

# **China - Regulations for Contracted Operation of Chinese-Foreign Equity Joint Ventures, 1990**

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**Regulations for Contracted Operation of Chinese-Foreign Equity  
Joint Ventures** 1  
**(Promulgated by the Ministry of Foreign Economic Relations and  
Trade, and the State Administration for Industry and Commerce  
on September 13, 1990)**

The following regulations on contracted operation of Chinese-foreign 2  
equity joint ventures (herein referred to as joint ventures) are aimed 3  
at guaranteeing the normal development of these enterprises. 4

**Article 1** 5

Definition of contracted operation 6

The contracted operation mentioned in these regulations for a certain of time while those 7  
joint ventures are managed by the contractors. Such forms of contracted operation 8  
are but supplementary measures to help those poorly managed and loss-making joint 9  
ventures. During the contracting term, the contractor takes on the risks of operation 10  
while gaining part of the joint venture's profits. 11

**Article 2** 8

Requirements for contracted operation of joint ventures 9

A joint venture shall fulfill the following requirements is meant for joint ventures which, 10  
by signing. contracts, off the where or part of their operation rights to contractors to 11  
practice contracted operation: 12

(1) That it is a project in an industry encouraged or permitted by State policy. However, 11  
key state projects, those in energy or communications in particular, shall not practice 12  
contracted operation. 13

(2) That the Chinese and foreign partners of the joint venture have fully provided the 12  
investment required by contract and the payment has been verified-but the joint venture 13  
is hardly likely to survive because of poor management. 14

**Article 3** 13

Contractor's qualifications 14

A contractor must have the following qualifications: 15

(1) That it is a Chinese or foreign corporation or enterprise with the qualification of a 16  
legal person, and has engaged in business operation for at least 3 years; 17

(2) That is belongs to the same industry as the joint venture and can work out a concrete 17

plan to effectively help the business make up deficits and return to normal development;  
and

(3) That it is able to provide adequate risk deposit and a letter-of -guarantee for the risk-guaranty money. 18

#### **Article 4** 19

Basic requirements for contracted operation 20

(1) The contractor can be chosen through public bidding i.e., the joint venture conducts public bidding in accordance with the conditions worked out by the board of directors); alternatively, the joint venture can sign directly an agreement on contracted operation with the contractor ( either partner of the venture or a third party ) in accordance with the decision made by the board of directors. 21

(2) The legal-person status, name and business scope of the joint venture shall not be changed because of contracted operation. 22

(3) As the operator and manager of the joint venture's property, the contractor shall strictly carry out the contract and be under the supervision of the venture's board of directors. The contractor has no right to dispose of the joint venture's property, such as transfer, selling off, removing , mortgaging, leasing or giving out as a present. The contractor shall regularly submit factual financial reports to the joint venture's board of directors. 23

(4) The contracting term is usually set at 1 to 3 years. The maximum shall be no more than 5 years. The contractor shall see to it that the joint venture becomes profitable or at least its performance is improved remarkably when the contracting term expires. 24

(5) Contracting shall only cover the joint venture's after- tax profits. Both parties to such contracts shall decide on the annual profit during the contracting term base in accordance with relevant targets defined in the feasibility study report worked out when the joint venture was launched. 25

(6) During the contractual term the contractor shall, in the first quarter of each year submit to the joint venture risk guaranty money, letter of guarantee or risk deposit. No securities shall be made for the deposit, which shall not come from the investment by the joint venture's partners. The risk guaranty money and the letter of guarantee shall be irrevocable and unilaterally drawable to the joint venture. Whatever the form the sum shall be not less than 50 percent of the contracted annual profit. 26

(7) During the contracting term the contractor shall get approval from the board of directors before applying for any loan in the name of the joint venture. The debt of the joint venture during the contracting term shall not exceed the total amount of the contracted profit for the year. 27

(8) During the contracting term, the joint venture shall continue to implement State laws, regulations and accounting rules. 28

In accordance with law, the contractor shall pay income tax on its earnings from contracting. 29

The financial, accounting and tax affairs related to the contracted operation shall be handled in accordance with relevant regulations adopted by the financial and taxation departments. 30

(9) If the contractor fails, for two years in succession, to fulfill contracted-profit obligations, besides the joint venture shall, at the end of a fiscal year, take over the contractor's risk deposit or draw the risk guaranty money according to the bank's letter of guarantee, or the contractor shall pay for the loss according to contract, the examination and approval authority may annul the approval. Consequently, the contract shall cease to be in force, the contractual relationship shall automatically be renounced, while the administration for industry and commerce shall recall the certificate of registration for the contracted operation and register the changed operational status of the joint venture. 31

