

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

(Promulgated by the State Council on September 20, 1983 and amended by the State Council on January 15, 1986)

## Chapter 1 - General Provisions

### Article 1

The Regulations hereunder are formulated with a view to facilitating the implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign investment (hereinafter referred to as the Law on Chinese Foreign Joint Ventures).

### Article 2

Joint ventures using Chinese and foreign investment (hereinafter referred to as joint ventures) established within China's territory in accordance with the Law on Chinese Foreign Joint Venture are Chinese legal persons and are subject to the jurisdiction and protection of Chinese law.

### 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 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, foodstuff, medicine, medical apparatus and packing industries;
- (5) Agriculture, animal husbandry and fish breeding;
- (6) Tourism and service trades.

### Article 4

Applicants to establish joint ventures shall lay stress on economic result and shall comply with one or several of the following requirements:

- (1) They shall adopt advanced technical equipment and scientific management which enable the increase of the variety of products, the raising of quality and output, and the saving of energy and materials;

(2) They shall provide benefice in terms of technical renovation of enterprises and result in less investment, quicker returns and bigger profits;

(3) They shall enable the expanded production of products for export and result in increasing income in foreign currency,

(4) They shall enable the training of technical and managerial personnel.

#### **Article 5**

Applicants to establish joint ventures shall not be granted approval if the project involves any of the following conditions:

(1) Detriment to China's sovereignty;

(2) Violation of Chinese law;

(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 party.

#### **Article 6**

Unless otherwise stipulated, the government department in charge of the Chinese participant in a joint venture shall be the department in charge of the joint venture (hereinafter referred to as the department in charge). In case of a joint venture having two or more Chinese participants which are under different departments or districts, the departments concerned shall consult the district to ascertain one department in charge.

Departments in charge are responsible for guidance and assistance and exercising supervision over the joint venture.

#### **Article 7**

A joint venture has the right to do business independently within the scale of the provisions of Chinese laws, decrees, and the agreement, contract and articles of association of the joint venture. The departments concerned shall provide support and assistance.

### **Chapter 2 - 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 Ministry of Foreign Economic Relations and Trade). Certificates of approval are granted by the Ministry of Foreign Economic Relations and Trade. The Ministry of Foreign Economic Relations and Trade shall entrust the people's government 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 participants has been ascertained;

(2) No additional allocations of raw materials by the state are required; neither is the national balance of fuel, power, transportation and foreign trade export quotas affected. The entrusted office, after approving the establishment of a joint venture, shall report this to the Ministry of Foreign Economic Relations and Trade for the record. A certificate of approval shall be issued by the Ministry of Foreign Economic Relations and Trade. (The Ministry of Foreign Economic Relations and Trade and the entrusted office shall hereinafter be referred to as a whole as the examination and approval authority.

### **Article 9**

The following procedures shall be followed for the establishment of a joint venture:

(1) The Chinese participant in a joint venture 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 participants. The proposal and the preliminary feasibility study report, upon examination and consent by the department in charge, shall be submitted to the examination and approval authority for final approval. The parties to the venture shall then conduct work relevant to the feasibility study, and based on this, negotiate and sign joint venture agreements, contract and articles of association.

(2) When applying for the establishment of a joint venture, the Chinese participant is responsible for the submission of the following documents to the examination and approval authority:

(a) Application for the establishment of a 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, vice chairman and director's appointed by the parties to the venture;

(e) Written opinions 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 with regard to the establishment of the joint venture.

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 examination and approval authority shall, within three months, decide whether to approve or disapprove them. Should anything inappropriate be found in any of the aforementioned documents, the examination and approval authority shall demand an amendment to it within a limited time. Without such amendment no approved shall be granted.

