese party and foreign parties shall, in accordance with the provisions of this law, stipulate in the contractual joint venture contract such matters as the condition of investment or cooperation, the distribution of profit or products, the liabilities of each party for the risks and losses of the venture, the mode of operation and management, and the ownership of the property after the termination of the venture, etc..

Where a contractual joint venture meets the requirements of Chinese laws in relation to a legal person, the venture shall qualify as a Chinese legal person.

Article 3 The state protects the lawful rights and interests of contractual joint ventures and both Chinese and foreign parties thereof in accordance with law.

Contractual joint ventures must abide by Chinese laws and regulations, and shall not impair Chinese social public interest.

State authorities concerned are empowered to conduct supervision on the contract joint ventures in accordance with law.

Article 4 The state encourages the establishment of production-type contractual joint ventures which are either export-oriented or adopt advanced technology.

Article 5 To apply for establishing a contractual joint venture, such documents as the agreement, contract and articles of association which have been concluded by both Chinese and foreign parties shall be submitted to the department under State Council in charge of foreign economic relation and trade or the other departments under the State Council or local governments, which have been authorized by the State Council, (hereafter briefly referred to as "the examination and approval authority") for approval. The examination and approval authority shall decide whether to grant approval within five days as from the day on which it receives such application.

Article 6 After an application for establishing a contractual joint venture has been approved, an application shall be made to the authority of industry and commerce for registration and acquisition of a business license within 30 days as from the day of receipt the certificate of approval. The issuing date of the business license of the contractual joint venture shall be the date of its establishment.

The venture shall go through registration procedure at tax authority within 30 days as from the day of its establishment.

Article 7 Where during the cooperation period both Chinese and foreign parties agree to make fundamental amendment to the contractual joint venture contract through negotiation, they shall submit to the examination and approval authority for approval. Where the amended contents involve statutory items which require registration for industry and commerce purpose or tax purpose, they shall go through relevant registration alteration procedures at the authority of industry and commerce or tax authority accordingly.

Article 8 The investment to be made or the cooperation conditions to be provided by either Chinese or foreign party may be in cash, or in kind, right to use of a land, industrial property right, non-patent technology or other property right.

Article 9 Both Chinese and foreign parties shall fulfil the obligation of paying up the contribution or providing cooperation condition within the specified period under the provisions of laws, regulations and the contractual joint venture contract. In the case of any party failing to fulfil such obligation upon expiration of the specified period, the authority of industry and commerce shall impose a deadline for such fulfilment. If the defaulting party still fails to fulfil such obligations upon arrival of the deadline, the examination and approval authority and the authority of industry and commerce are empowered to handle the issue in accordance with relevant regulation in China.

The investment made or the cooperation condition provided by either Chinese or foreign party shall be audited and issued a certificate by a China-certified public accountant or other relevant institution.

the prescribed period is subject to payment of interest for the delayed contribution or results in compensation for losses caused.

Article 29 After each party to an equity joint venture has contributed, verification shall be conducted by a China-certified public accountant. After a report of verification has been made by the China-certified public accountant, a certificate of contribution shall be issued by the venture based on the report. The certificate of contribution shall contain the following items: the name of the venture; the day, month and year of the establishment of the venture; the names of the parties to the venture and their contribution; the day, month and year of contribution; and the day, month and year of issue of the certificate of contribution.

## CHAPTER V BOARD OF DIRECTORS AND ORGANS OF OPERATION AND MANAGEMENT

Article 30 The board of directors is the top authority within an equity joint venture, and is powered to decide all the material issues of the venture.

Article 31 There shall be no less than three members on the board of directors. The allocation of the quota of board members to each party shall be determined by the parties through negotiation by reference to the proportion of the contribution of each party.

The term of office of each director is four years and may be renewed upon reappointment by the appointing party to the venture.

Article 32 The meeting of the board of directors shall be held at least once a year, and shall be summoned and presided over by the chairman of the board. When the chairman is unable to summon such a meeting, he may authorize the vice-chairman or any other director to be responsible for calling and presiding over the meeting. Upon a proposal presented by more than one-third of directors, an interim board meeting may be summoned by the chairman.