The joint venture shall be dissolved according to the law and the joint venture contract if, after the contracted operation has ceased, the venture still fails to change its loss making situation. 32

(10) Before the contracted operation, and when the contracted operation is terminated during the contracting term or when the contracting term expires, the joint venture shall make an inventory of property and capital and transfer management from one to another. The inventory is valid only when it has been certified by accountants registered in China. 33

## **Article 5** 34

Contract on contracted operation 35

(1) To contract the operation of a joint venture, the contractor shall sign a contract with the joint venture. Contracts on contracting profit between partners of the venture are not permitted to sign. 36

(2) The contract shall be concluded in accordance with relevant Chinese laws, in keeping with the purposes and principles of the original contract of the joint venture and without changing the items of the original contract that have nothing to do with the contracted operation. 37

(3) The contract shall include the contracting term, the rights and restrictions on the rights, and duties and responsibilities of the contractor, the form and content of the contracted operation, the distribution pattern of income, risk guaranty money, letter of guarantee and risk deposit, liability for breach of contract, ways to settle disputes over contract, responsibilities on losses and/or debt owed by the joint venture prior to the contracted operation, the principles of making an inventory of property and capital and the transferring procedures as well as the method of evaluating, production targets and profit, target for technological upgrading, the debt safety line, the arrangements for the 38

workers of the joint venture, labor management, wages, welfare and insurance, and the party which shall handle and be responsible for the disputes with other corporations, enterprises and individuals in the course of implementing the contract on contracted operation.

(4) If the contractor severely violates the contract during the contracting term, the joint venture's board of directors has the right to terminate the contract and demand corresponding compensation for loss from the contractor. 39

(5) The revision, postponement, termination or expiration of the contract shall be approved by the original authorities that approved the joint venture. 40

## Article 6 41

Application, examination and approval and registration of contracted operation: 42

(1) The joint venture shall apply for contracted operation and submit the following documents to the examination and approval authority: 43

(a) An application on contracted operation of the joint venture; 44

(b) The decision of the joint venture's board of directors on contracted operation; 45

(c) A report containing concrete measures to turn the joint venture from loss-making to profitable, measures worked out by the contractor and approved by the joint venture's board of directors; 46

(d) The contractor's legal business license, articles of association of the corporation and a balance sheet covering the past 3 years operations; 47

(e) The contract on contracted operation; 48

(f) The original contract of the joint venture and report on feasibility studies; 49

(g) Opinions of the government department in charge and financial and taxation departments on contracted operation of the joint venture; and 50

(h) Other documents required by the examination and approval authority. 51

(2) The examination and approval authority, within 30 days of receiving all the above-mentioned documents, shall decide to approve or not approve the contracted operation in accordance with these regulations. The authority shall, within a specified time, demand revision of illegal or obviously unfair contents in the contract. Otherwise the application shall not be approved. 52

(3) Within 30 days from the date when the examination and approval authority issued documents of approval for the contracted operation, the contractual parties shall, with the certificate on the delivery of risk deposit or letter of guarantee and risk guaranty money, go through the formalities of registration with the administration for industry and commerce. The approval of the examination and approval authority shall automatically cease to be effective if registration is not done in 30 days. The administration for 53

industry and commerce shall handle registration within 30 days of receiving the application.

The term of contracted operation begins from the date on which the administration for industry and commerce issues registration documents. 54

The registration of the opening and alteration of contracted operation and cancellation of registration shall be handled in accordance with the regulations of the administration for industry and commerce. 55

## **Article 7** 56

Supplementary rules: 57

(1) Joint ventures which are already under contracted operation must, within 90 days from the date these regulations are published, retroactively go through procedures of the examination and approval and registration for contractual operation. Contracts already concluded may be revised by referring to these regulations. The joint ventures and contractors who fail to retract formalities within the time, may be ordered jointly by the examination and approval authority and the administration for industry and commerce to terminate their contract, and even their business license of the joint venture may be taken over and the contractor's profit may be frozen. 58

(2) The examination and approval authority and administration for industry and commerce may penalize joint ventures and contractors who conceal their contracted operations without applying for approval and going through the registration formalities. 59

(3) The circular on the examination, approval and registration of enterprises from foreign countries, or regions entrusted to manage Chinese-foreign ventures, published on July 11, 1988 by the State Administration for Industry and Commerce and the Ministry of Foreign Economic Relations and Trade is still valid for those joint ventures which entrust foreign enterprises with management and administration. 60

(4) Contracted operators of Chinese-foreign contractual joint ventures may refer to these regulations. 61

(5) These regulations goes into effect on the day of promulgation. 62

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