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## **Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (Amended in 2001)**

### **Article 1**

With a view to expanding international economic cooperation and technological exchange, the People's Republic of China shall permit foreign companies, enterprises, other economic organizations or individuals (hereinafter referred to as "foreign joint venture party") to establish equity joint venture together with Chinese companies, enterprises or other economic organizations (hereinafter referred to as "Chinese joint venture party") within the territory of the People's Republic of China, on the principle of equality and mutual benefit, and subject to approval by the Chinese Government.

### **Article 2**

The Chinese Government shall protect, according to the law, the investment of foreign joint ventures, the profits due to them and their other lawful rights and interests in an equity joint venture, pursuant to the agreement, contract and articles of association approved by the Chinese Government.

All activities of equity joint ventures shall be subject to the relevant laws and regulations 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, equity joint ventures may be requisitioned through legal procedures and appropriate compensation shall be made accordingly.

### **Article 3**

The equity 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 equity 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**

An equity joint venture shall take the form of a limited liability company.

The proportion of the foreign joint venture party's investment in an equity joint venture shall

be, in principle, not less than 25 percent of its registered capital.

The parties to the venture shall share the profits, risks, and losses in proportion to their contributions to the registered capital.

If any of the joint venture parties wishes to assign its registered capital, it must obtain the consent of the other parties to the venture.

#### **Article 5**

The parties to an equity joint venture may make their investment in cash, in kind or in industrial property rights, etc.

The technology and equipment contributed by a foreign joint venture party as its investment must be really advanced technology and equipment that suit China's needs. In case of losses caused by a foreign joint venture party through fraud by providing intentionally the outdated technology and equipment, it shall compensate for the losses. A Chinese joint venture party's investment may include the right to the use of a site provided for the equity joint venture during the period of its operation.

If the right to the use of the site is not taken as a part of the Chinese joint venture party's investment, the equity joint venture shall pay the Chinese Government for its use.

The above-mentioned investments shall be specified in the contract and articles of association of the equity joint venture, and their value, excluding that of the site, shall be assessed and negotiated by all parties to the venture.

#### **Article 6**

An equity joint venture shall have a board of directors; the number of the directors thereof from each party and the composition of the board shall be stipulated in the contract and articles of association after consultation among the parties to the venture; such directors shall be appointed and replaced by the relevant parties. The chairman and the vice-chairman (vice-chairmen) 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 (vice-chairmen). The board of directors shall decide on important issues concerning the joint venture on the principle of equality and mutual benefit.

The functions and powers of the board of directors are, as stipulated in the articles of association of the equity joint venture, to discuss and decide all major issues concerning the venture, namely, the venture's development plans, proposals for production and business operations, the budget for revenues and expenditures, the distribution of profits, the plans concerning manpower and wages, the termination of business, and the appointment or employment of the general manager, the vice-general manager(s), the chief engineer, the treasurer and the auditors, as well as the determination of their functions, powers and terms of employment, etc.

The offices of general manager and vice-general manager(s) (or factory manager and deputy manager(s)) shall be assumed by the respective parties to the venture.

The employment, dismissal, remuneration, welfare, labor protection, labor insurance and so on of the workers and staff of the equity joint ventures shall be stipulated in contract according to law.

#### **Article 7**

Employees of the equity joint ventures may establish the trade unions according to law to develop trade union activities, so as to maintain the legal rights and interests of employees.

Equity joint ventures shall provide necessary activity conditions for the trade unions of their own enterprises.

#### **Article 8**

The new profit of an equity joint venture shall be distributed among the parties to the venture in proportion to their respective contributions to the registered capital, after payment out of its gross profit of the equity joint venture income tax, pursuant to the provisions of the tax laws of the People's Republic of China, and after deduction from the gross profit of a reserve fund, a bonus and welfare fund for workers and staff members and a venture expansion fund, as stipulated in the venture's articles of association.

An equity joint venture may, in accordance with provisions of the relevant laws and administrative rules and regulations of the state on taxation, enjoy preferential treatment for reduction of or exemption from taxes.

A foreign joint venture party that reinvests its share of the net profit within the territory of China may apply for partial refund of the income tax already paid.

#### **Article 9**

An equity 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.

An equity joint venture shall handle its foreign exchange transactions in accordance with the regulations on foreign exchange control of the People's Republic of China.

An equity joint venture may, in its business operations, directly raise funds from foreign banks.

Various insurances of equity joint ventures shall be handled by the insurance companies in the territory of the People's Republic of China.

#### **Article 10**

The raw materials, fuelling, and other materials necessary for equity joint ventures in the approved business scope may be procured in domestic or international market.

An equity joint venture shall be encouraged to market its products outside China. It may sell its export products on foreign markets directly or through associated agencies or China's foreign trade agencies. Its products may also be sold on the Chinese market.

When necessary, an equity joint venture may set up branches and other subsidiaries outside China.

#### **Article 11**

The net profit which a foreign joint venture party receives as its share after performing its obligations under the laws, and the agreements or the contract, the funds it receives upon the expiration of the venture's term of operation or its early termination, and its other funds may be remitted abroad in accordance with foreign exchange control regulations and in the currency or currencies specified in the contract concerning the equity joint venture.

A foreign joint venture party shall be encouraged to deposit in the Bank of China the foreign exchange, which it is entitled to remit abroad.

#### **Article 12**

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

#### **Article 13**

Based on different lines of trade and different circumstances, arrangements for the duration of equity joint ventures may be made differently through agreement by the parties to the venture. Equity joint ventures engaged in certain lines of trade shall specify their duration in the contracts, while equity joint ventures engaged in certain other lines of trade may choose to or not to specify their duration in the contracts. Where an equity joint venture has had its duration specified and the parties to the venture agree to 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 14**

In case of heavy losses, failure of a party to perform its obligations under the contract and the articles of association, or force majeure etc., the parties to the joint venture may terminate the contract through their consultation and agreement, 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 a breach of contract, the financial responsibility shall be borne by the party that has breached the contract.

#### **Article 15**

Disputes arising between the parties to an equity joint venture, which the board of directors has failed to settle through consultation, may be settled through mediation or arbitration by

an arbitration agency of China or through arbitration by another arbitration agency agreed upon by the parties.

If all parties of the equity joint ventures do not stipulate the arbitration clauses in the contracts or do not reach a written arbitration agreement afterwards, they may file a lawsuit in the people's courts.

**Article 16**

This Law shall take effect as of the date of promulgation.