

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON SINO-FOREIGN CONTRACTUAL COOPERATIVE ENTERPRISES

(Adopted on April 13, 1988 at the First Session of the Seventh National People's Congress)

Article 1

This said law is formulated with a view to expanding Sino-foreign economic cooperation and technological exchanges and to encouraging foreign enterprises and other economic organizations or individuals (hereinafter referred to as the foreign partner) to establish, on the principle of equality and mutual benefit, Sino-foreign contractual cooperative enterprises (hereinafter referred to as the contractual cooperative enterprise) inside China's territory with enterprises of the People's Republic of China or other economic organizations (hereinafter referred to as the Chinese partner).

Article 2

In establishing a contractual cooperative enterprise, the Chinese and foreign partners should, in accordance with the provisions of this law, prescribe in their contract such matters as the conditions for investment or cooperation, the distribution of earnings or products, the sharing of risks and losses, the form of operations and management and the ownership of the assets at the time of the termination of the enterprise. A contractual cooperative enterprise which meets the conditions for a legal person under Chinese law will be legally accorded the status of a Chinese legal person.

Article 3

According to Chinese law, the State protects the lawful rights and interests of the contractual cooperative enterprise and that of the Chinese and foreign partners. A contractual cooperative enterprise must abide by Chinese law and regulations and must not infringe upon the public interests of the society. According to Chinese law, the relevant state authorities may exercise supervision over the contractual cooperative enterprise.

Article 4

The State encourages the establishment of export-oriented production contractual cooperative enterprises or technologically advanced cooperative enterprises.

Article 5

In applying for the establishment of a contractual cooperative enterprise, documents such as the agreement, the contract and the articles of association signed by the Chinese and foreign partners should be submitted for examination and approval to the department in charge of foreign economic relations and trade under the State Council or to the authorities or local governments empowered by the State Council (hereinafter referred to as the examination and approval authorities). The examination and approval authorities should, within 45 days of the receipt of the application, decide whether to grant the approval or not.

Article 6

The partners should apply to the administrative authorities for industry and commerce for registration and the business license within 30 days of the receipt of the notification of the approval of the application for the establishment of a contractual cooperative enterprise. The date of issuance of the business license of a contractual cooperative enterprise shall be the date of its establishment.

A contractual cooperative enterprise should go through the tax registration formalities with the tax authorities within 30 days of its establishment.

Article 7

The Chinese and foreign partners should report to the examination and approval authorities for approval if they both agree, through consultations, to make major revisions with regard to their contract during their term of cooperation; they should register with the administrative authorities for industry and commerce and with the tax authorities for the revisions if the revisions include items involving statutory industry and commerce registration or tax registration.

Article 8

The investment or conditions for cooperation contributed by the Chinese and foreign partners may be provided in cash or in kind, or may include the right to the use of land, industrial property right, non-patent technical know-how or other property rights.

Article 9

The Chinese and foreign partners should in accordance with the provisions of laws and regulations and the terms agreed in the contractual cooperative enterprise contract, fulfill their obligations of making the full investment and providing the conditions for cooperation in time. The administrative authorities for industry and commerce will set a deadline for them to fulfill the obligations in case they have failed to do so within the earlier time limit; the examination and approval authorities and the administrative authorities for industry and commerce will handle the case according to the relevant provisions of the State if they fail to meet the deadline. The investment or conditions for cooperation provided by both the Chinese and foreign partners shall be verified by an accountant registered in China or the relevant authorities which shall issue a verification certificate to that effect.

Article 10

The Chinese or the foreign partner must have the agreement of the other party and report to the examination and approval authorities for approval if it transfers all or part of its rights, interests and obligations prescribed in the contract.

Article 11

A contractual cooperative enterprise conducts its operations and management in accordance with its approved contract and articles of association. No interference with regard to the management autonomy of the enterprise is allowed.

Article 12

A contractual cooperative enterprise should have a board of directors or a joint management body responsible for making major decisions of the enterprise according to the contract or the articles of association of the enterprise. If the Chinese or foreign

partner is appointed the chairman of the board of directors or the director of the joint management body, the other partner shall be the vice-chairman of the board of directors or the deputy director of the joint management body. The board of directors or the joint management body may decide on the appointment and the employment of the general manager who will take charge of the daily operations and management affairs of the enterprise. The general manager is accountable to the board of directors or the joint management body.

A contractual cooperative enterprise must have the unanimous agreement of its board of directors or joint management body and report to the examination and approval authorities for the record if it chooses to entrust a third party to be responsible for its operations and management affairs after it has been established, and register the changes with the administrative authorities for industry and commerce.

Article 13

Relevant contracts should be concluded according to the laws with regard to the employment, dismissal, remuneration, welfare, labor protection and labor insurance of the employees of a contractual cooperative enterprise.