Only with the presence of a quorum of more than two-third of directors can a board meeting be held. Any director who is unable to attend the board meeting may, by signing a proxy, authorize some person to attend and vote on the meeting on his behalf.

In general, a board meeting shall be held at the statutory domicile of an equity joint venture.

Article 33 A resolution on the following matters in relation to an equity joint venture shall only be adopted upon a consensus among the directors present at a board meeting—

- (1) amendment of the articles of association of the venture;
- (2) cessation and dissolution of the venture;
- (3) increase or reduction of the registered capital of the venture; or
- (4) merger or separation of the venture.

A resolution on any other matters may be adopted in accordance with the rules of operation as provided for in the articles of association of the venture.

Article 3 The chairman of the board of directors of an equity joint venture is the legal representative of the venture. Where the chairman is unable to fulfil his duty, he shall authorize the vice-chairman or any other director to act as the representative of the venture.

Article 35 An organ of operation and management shall be established within an equity joint venture to be responsible for the day-to-day operation and management of the venture. Such organ shall consist of one general manager and several deputy general managers. The deputy general managers shall assist the manager in his work.

Article 36 The general manager shall carry out each resolution adopted by the board meetings, and shall organize and lead the day-to-day operation and management of the equity joint venture. Within the authority delegated by the board of directors, the external function of the manager shall be representing the venture, his internal function shall be appointing and dismissing his subordinates, and exercising other authority empowered by the board of directors.

Article 37 The general manager and deputy general manager shall be employed by the board of directors of an equity joint venture from either Chinese citizens or foreign citizens.

Upon being employed by the board of directors, the chairman, vice-chairman or other directors of the board may, as their concurrent position, act as the general manager, deputy general manager or hold other senior management positions in the venture.

In dealing with material issues of the venture, the general manager shall discuss with deputy general manager.

A general manager or deputy general manager of an equity joint venture is prohibited from holding a concurrent position of general manager or deputy general manager in other economic organizations, or participating into any other economic organization's competition against the venture.

Article 38 Where a general manager, deputy general manager or other senior management officer commits favouritism or massive abuse of his authority, he may be removed at any time upon a resolution adopted by the board of directors.

provisions of right to use of property, etc. between the enterprise and its associated enterprises, the local tax authority may make adjustment by reference to the amount which may be agreed upon in the case of such a transaction between unconnected enterprises.

Article 58 An enterprise is prohibited from itemizing the management fee as expenses that have been paid by the enterprise to its associated enterprises.

## CHAPTER V RESOURCES WITHHOLDING

Article 59 In relation to the profit, interest, rent, licensing fee and other income mentioned in sub-article 1 of article 19 of the Tax Law, the taxable amount shall be calculated on the basis of full amount of the income, except as otherwise provided by the state.

The full amount of the using fee charged for provision of patent right or proprietary technology shall include the related fees for blueprint materials, technological service and personnel training and other related fees.

Article 60 "The profit" mentioned in article 19 of the Tax Law means the income obtained with the right to profit distributed on the basis of proportion of investment, share ownership or shares or other none-debt relationship.

Article 61 "The other income" mentioned in article 19 of the Tax Law includes the proceeds obtained by transferring the houses, constructions, and their ancillary facilities, and right to use of land, etc., that are located within the territory of China.

"The proceeds" mentioned in the preceding sub-article means the rest amount of the income out of transfer less the original value of the said property. Where the foreign enterprise is unable to provide correct certificate of the original price of the property, the original price shall be estimated by the local tax authority in light of concrete situation.

Article 62 "The amount paid" mentioned in sub-article 2 of article 19 of the Tax Law means the amount paid by cash, remittance, or account transfer, and the amount paid by way of pricing non-monetary assets or interests.

Article 63 "The profit earned from a foreign-invested enterprise" mentioned in sub-article 3(1) of article 19 of the Tax Law means the income which is earned from the profit of a foreign-invested enterprise after it has paid or been reduced or exempted income tax.

Article 64 "The international financial organizations" mentioned in sub-article 3 (2) of article 19 of the Tax Law means the international financial organizations such as International Monetary Organization, World Bank, Asian Development Bank, International Development Association, International Fund for Agricultural Development, etc..

