

China - Explanations on Implementing certain Articles of Detailed Rules on the Implementation of the Law of the People's Republic of China on Sino-Foreign Joint Cooperative Ventures, 1996

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Detailed Rules on the Implementation of the Law of the People's Republic of China on Sino-Foreign Joint Cooperative Ventures (hereinafter referred to as the Detailed Rules) was promulgated and enforced on September 4, 1995. Now, explanations concerning the implementation of the Detailed Rules are hereby made as follows:

1. Article 14 of the Detailed Rules stipulates:

“Joint ventures with Chinese legal person status shall be limited liability companies. The partners shall share responsibilities within the limit of its investment or cooperative means rendered, unless otherwise stipulated under the contracts.

The joint venture shall have liability for its debts with all of its capital.”

The explanations: In accordance with the Section 1 of the present article and Article 18 of the Law of Corporation of the People's Republic of China, the organizational form of any joint cooperative ventures with Chinese legal person status which have been set up after the approval shall be limited liability companies.

2. Article 18 of the Detailed Rules stipulates:

“The partners' investment or cooperative means could be currencies, or material objects or industrial rights, special technologies, land use rights and other property rights.

The Chinese partners' investments or cooperative means, if they are State fixed assets, shall undergo assets assessment in accordance with related laws and administrative regulations or provisions.

For joint ventures with Chinese legal person status, the foreign partners' investment shall normally be no less than 25% of the total registered capital of the joint venture. For joint ventures without Chinese legal person status, the specific requirements for the partners' investments or rendition of cooperative means shall be stipulated by MOFTEC.”

The explanations: The investment, as mentioned in Section 1 of this article, refers to currencies, buildings, machinery and equipment or other materials, industrial property rights, special technologies, land use right and others which are assigned a fixed price and used as the investment of partners.

The cooperative means, as mentioned in Section 1 of this article, refers to the real estate and other property rights, including: land use right, ownership or right of use concerning the buildings constructed on the land and other fixed accessory equipment attached to the buildings, industrial property rights, special technologies and other property rights. The cooperative means rendered by partners to the joint cooperative ventures belong to the property of joint cooperative ventures. The said means shall not be expressed in the form of currencies, but shall be registered as subsidiary and have liability for the debts of the joint cooperative ventures.

The Chinese partners' investment and cooperative means shall undergo assessment, if they are required to do so in accordance with the stipulations of relevant laws and administrative regulations. The assessment results shall be the basis for the negotiations for cooperation, so as to prevent the loss of the state property.

For joint cooperative ventures without Chinese legal person

statures, the foreign partners' investment shall be no less than 25% of the total investment made by the Chinese and foreign partners.

3. Article 44 of the Detailed Rules stipulates:

"When the operation term as set in the joint venture's contract expires, if the joint venture's fixed assets have been set to be handed to the Chinese partners free of charge, the foreign partners can, during the operative term, apply to recover their investment in the following manners:

(1) Aside from the distribution in accordance with the investment and/or cooperative means rendered, the foreign partner can increase its share in the distribution in the contract;

(2) With the examination and approval of the finance and taxation authorities in accordance with related taxation regulations, the foreign partners recover their investment before the joint venture pays its income tax;

(3) Other investment recovery measures approved by the examination and approval departments and finance and taxation departments.

When the foreign partners recover investment during the operation term as described in the previous paragraphs, the Chinese and foreign partners shall shoulder the joint ventures' debts in accordance with provisions of related laws as well as the ventures' contracts."

The explanations: The fixed assets of joint cooperative ventures, as mentioned in Section 1 of this article, refer to the fixed assets out of the remaining assets after the joint cooperative venture liquidates its assets, financial claims and debts and pays its debts in accordance with the stipulations under Article 24 of the Law of the People's Republic of China on Chinese-Foreign Contractual Joint

Ventures. Before the joint cooperative venture pays off after liquidation and discharges its debts, the Chinese partner shall not distribute in advance the fixed assets of the joint cooperative venture even when the operation term of the venture expires.

Item 3 of Section 1 in this article means that, with the approval by the finance and taxation departments and the examination and approval departments, foreign partners are allowed to recover their investment in advance during the operation term through means of distributing depreciation costs of the fixed assets of the joint cooperative venture. In case the assets of joint cooperative venture decrease as a result of foreign partner's distribution of depreciation costs of the venture's fixed assets, the foreign partners must submit letters of guarantee with the amount equivalent to the aforesaid distribution of depreciation costs, presented by banks or financial institutions within the territory of China (including those branch banks or affiliated agencies established within the territory of China by overseas banks or overseas financial institutions) so as to guarantee that the joint cooperative venture has the debt paying ability.

Procedures of application and approval:

In case the joint cooperative venture's contract stipulates before the establishment of the venture that foreign partners adopt the investment recovery measures as described in Item 3 of Section 1, Article 44 of the Detailed Rules, the Chinese partner shall first file an application to the financial organization with the aforesaid letters of guarantee in accordance with the procedures. With the examination of and approval by the financial organization, the application shall then be filed to the examining and approving departments for examination and approval in line with Article 7 of the Detailed Rules.

During the term of business operation of the joint cooperative venture, in case foreign partners intend to recover their investment in advance through the means as stipulated in Item 3, Section 1 of

the said article, the joint cooperative venture shall file an application to the examining and approving departments with the aforesaid letters of guarantee in accordance with the procedures. The examination and approval departments shall decide jointly with financial organizations whether or not to grant approval within 60 days of receiving the aforesaid documents.

26 In case a joint cooperative venture needs to accelerate the depreciation of the fixed assets so as to ensure the foreign partners to recover their investment in advance, the joint cooperative venture, in addition to abiding by the regulations as stipulated in the previous section, shall gain the approval by the State Administration of Taxation in accordance with the relevant regulations of Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.

27 “The examining and approving authorities” as mentioned in the present Explanations refers to the Ministry of Foreign Trade and Economic Cooperation or departments and provincial governments (departments in charge of foreign trade and economic cooperation) authorized by the State Council.

28 “The finance and taxation authorities” refers to the financial organizations and taxation authorities at the same level of the above-mentioned examining and approving departments.

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