### **Article 11**

The applicant shall, within one month after receipt of the certificate of approval, register with the administrative bureau for industry and commerce of the province, autonomous region or municipality directly under the central government in accordance

with the provisions of the procedures of the People's Republic of China for the Registration and Administration of Chinese-Foreign Joint Ventures (hereinafter referred to as registration and administration office). The date on which its business license is issued is regarded as the date of formal establishment of a 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 his joint venture projects and authorize the China international Trust and investment Corporation (CITIC) or trust and investment corporations of a province, autonomous region or municipality directly under the central government, or relevant government department or non-governmental organization, to introduce potential Chinese co-operators.

#### **Article 13**

The "joint venture agreement" mentioned in this chapter refers to a document agreed upon by the parties to the joint venture on some main points and principles governing the establishment of a joint venture on some main points and principles governing the establishment of a joint venture. "Joint venture contract" refers to a document agreed upon and concluded by the parties to the joint venture on their rights and obligations.

"Articles of association" refers to a document agreed upon by the parties to the joint venture indicating the purpose, organizational principles and method of management of a joint venture in compliance with the principles of the Joint venture contract.

If the joint venture agreement conflicts with the contract, the contract shall prevail.

If the parties to the joint venture agree to sign only a contract and articles of association, the agreement can be omitted.

#### **Article 14**

The joint venture contract shall include the following main items

- (1) The names, the countries of registration, the legal address of parties to the joint venture, and the names, professions 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, investment contributed by the parties to the joint venture, each party's investment proportion, forms of investment, the time limit for contributing investment stipulations concerning incomplete contributions, and assignment of investment;
- (4) The ratio of profit distribution 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 management 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 and outside China;
- (8) Arrangements for income and expenditure of 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 procedure 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 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 with the contract itself.

#### **Article 15**

The formation of a joint venture contract, its validity, interpretation, execution and the settlement of disputes under it shall be governed by the Chinese law.

#### **Article 16**

Articles of Association 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 address of parties to the joint venture, and the names, professions 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 ratio of profit distribution and losses to be borne by parties to the Joint venture;
- (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 management personnel, and the method of their appointment and dismissal;
- (7) Principles governing finance, accounting and auditing;
- (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 after being approved by the examination and approval authority. The same applies in the event of amendment.

#### **Article 18**

The examination and approval authority and the registration and administration office are responsible for supervising and inspecting the execution of the joint venture contract and articles of association.

### **Chapter 3 - 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 limits 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 shall generally be presented in total amount of investment registered at the registration and administration office for the establishment of the joint venture. It should be the total amount of investment subscribed by parties to the joint venture.

The registered capital shall generally be presented 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 his investment subscribed to a third party, consent shall be obtained from the other party to the joint venture, and approval from the examination and approval authority is required.

When one party assigns all or part of his investment to a third party, the other party has pre-emptive right.

When one party assigns his investment subscribed to a third party, the conditions given shall not be more favorable than those given to the other party to the joint venture.

No assignment shall be made effective should there be any violation of the above stipulations.

#### **Article 24**

Any increase, assignment or other disposal of the registered capital of a joint venture shall be approved by a meeting of the board of directors and submitted to the original examination and approval authority for approval. Registration procedures for changes shall be dealt with at the original registration and administration office.

### **Chapter 4 - Ways of Contributing investment**

#### **Article 25**

Each participant to a joint venture may contribute cash or buildings, premises, equipment or other materials, industrial property, know-how, right to the use of a site as investment, the value of which shall be ascertained. If the investment is in the form of buildings, premises, equipment or other materials, industrial property or know-how, the prices shall be ascertained through consultation by the parties to the joint venture on the basis of fairness and reasonableness. or evaluated by the third' party agreed upon by parties to the joint venture.

#### **Article 26**

The foreign currency contributed by the foreign participant shall be converted into Renminbi according to the exchange rate announced by the State General Administration of Foreign Exchange Control of the People's Republic of China (hereinafter referred to as the State General Administration of Foreign Exchange Control) on the day of its submission or be cross exchanged into a predetermined foreign currency. Should the cash Renminbi contributed by the Chinese participant be converted into foreign currency, it shall be converted according to the exchange rate announced by the State Administration of Foreign Exchange Control on the day of the submission of the funds.