Article 65 "The Chinese state banks" mentioned in sub-article 3 (2), (3) of article 19 of the Tax Law means the People's Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, China Construction Bank, the Communication Bank, China Investment Bank and other financial institutions that have been approved by the State Council to engage in the credit business such as foreign exchange deposits and loans.

Article 66 In relation to the reduction or exemption of income tax on the licensing fee mentioned in sub-article 3 (4) of article 19 of the Tax Law, the scope is as below—

- (1) the using fee charged for proving the following proprietary technologies in respect of developing agriculture, forestry, husbandry and fishery—
  - (a) the technology of improving soil, grassland, cultivating barren mountains, or making full use of natural resources;
  - (b) the technology of fostering new species of animal or plant, or producing high-efficiency-low-poison pesticides; and
  - (c) the technology in respect of scientific production and management, preservation of biological balance, improvement of the ability to fight against natural disasters in relation to agriculture, forestry, husbandry and fishery, etc..
- (2) the using fee charged for providing proprietary technology for scientific academy, higher educational institutions or other scientific and research institutions to conduct or cooperate to conduct scientific research or experiments;
- (3) the using fee charged for providing proprietary technology in respect of exploiting energy or developing traffic and transportation;
- (4) the use fee charged for providing proprietary technology in respect of conserving energy or preventing environmental pollution; and
- (5) the using fee charged for providing the following proprietary technologies in respect of developing important scientific fields—
  - (a) significant and advanced mechanical and electrical equipment production technology;
  - (b) nuclear energy technology;

## Regulation on Guiding the Direction of Foreign Investment

(Promulgated by the order [2002] No. 346 of the State Council on February 11, 2002)

Article 1 For the purpose of guiding the direction of foreign investment so as to enable it to be compatible with the state planning in relation to national economy and social development, and facilitating the protection of the lawful rights and interests of investors, this regulation is made in accordance with the provisions of Chinese laws and the requirements of industrial policy concerning to foreign investment.

Article 2 This regulation applies in relation to the project to which establishment of a Sino-foreign equity joint venture, Sino-foreign contract joint venture or a foreign-owned enterprise (hereafter briefly referred to as "foreign-invested enterprise") relates, and any other form of foreign investment project (hereafter briefly referred to as "foreign-invested project").

Article 3 The Guidance Catalog of Foreign Investment Industries and the Catalog of Priority Industries for Foreign Investment in Central-Western Region shall be made by the State Development Planning Commission, the National Economy and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation in conjunction with relevant departments under the State Council, and, after being approved by the State Council, shall be published. Where in light of actual situation there is a need to make adjustment of part of either the Guidance Catalog of Foreign Investment Industries or the Catalog of Priority Industries for Foreign Investment in Central-Western Region, the National Economy and Trade Commission, the State Development Planning Commission and the Ministry of Foreign Trade and Economic Cooperation in conjunction with relevant departments under the State Council may, from time to time, do so and publish the amendment.

The Guidance Catalog of Foreign Investment Industries and the Catalog of Priority Industries of Foreign Investment in Central-Western Region are the grounds of guiding the examination and approval of foreign-invested projects and the application of relevant policy to foreign-invested enterprises.

Article 4 Foreign-invested projects shall fall within four categories, which are encouraged, permitted, restricted and prohibited categories.

The foreign-invested projects falling within the encouraged, restricted and prohibited category shall be contained in the Guidance Catalog of Foreign Investment Industries. The foreign-invested projects which do not fall within the aforementioned categories shall be the permitted foreign-invested projects. The permitted foreign-invested projects are not included in the Guidance Catalog of Foreign Investment Industries.

Article 5 Any project involving any one of the following situation shall be categorized as an encouraged foreign-invested project, namely, the project which—

- (1) involves new agricultural technology or comprehensive development of agriculture, or the industry of energy, traffic or essential materials;
- (2) involves high and new technology or advanced applicable technology, which is capable of improving the performance of products, increasing economic efficiency of technology of the enterprise or producing new equipment or material for which the domestic production capability is insufficient;
- (3) suits the requirements of market, being capable of upgrading the quality level of products, cultivating emerging market or increasing the international competitiveness of products;
- (4) involves new technology or equipment, which is capable of conservation of energy and raw material, comprehensive utilization of resources and recycled resources, and preventing and curing environmental pollution;
- (5) is capable of utilizing the advantages of manpower and resources of the central and western region, and being compatible with national industrial policy; or
- (6) involves other situations as may be provided by laws or administrative regulations.