Article 14

According to Chinese law, the staff and workers of a contractual cooperative enterprise may set up their trade union to carry out trade union activities and protect their lawful rights and interests. A contractual cooperative enterprise should provide the necessary conditions for the trade union to out its activities.

Article 15

A contractual cooperative enterprise must establish its account books inside the territory of China, file its accounting statements according to relevant provisions and accept the supervision by the relevant financial and tax authorities. Financial and tax authorities may impose a fine on the enterprise and the administrative authorities for industry and commerce may order the enterprise to suspend its business or may revoke its business license if the enterprise is found to have violated the aforesaid provision regarding the establishment of account books inside the territory of China.

Article 16

A contractual cooperative enterprise should, by presenting its business license, open a foreign exchange account with a bank or a financial institution which is authorized by the State exchange control authorities to conduct transactions in foreign exchange. A contractual cooperative enterprise shall handle its foreign exchange transactions in accordance with the relevant provisions on foreign exchange control of the State.

Article 17

A contractual cooperative enterprise may contract loans from financial institutions inside or outside the territory of China. The Chinese and foreign partners shall each be responsible for solving their own problems on raising capital to be used as investment or conditions for cooperation through loans and the necessary loan guarantee.

Article 18

The various kinds of insurance coverage of a contractual cooperative enterprise should be furnished by insurance institutions inside the territory of China.

Article 19

A contractual cooperative enterprise may, within its approved business scope, import materials it needs and export products it products. Within its approved business scope, it may purchase the raw materials, fuels and other materials either on the domestic market or on the world market.

Article 20

A contractual cooperative enterprise shall keep balance between its foreign exchange income and expenses. It may apply to the relevant authorities for assistance in accordance with the State provisions if it has difficulty in balancing its foreign exchange account.

Article 21

A contractual cooperative enterprise shall pay taxes in accordance with the State provisions on tax and it may enjoy preferential tax treatment such as tax reduction or exemption.

Article 22

The Chinese and foreign partners of a contractual cooperative enterprise shall distribute the earnings or products, and undertake the responsibility to share risks and losses according to the stipulations of their contract. It may be prescribed in the contract on ways for the foreign partner to first recover its share for investment during the term of cooperation if ownership of all the fixed assets of the enterprise are to be reverted to the Chinese partner upon expiration of the term of cooperation of the enterprise as agreed upon by the Chinese and foreign partners in their contract. The foreign partner must apply to the tax authorities which shall examine and approve the application according to the state provisions on taxes if the foreign partner is to recover its share of investment before the payment of the corporate income tax as prescribed in their contract.

The Chinese and foreign partners shall be liable for the debts of the enterprise according to relevant laws and their contract if according to provisions of the preceding paragraph the foreign partner is to first recover its share of investment during the term of cooperation.

Article 23

According to Chinese law, the foreign partner may remit abroad its share of profits, other legitimate income and the funds that it receives upon the termination of cooperation of the enterprise after it has fulfilled its obligations under the relevant laws and the enterprise contract. According to Chinese law, foreign employees of contractual cooperative enterprise may remit abroad their wages and other legitimate income after having paid their individual income tax.

Article 24

The assets, claims and debts of a contractual cooperative enterprise should be settled according to the legal procedures upon the expiration or advance termination of cooperation of the enterprise. The Chinese and foreign partners should in accordance with

their contract, decide the ownership of the assets of the enterprise. A contractual cooperative enterprise should go through the registration cancellation formalities with the administrative authorities for industry and commerce and the tax authorities upon expiration or advance termination of cooperation.

Article 25

The term of cooperation of a contractual cooperative enterprise is to be decided by the Chinese and foreign partners through consultations and should be specified clearly in their contract. The Chinese and foreign partners should apply to the examination and approval authorities 180 days prior to the expiration of the term of cooperation of the enterprise if they have reached an agreement to extend the term of cooperation. The examination and approval authorities should decide whether to grant its approval or not within 30 days beginning from the date of receiving the application for extension.

Article 26

Any dispute arising from the execution of contract or articles of association between the Chinese and foreign partner of a contractual cooperative enterprise should be settled through consultations or mediation. In case the Chinese and foreign partners are unwilling to settle their disputes through consultations or mediation or they have failed in doing so, the Chinese and foreign partners may submit their case before a Chinese arbitration organ or any other arbitration institutions for arbitration in accordance with the arbitration clauses in their contract or of a written arbitration agreement concluded afterwards. Both the Chinese and foreign partners may bring their case to a Chinese court if their contract does not contain any clause on arbitration and have failed to reach a written agreement afterwards.

Article 27

The detailed roles for the implementation of this said law shall be formulated by the departments in charge of foreign economic relations and trade under the State Council and shall be reported to the State Council for approval before implementation.

Article 28

This said Law shall come into force as of the date of its promulgation.