

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

(Adopted on July 1, 1979 at the Second Session of the Fifth National People's Congress, and revised in accordance with the Decision of the National People's Congress Regarding the Revision of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign investment adopted at the Third Session of the Seventh National People's Congress on April 4, 1990)

## Article 1

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

## Article 2

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

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

The State shall not nationalize or requisition any equity joint venture. Under special circumstances, when public interest requires, joint ventures may be requisitioned by legal procedures and appropriate compensation shall be made.

## Article 3

The joint venture agreement, contract and articles of association signed by the parties to the venture shall be submitted to the State's competent department in charge of foreign economic relations and trade (hereinafter referred to as the examination and approval authorities) for examination and approval. The examination and approval authorities shall decide to approve or disapprove the venture within three months. When approved, the joint venture shall register with the State's competent department in charge of industry and commerce administration, acquire a business license and start operations.

## Article 4

A joint venture shall take the form of a limited liability company. In the registered capital of a joint venture, the proportion of the investment contributed by the foreign participant(s) shall in general not be less than 25 percent.

The profits, risks and losses of a joint venture shall be shared by the parties to the venture in proportion to their contributions to the registered capital. The transfer of one party's share in the registered capital shall be effected only with the consent of the other parties to the venture.

## **Article 5**

Each party to a joint venture may contribute cash, capital goods, industrial property rights, etc, as its investment in the venture. The technology or equipment contributed by any foreign participants as investment shall be truly advanced and appropriate to China's needs. In case losses caused by deception through the intentional provision of outdated equipment or technology, compensation shall be paid for the losses. The investment contributed by a Chinese participant may include the right to the use of a site provided for the joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese participant, the joint venture shall pay the Chinese Government for its use. The various contributions referred to in the present article shall be specified in the contracts concerning the joint venture or in its articles of association, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.

## **Article 6**

A joint venture shall have a board of directors with a composition stipulated in the contracts and the articles of association after consultation between the parties to the venture, and each director shall be appointed or removed by his own side. The chairman and the vice-chairman shall be determined through consultation by the parties to the venture or elected by the board of directors if the Chinese side or the foreign side assumes the office of the chairman, the other side shall assume the office(s) of the vice-chairman. The board of directors shall decide on important issues concerning the joint venture on the principle of equality and mutual benefit. The board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the joint venture, all fundamental issues concerning the venture, namely, expansion projects, production and business programs, the budget, distribution of profits, plans concerning man power and pay scales, the termination of business, the appointment or hiring of the president, the vice-president(s), the chief engineer, the treasurer and the auditor as well as their functions and power and their remuneration, etc. The president and vice-president(s) (or the general manager and assistant general manager(s) in a factory) shall be chosen from the various parties to the joint venture. Procedures covering the employment and discharge of the workers and staff members of a joint venture shall be stipulated according to law in the agreement or contract concluded between the parties to the venture.

## **Article 7**

The net profit of a joint venture shall be distributed between the parties to the venture in proportion to their respective shares in the registered capital after the payment of a joint venture income tax on its gross profit pursuant to the tax laws of the People's Republic of China and after the deductions therefrom as stipulated in the articles of association of the venture for the reserve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture. A joint venture may, in accordance with provisions of the relevant administrative rules and regulations of the State on taxation, enjoy preferential treatment for reduction of or exemption from taxes.

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

## **Article 8**

Joint venture shall on the strength of its business license, open a foreign exchange

account with a bank or any other financial institution which is permitted by the state agency for foreign exchange control to handle foreign exchange transactions. A joint venture shall conduct its foreign exchange transactions in accordance with the Foreign Exchange Regulations of the People's Republic of China. A joint venture may, in its business operations, obtain funds from foreign banks directly.

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

#### **Article 9**

The production business programs of a joint venture shall be filed with the authorities concerned and shall be implemented through business contracts. In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc., a joint venture should give first priority to Chinese sources, but may also acquire them directly from the world market with its own foreign exchange funds. A joint venture is encouraged to market its products outside China. It may distribute its export products on foreign markets through direct channels or its associated agencies or China's foreign trade establishments. Its products may also be distributed on the Chinese market. Wherever necessary, a joint venture may set up affiliated agencies outside China.

#### **Article 10**

The net profit which a foreign participant receives as his share after executing his obligations under the pertinent laws and agreements and contracts, the funds he receives at the time when the joint venture terminates or winds up its operations, and his other funds may be remitted abroad in accordance with the foreign exchange regulations and in the currency or currencies specified in the contracts concerning the joint venture. A foreign participant shall receive encouragement for depositing in the Bank of China any part of foreign exchange which he is entitled to remit abroad.

#### **Article 11**

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

#### **Article 12**

Based on different lines of trade and different circumstances, arrangements for the duration of joint ventures may be made differently through agreement by the parties to the venture. Joint ventures engaged in certain lines of trade shall specify their duration in the contracts, while joint ventures engaged in certain other lines of trade may choose to or not to specify their duration in the contracts. Where a joint venture had its duration specified and the parties to the extend the duration, the venture shall file an application for the purpose with the examination and approval authorities six months before its expiration. The examination and approval authorities shall, within one month after receipt of the application, decide on its approval or disapproval.

#### **Article 13**

In cases of heavy losses, the failure of any party to a joint venture to execute its

obligations under the contract or the articles of association of the venture, force majeure, etc, the contract may be terminated by consultation and agreement between the parties and subject to approval by the examination and approval authorities and to registration with the State's competent department in charge of industry and commerce administration. In cases of losses caused by breach of the contract(s) by a party to the venture, the financial responsibility shall be borne by the said party.

#### **Article 14**

Disputes arising between the parties to a joint venture which the board of directors fails to settle through consultation may be settled through conciliation or arbitration by an arbitral body of China or through arbitration by an arbitral body agreed upon by the parties.

#### **Article 15**

The present Law comes into force on the date of promulgation. The power of amendment is vested in the National People's Congress