Article 6 Any project involving any one of the following situations shall be categorized as a restricted foreign-invested project, namely, the project which—

- (1) involves backward technology;
- (2) is not disadvantageous to the conservation of resources and bettering of biological environment;
- (3) engages in the prospecting and exploration of special minerals under national policy of protective exploration;
- (4) falls within an industry subject to a step-by-step opening policy in China; or
- (5) involves other situations as may be provided by laws or administrative regulations.

immediately preceding the public offering. If the promoter is a Chinese share holder, he shall provide financial and accounting reports of the latest three years audited by a China-certified public accountant. If the promoter is a foreign share holder, it shall provide his financial and accounting reports audited by an accountant registered at the location of the domicile of the foreign share holder.

Article 7 The registered capital of a company shall be the total amount of actual paid-up share capital registered at the registration authority. The minimum registered capital of a company is 30 million Renminbi Yuan, among which the shares purchased and held by foreign shareholders shall be equivalent to no less than 25% of the registered capital of the company.

Article 8 The transfer of the shares subscribed by any shareholder shall meet the requirements under article 7 of these provisions. The transfer of the shares held by a promoter shall, subject to the approval of the original examination and approval authority, be conducted only three years after the establishment of a company.

Article 9 The promoters may, after having reached an agreement in relation to establishment of a company, jointly authorize a promoter to go through application procedures for establishment of the company.

The specific procedures are as below—

- (1) the applicant submits such documents as the application for establishment of the company, feasibility study report, assets evaluation report, etc. to the governing department of the government of relevant province, autonomous region, central-administered municipality or a city under separate planning (hereafter referred to as "governing department"); In the case of a company to be established by means of public offering, prospectus shall also be included in the application;
- (2) the above-mentioned documents shall, after being examined and approved by the governing department, be submitted by the governing department to the governmental department, which is in charge of foreign economic relation and trade, of the province, autonomous region, central-administered municipality or the city under separate planning. After the above-mentioned documents have been approved by the aforesaid department, the promoters shall formally enter into an agreement on establishment of the company and sign the articles of association of the company; and
- (3) the agreement on establishment of company and articles of association concluded by the promoters shall, after being examined and approved by the department, which is in

charge of foreign economic relation and trade of province, autonomous region, central-administered municipality, be submitted to the Ministry of Foreign Trade and Economic Cooperation for examination and approval. The Ministry of Foreign Trade and Economic Cooperation shall decide whether to approve within 45 days.

Article 10 Every document submitted by the promoters must be written in Chinese. Where all the promoters think it necessary to contain a version written in a foreign language, they may do so by choosing a foreign language through negotiation, but the documents of Chinese version which have been approved shall be relied on as the effective documents.

Article 11 The application for establishment of a company shall briefly state—

- (1) the name, domicile and legal representative of the promoters;
- (2) the name, domicile and purpose of the proposed company;
- (3) the means of establishing the company, total share capital, category of shares, par value par share, the proportion of the shares subscribed by the promoters, the scope and approach of share public offering;
- (4) the situations concerning the production and operation of the promoters, including the situations such as the production and operation, assets and debts, and profit, etc. within the latest three years (limited to the promoters establishing a company by means of public offering);
- (5) the investment direction of the fund of the company and its business scope;
- (6) the time of submission of application, the signature of the legal representative of the promoters, stamp of the common seal of the promoters; and
- (7) other matters as may be required.

Article 12 The promoters' agreement shall contain the following main contents—

- (1) the name, domicile of the promoters, and the name, nationality, domicile and position of the legal representative of each promoter;
- (2) the name and domicile of the proposed company;
- (3) the purpose and business scope of the company;
- (4) the means of establishment of, and the organizational form of the company;
- (5) the registered capital of the company, total share capital, category of shares, the amount of shares subscribed by the promoters, and the means and period of subscription;