

China - Law on Chinese-Foreign Equity Joint Ventures, 1990

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Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures

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(Adopted at the second session of the Fifth National People's Congress on July 1, 1979, and Amended in accordance with “ The decision on Amendment to The Law of the People's Republic of China on Chinese--Foreign Equity Joint Ventures” adopted at the Third Session of the Seventh National People's Congress on April 4, 1990)

Article 1

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

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Article 2

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The Chinese Government protects, by the legislation in force, the investments of foreign parties, the profits due to them and their other lawful rights and interests in equity joint ventures, pursuant to the agreements, contracts and article of association approved by the Chinese Government.

5

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

6

The State will not nationalize or expropriate any equity joint venture. Under special circumstances, based on the need of the social public interests, equity joint ventures may be expropriated under legal procedures and against appropriate compensation.

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Article 3

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All parties to an equity joint venture shall submit their agreements, contracts and articles of association to the State's Competent Department of Foreign Relations and Trade (simplified as the examination and approval authority hereinafter) for examination and approval. The examination and approval authority shall decide whether to approve or disapprove them within 3 months. Once approved, the equity joint venture shall register with the concerned department of the State Administration for Industry and Commerce, and start operation after receiving its business license.

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Article 4

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

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In the registered capital of an equity joint venture, the proportion of the investment contributed by the foreign parties shall in general not be less than 25 percent.

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The profits, risks and losses of an equity joint venture shall be shared by the parties to the venture in proportion to their contributions to the registered capital.

13

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.

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Article 5

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Each party to an equity joint venture may contribute cash, capital goods, industrial property rights, etc. as its investment in the venture.

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The technology or equipment contributed by any foreign party as investment shall be truly advanced and appropriate to China's needs. In cases of losses caused by deception through the intentional provision of outdated equipment or technology, compensation shall be paid for such losses.

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The investment contributed by a Chinese party may include the right to the use of a site provided for the equity joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese party, the venture shall pay the Chinese Government a fee for its use.

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The various contributions referred to in the present Article shall be specified in the contracts concerning the equity 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.

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Article 6

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An equity joint venture shall have a board of directors with a composition stipulated in the contract and the articles of association after consultation between the parties to the venture; each director shall be appointed and replaced by his own side. The chairman and the vice-chairmen shall be chosen 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 or vice-chairmen. The board of directors shall decide on important problems concerning the equity joint venture on the principle of equality and mutual benefit.

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The board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the equity joint venture, all fundamental issues concerning the venture, namely, expansion projects, production and business programs, the budget, distribution of profits, plans concerning manpower and pay

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scales, the termination of business, the appointment or hiring of the president, the vice-president (s), the chief engineer, the treasurer and the auditors as well as their functions and powers 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 equity joint venture. 23

Procedures concerning the employment and discharge of the workers and staff members of an equity joint venture shall be stipulated according to law in the agreement or contract concluded between the parties to the venture. 24

Article 7 25

The net profits of an equity joint venture shall be distributed among the parties to the venture in proportion to their respective shares in the registered capital after the payment of an equity 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 serve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture. 26

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. 27

A foreign party who re-invests any part of his share of the net profit within Chinese territory may apply for the restitution of a part of the income taxes paid. 28

Article 8 29

An equity joint venture shall, on the strength of its business license, open a foreign exchange account with a bank or and other financial institution which is permitted by the State agency for foreign exchange control to handle foreign exchange transactions. 30

An equity joint venture shall conduct its foreign exchange transactions in accordance with the Foreign Exchange Regulations of the People's Republic of China. 31

An equity joint venture may, in its business operations, obtain funds from foreign banks directly. 32

The insurances appropriate to an joint venture shall be furnished by Chinese insurance companies. 33

Article 9 34

The production and business programs of an equity joint venture shall be filed with the authorities concerned and shall be implemented through business contracts. 35

In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc. , an equity joint venture shall give first priority to Chinese sources, but may also acquire them directly from the international market with its own foreign exchange funds. 36

An equity 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. 37

Whenever necessary, an equity joint venture may set up affiliated agencies outside China. 38

Article 10 39

The net profit which a foreign party receives as his share after performing his obligations under the pertinent laws and agreements and contracts, the funds he receives at the time when the equity 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 (.ies) specified in the contracts concerning the ventures. 40

A foreign party is encouraged to deposit in the Bank of China any part of foreign exchange which he is entitled to remit abroad. 41

Article 11 42

The wages, salaries or other legitimate income of the foreign employees of an equity 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. 43

Article 12 44

The operation periods of equity joint ventures may be handled differently according to their particular lines of business and circumstances. Equity joint ventures engaged in a certain line of business shall specify in the contracts their operation periods, while equity joint ventures engaged in another line of business may choose whether or not to specify their operation periods. In the case of an equity joint venture with its operation period specified, if the parties to the venture agree to extend the operation period, the venture may send an application to the examining and approval authority 6 months before the expiration of the operation period. The examination and approval authority shall, within 1 month of receipt of the application, decide whether to approve or disapprove it. 45

Article 13 46

If there occur heavy losses, the failure of a party to perform its obligations under the 47

contract and the articles of association or force majeure,* etc. , the equity joint venture may terminate the contract through consultation and agreement by the parties, and subject to approval by the examination and approval authority and to registration with the State's Competent Department 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 14

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Disputes arising between the parties to an equity 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.

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Article 15

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The present law comes into force as of the date of its promulgation. The right to amendment is vested in the National People's Congress.

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