#### **Article 27**

The machinery equipment and other materials contributed as investment by the foreign participant shall meet the following conditions:

- (1) They are indispensable to the production of the joint venture;
- (2) China is unable to manufacture them, or manufactures them only at too high a price, or their technical performance and time of availability cannot meet the demand;
- (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 know-how contributed by the foreign participant 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 improving markedly the performance quality of existing products and raising productivity;
- (3) Capable of notable savings in raw materials, fuel or power.

#### **Article 29**

Foreign participants who contribute industrial property or know-how as investment shall present relevant documentation on the industrial property or know-how, including photocopies of the patent certificates or trademark registration certificates, statement of validity, their technical characteristics, practical value, the basis for calculating the price and the price agreement signed with the Chinese participants. All these shall serve as an annex to the contract.

#### **Article 30**

The machinery, equipment or other materials, industrial property or know how contributed by foreign participants as investment shall be examined and approved by the department in charge of Chinese participant and then submitted to the examination and approval authority for 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 interest 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 an investment certificate, which includes the following items: name of the joint venture; date, month and year of the establishment of the joint venture; names of the participants and the investment contributed; date, month and year of the contribution of the investment, and date, month and year of issuance of the investment certificate.

## **Chapter 5 - Board of Directors and Management Office**

### **Article 33**

The highest authority of the joint venture shall be its board of directors. It shall decide all major issues concerning the joint venture.

### **Article 34**

The board of directors shall consist of no fewer than three members. The distribution of the number of directors shall be ascertained through consultation by the parties to the joint venture with reference to the proportion 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 participant and the vice chairman by the foreign participant. The term of office for the directors is four years. Their term of office may be renewed with the consent of 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 other director to call and preside over the meeting. The chairman may convene an interim meeting based on a proposal made by more than one-third of the directors. A board meeting requires a quorum of over two-thirds of the directors. Should the director be unable to attend, he shall present a proxy authorizing someone else to represent him and vote for him. A board meeting shall generally 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 of the articles of association of the joint venture;
- (2) Termination and dissolution of the joint venture;
- (3) Increase or assignment of the registered capital of the joint venture;
- (4) Merger of the joint venture with other economic organizations.

Decision on other items shall 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 exercise his responsibilities, he shall authorize the vice chairman of the board or another director to represent the Joint venture.

#### **Article 38**

A joint venture shall establish a management office which shall be responsible for daily management.

The management office shall have a general manager and several deputy general managers who shall 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 daily management of the joint venture. The general manager shall, within the scope empowered him by the board, represent the joint venture in outside dealings, have the right to appoint and dismiss his subordinates, and exercise other responsibilities and rights as authorized by the board within the joint venture.

#### **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 citizens or foreign citizens.

At the invitation 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 management 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 economic organizations. They shall not have any connections with other economic organizations in commercial competition with 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 management personnel, the board of directors shall have the power to dismiss them at any time.

#### **Article 42**

Establishment of branch offices (including sales offices) outside of China or in Hong Kong or Macao is subject to approval by the Ministry of Foreign Economic Relations and Trade.

### **Chapter 6 - Acquisition of technology**

#### **Article 43**

The acquisition of technology mentioned in this chapter refers to the necessary technology obtained by the joint venture by means of technology transfer from a third party or participants.

#### **Article 44**

The technology acquired by the joint venture shall be appropriate and advanced and enable the venture's products to display conspicuous social and 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 making technology transfer agreements, and relevant documentation shall be provided by the technology exporting party in accordance with the provisions of Article 29 of these Regulations.

#### **Article 46**

The technology transfer agreements signed 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 examination and approval authority.

Technology transfer agreements shall comply with the following stipulations:

- (1) Expenses 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 standard international rate, which shall be calculated on the basis of net sales of the products turned out with the relevant technology or other reasonable means 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 no longer than ten years.
- (4) After the expiration of a technology transfer agreement, the technology importing party shall have the right to use the technology continuously.
- (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 by Chinese laws and regulations shall be included.

### **Chapter 7 - Right to the Use of Site and its Fee**

#### **Article 47**

Joint ventures shall practice economy in the use of land for their premises. Any joint venture requiring the use of a site shall file an application with the local department of the municipal (county) government in charge of land and obtain the right to use a site only after securing approval and 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 parties to a joint venture and fines for breach of contract should be stipulated in explicit terms in the contract.

#### **Article 48**

If the Chinese participant already has the right to the use of site for the joint venture, the Chinese participant may use it as part of its investment. The monetary

equivalent of this investment should be the same as the site use fee otherwise paid for acquiring such site.

#### **Article 49**

The standard for site use fee shall be set by the people's government of the province, autonomous region or municipality directly under the central government where the joint venture is located according to the purpose of use, geographic and environmental conditions, expenses for requisition, demolishing and resettlement and the joint venture's requirements with regard to infrastructure, and filed with the Ministry of Foreign Economic Relations and Trade and the state department in charge of land.

#### **Article 50**

Joint ventures engaged in agriculture and animal husbandry may, with consent of the people's government of the local province, autonomous region or municipality directly under the central government, pay a percentage of the joint venture's operating revenue as site use fee to the local department in charge of land. Projects of a development nature in economically underdeveloped areas shall receive special preferential treatment in respect of site use fees with consent of the local people's government.

#### **Article 51**

The rates shall not be subject to adjustment in the first five years beginning from the day the land is used. After that the interval of adjustment shall not be less than three years according to the development and changes in geographic and environmental conditions. Site use fee as part of the investment by the Chinese participant shall not be subject to adjustment during the contract period.

#### **Article 52**

The fee for the right to the use of 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 shall pay a half year fee if it has used the land for over six months; if less than six months the site use fee shall be exempt. During the contract period if the rates of site use fees are adjusted, the joint venture shall pay it according to the new rates from the year of adjustment.

### **Chapter 8 - Planning, Purchasing and Selling**

#### **Article 54**

A joint venture shall work out a capital construction plan (including construction ability, 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 and shall be given priority in arranging supplies and be ensured to be carried out.

#### **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 operation 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.

Departments in charge of the joint ventures and planning and administration departments at all levels shall not issue directive on production and operating plans to joint ventures.

#### **Article 57**

In its purchase of required machinery, equipment, raw materials, fuel, parts, means of transport and things for office use, 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 conditions are the same, it should give first priority to purchase 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 departments in charge of joint ventures and supplied by materials and commercial departments or production enterprises according to contract:

(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 amount of materials needed for office and daily life use for joint ventures purchased in China is not subject to restriction.

#### **Article 60**

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

#### **Article 61**

Products of joint ventures that China urgently needs or imports can be mainly sold on the Chinese market.

#### **Article 62**

A joint venture has the right to export its products itself or entrust sale agencies of the foreign participant or Chinese foreign trades corporations with sales on a commission or distribution.

#### **Article 63**

Within the scope of operation stipulated in the contract, a joint venture can 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 six months. For machines, equipment and other objects a foreign participant has contributed as part of his investment, the foreign participant can apply directly for import licenses with documents approved by examination and approval authority. For materials to be imported exceeding the stipulated scope of the contracts, separate application for import licenses according to state regulations is required.

A joint venture has the right to export its products by itself, for those export licenses are required by the stipulation of the State, the joint venture shall make an export plan every business year and apply for them every six 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, departments in charge of joint ventures shall 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 shall sign purchase contracts with the joint ventures.
- (3) For excess portions other than those purchased by plan of the above two categories and materials that do not belong to these two categories, the joint venture has the right to sell by itself or entrust sales to the organizations concerned.
- (4) For products of a joint venture that Chinese foreign trade companies need to import, the joint venture may sell to Chinese foreign trade companies, and foreign currency shall be paid.

#### **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 General Administration of Foreign Exchange Control or foreign trade departments, and paid in foreign currency or Renminbi.
- (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 intentional 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, service, engineering, consultation service, 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 those items approved by the price control department for valuation with reference to the international market, shall correspond with state-set prices, be rated according to quality and paid for in Renminbi. Prices fixed by a joint venture for its products shall be filed with departments in charge of joint ventures and of prices control. Prices of export products of a

joint venture shall be fixed by the joint venture itself and shall be filed with departments in charge of joint ventures and of price control.

#### **Article 67**

A joint venture and other Chinese economic organizations shall, in their economic exchanges, undertake economic responsibilities and settle disputes over contracts in accordance with relevant law and the contract concluded between both parties.

#### **Article 68**

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

### **Chapter 9 – 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 duty and consolidated industrial and commercial tax for 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 participant's share of investment according to the provisions of contract.

(2) Machinery, equipment, parts and other materials imported with funds which are part of the joint venture's total investment.

(3) Machinery, equipment, parts and other materials imported by the joint venture with the additional capital under the approval of examination and approval authority on which China cannot guarantee production and supply.

(4) Raw materials, auxiliary materials, components, parts and packing materials imported by the joint venture for production of export goods.

Taxes shall be pursued and payable according to regulation when the above-mentioned duty-free materials are approved for sale inside China or switched to the production of items to be sold on the Chinese domestic market.

#### **Article 72**

Except for those export items restricted by the state, products of a joint venture for export shall be exempt from industrial and commercial consolidated tax, subject to the approval by the Ministry of Finance of the People's Republic of China.

A joint venture can apply for reduction or exemption of 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 10 - 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

With the business license issued by the General Administration for industry and commerce of the People's Republic of China, a joint venture can open foreign exchange deposit accounts and Renminbi deposit accounts with the Bank of China, or some other banks designated. The bank handling the account of the joint venture exercises supervision of receipts and expenditures.

All foreign exchange income 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 made from its foreign exchange deposit account. The deposit interest rate shall be set as announced by the Bank of China.

### Article 75

A joint venture shall in general keep balance between its foreign exchange income and expenses. When a joint venture whose products are mainly sold on domestic market under its approved feasibility study report and contract has an unbalance of foreign exchange income and expenses, the unbalance shall be solved by the people's government of a relevant province, an autonomous region or a municipality directly under the central government or the department in charge under the State Council from their own foreign exchange reserves. If unable to be solved, it shall be solved through inclusion into plan after the examination and approval by the Ministry of Foreign Economic Relations and Trade together with the State Planning Commission of the People's Republic of China.

### Article 76

A joint venture shall get permission from the General 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 General Administration of Foreign Exchange Control or one of its branches, its foreign exchange receipts and expenditures, and provide account sheets.

### Article 77

Subdivisions set up by a joint venture in foreign countries or in Hong Kong or Macao shall open an account with the Bank of China wherever there is a branch. The sub-division shall submit its annual statement of assets and liabilities and annual profit report to the State General Administration of Foreign Exchange Control or one of its branches through the joint venture.

### Article 78

A joint venture can apply to the Bank of China for foreign loans and Renminbi loans according to business needs and following the Provisional Regulations for Providing loans to Joint Ventures Using Chinese and Foreign Investment by the Bank of China. Interest

rates on loans to joint ventures are as announced by the Bank of China. A joint venture can also borrow foreign exchange as capital from banks abroad or in Hong Kong or Macao, but shall file a report with the State General Administration of Foreign Exchange Council or one of its branches.

#### **Article 79**

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

### **Chapter 11 - Financial Affairs and Accounting**

#### **Article 80**

Procedures for handling financial affairs and accounting of a joint venture shall be formulated 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 being filed with local financial departments and tax authorities.

#### **Article 81**

A joint venture shall employ a treasurer to assist the general manager in handling the financial affairs of the enterprise. If necessary, a deputy treasurer can be appointed.

#### **Article 82**

A joint venture shall (small venture may not) 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 intentionally used accrual basis and debit and credit accounting system in their work. All vouchers, account book, statistic statements and reports prepared by the enterprise shall be written in Chinese. A foreign language can be used concurrently with mutual consent.

#### **Article 85**

Principally, a joint venture shall adopt Renminbi as the standard currency. In keeping accounts, however, another currency can be used through consultation by the parties concerned.

#### **Article 86**

In addition to the use of standard currency to record accounts, joint ventures shall record accounts in currencies actually used in payments and receipts, if such currencies in cash, bank deposits, funds of other currencies, creditor's right, debts, gains, expenses, etc. are inconsistent with the standard currency in recording accounts.

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. The actual amounts of losses and gains caused by differences in exchange rates in the course of remittances shall be recorded in the year's losses and gains accounts. No adjustments shall be made for recorded changes in exchange rates and remaining sum on the book of related foreign exchange accounts.

#### **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 Joint Ventures with Chinese and Foreign investment are as follows:

(1) Allocations for reserve funds, bonuses and welfare funds for staff and workers and expansion funds of the joint venture. Proportion of allocations is decided by the board of directors.

(2) Reserve funds can be used to make up the losses of the joint venture, and with the consent of examination and approval authority, to increase the joint venture's capital for production expansion.

(3) After the funds described in (1) of this article have been deducted and if the board of directors decides to distribute the remaining profit, it should be distributed according to the proportion of each participant's investment.

#### **Article 88**

Profits cannot be distributed unless the losses of previous year's have been made up. Remaining profits from previous year (or years) can be distributed together with that 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 financial department at the same level to those departments.

A copy of the annual fiscal report shall be submitted to the original examination and approval authority.

#### **Article 90**

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

(1) certificates of investment from all parties to a joint venture (lists of assessed value shall be attached to documents on investments involving materials, share use rights, industrial property and know-how);

(2) Annual fiscal report of the joint venture;

(3) Fiscal reports on liquidation of the joint venture.

### **Chapter 12 - 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 Labor Management in Joint Ventures Using Chinese and Foreign Investment.

#### **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 systems of joint ventures shall be in accordance 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, deputy general manager(s), chief engineer, deputy chief engineer(s), treasurer and deputy treasurer, auditor and other high-ranking officials shall be decided upon by the board of directors.

### **Chapter 13 - 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 Constitution of Chinese Trade Union.

#### **Article 96**

Trade unions in joint ventures are representatives of the interests of the staff and workers. They have the power to represent the staff and workers to sign labor contracts with joint ventures and supervise the execution of these contracts.

#### **Article 97**

The basic tasks of the trade union in joint ventures are: to protect the democratic rights and material interest of the staff and workers pursuant to the 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 as nonvoting member's and to report the opinions and demands of staff and workers to meetings of the board of directors held to discuss important issues such as development plans, production and operational activities of joint ventures. Trade union representatives have the right to attend as nonvoting members of meetings of the board of directors held to discuss and decide on awards and penalties to staff and workers, salary systems, welfare benefits, labour protection and labour insurance, etc. The board of directors shall heed the opinions of the trade union and win its cooperation.

### **Article 99**

A joint venture shall actively support the work of the trade union, and, in accordance with stipulations of the Chinese Trade Union Law.

provide housing and facilities for the trade unions office work, meetings, and welfare, cultural and sports activities. The joint venture shall allot an amount of money totalling 2 percent of all the salaries of the joint venture's staff and worker's as trade union's funds, which the trade union of the joint venture shall use according to the relevant managerial rules for trade union funds formulated by the All China Federation of Trade Unions.

## **Chapter 14 - Duration, Dissolution and Liquidation**

### **Article 100**

The duration of a Joint venture shall be decided upon through consultation of all parties to the joint venture according to actual conditions of the particular lines and projects. The duration of a joint venture engaged in ordinary projects is 10 to 30 years while the duration of a Joint venture engaged in a project requiring a large amount of investment, long construction period and low interest rates on funds, producing highly sophisticated products with advanced or key technology supplied by foreign partner, or producing competitory products on world market, can be extended to 50 years. The said duration can be extended to more than 50 years with the special approval by the State Council.

### **Article 101**

The duration of a joint venture shall be stipulated by all parties to the joint venture in the agreement contract and articles of association. The duration begins from the day 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 examination and approval authority six months before the date of expiration of the duration. The examination and approval authority shall give an official written reply to the applicant within one month beginning from the day it receives 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 Procedures of the People's Republic of China for the Registration and Administration of Chinese-Foreign Joint Ventures.

### **Article 102**

A joint venture may be dissolved in the following situations:

- (1) Termination of duration;
- (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 the obligations prescribed by 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, etc.,
- (5) Inability to obtain the desired objectives of the operation and at the same time to see a future for development;

(6) Occurrence of other reasons for dissolution prescribed by 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 application for dissolution to the examination and approval authority. In the situation described in (3) of this article, the party failing to fulfil the obligations prescribed by the agreement, contract and articles of association shall be liable to the losses thus caused.

#### **Article 103**

Upon announcement of the dissolution of a joint venture, its board of directors shall work out procedures and principles for 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 the liquidation.

#### **Article 104**

Members of a liquidation committee are usually selected among directors of joint venture. In case the directors cannot serve or are unsuitable to be members of the liquidation committee, the joint venture may invite accountant and lawyers registered in China to do the job. When the examination and approval authority deems necessary, it may send personnel to supervise the process. The liquidation expenses and remuneration to members of the liquidation committee shall be paid in priority from the existing assets of the joint venture.

#### **Article 105**

The tasks of the liquidation committee are: to conduct thorough check of the property of the joint venture concerned, its creditors' rights and liabilities; to work out the statement of assets and liabilities and list of property; to put forward a basis on which 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 to sue and be sued.

#### **Article 106**

A joint venture shall be liable to its debt with all of its assets. The remaining property after the clearance of debts shall be distributed among parties to the joint venture according to the proportion of each party's investment unless otherwise provided by agreement, contract and articles of association of the joint venture. At the time when a joint venture is being dissolved the value added to its net assets or remaining property that exceeds the registered capital is regarded as profit on which income taxes shall be levied according to law. The foreign participant shall pay income taxes according to law for the portion of the net assets or remaining property that exceeds his investment when he remits it abroad.

#### **Article 107**

On 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 examination and approval authority, go through formalities for nullify its registration and hand in its business license to the original registration authority.

#### **Article 108**

After dissolution of a joint venture, its account books and documents shall be left in the care of the Chinese participant.

### **Chapter 15 - Settlement of Disputes**

#### **Article 109**

Disputes arising over the interpretation of 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. Disputes that cannot be settled through these means may be settled through arbitration or courts of justice.

#### **Article 110**

Parties to a joint venture shall apply for arbitration in accordance with the relevant written agreement. They may submit the dispute 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 through an arbitration agency in the country where the sued party is located or through one in a third country in accordance with the arbitration agency's procedures.

#### **Article 111**

if there is no written arbitration agreement between the parties to a joint venture, each side can file a suit with the Chinese People's Court.

#### **Article 112**

In the process of solving 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 16 - Supplementary Articles**

#### **Article 113**

The Chinese office in charge of visas shall give convenient service by simplifying procedures for staff and workers from foreign countries or from Hong Kong and Macao (including their family member's) who frequently cross Chinese borders.

#### **Article 114**

Departments in charge of joint ventures are responsible for handling applications and procedures for Chinese staff and workers going abroad for study tours, business negotiations or training.

#### **Article 115**

Staff and workers from foreign countries or from Hong Kong and Macao working for a joint venture can bring in needed means of transport and items for office use, paying regular customs duty and consolidated industrial and commercial tax on them.

**Article 116**

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

**Article 171**

The power to explain the Regulation is vested in the Ministry of Foreign Economic Relations and Trade.

**Article 118**

These Regulations shall come into force on the date of promulgation.