

中华人民共和国 对外经济法规汇编

(1991年卷)

COLLECTION OF LAWS AND REGULATIONS
OF THE PEOPLE'S REPUBLIC OF CHINA
CONCERNING FOREIGN ECONOMIC AFFAIRS
(VOLUME 1991)

中华人民共和国对外经济贸易部条法司编

The Department of Treaties and Laws of the
Ministry of Foreign Economic Relations and Trade
of the People's Republic of China

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中华人民共和国

中外合资经营企业法

(1979年7月1日第五届全国人民代表大会第二次会议通过, 根据1990年4月4日第七届全国人民代表大会第三次会议《关于修改〈中华人民共和国中外合资经营企业法〉的决定》修正)

第一条 中华人民共和国为了扩大国际经济合作和技术交流, 允许外国公司、企业和其他经济组织或个人(以下简称外国合营者), 按照平等互利的原则, 经中国政府批准, 在中华人民共和国境内, 同中国的公司、企业或其他经济组织(以下简称中国合营者)共同举办合营企业。

第二条 中国政府依法保护外国合营者按照经中国政府批准的协议、合同、章程在合营企业的投资、应分得的利润和其他合法权益。

合营企业的一切活动应遵守中华人民共和国法律、法令和有关条例规定。

国家对合营企业不实行国有化的征收; 在特殊情况下, 根据社会公共利益的需要, 对合营企业可以依照法律程序实行征收, 并给予相应的补偿。

第三条 合营各方签订的合营协议、合同、章程, 应报国家对外经济贸易主管部门(以下称审查批准机关)审查批准。审查批准机关应在三个月内决定批准或不批准。合营企业经批准后, 向国家工商行政管理主管部门登记, 领取营业执照, 开始营业。

第四条 合营企业的形式为有限责任公司。

在合营企业的注册资本中, 外国合营者的投资比例

一般不低于25%。

合营各方按注册资本比例分享利润和分担风险及亏损。

合营者的注册资本如果转让必须经合营各方同意。

第五条 合营企业各方可以现金、实物、工业产权等进行投资。

外国合营者作为投资的技术和设备，必须确实是适合我国需要的先进技术和设备。如果有意以落后的技术和设备进行欺骗，造成损失的，应赔偿损失。

中国合营者的投资可包括为合营企业经营期间提供的场地使用权。如果场地使用权未作为中国合营者投资的一部分，合营企业应向中国政府缴纳使用费。

上述各项投资应在合营企业的合同和章程中加以规定，其价格（场地除外）由合营各方评议商定。

第六条 合营企业设董事会，其人数组成由合营各方协商，在合同、章程中确定，并由合营各方委派和撤换。董事长和副董事长由合营各方协商确定或由董事会选举产生。中外合营者的一方担任董事长的，由他方担任副董事长。董事会根据平等互利的原则，决定合营企业的重大问题。

董事会的职权是按合营企业章程规定，讨论决定合营企业的一切重大问题：企业发展规划、生产经营活动方案、收支预算、利润分配、劳动工资计划、停业，以及总经理、副总经理、总工程师、总会计师、审计师的任命或聘请及其职权和待遇等。

正副总经理（或正副厂长）由合营各方分别担任。

合营企业职工雇用、解雇，依法由合营各方的协议、合同规定。

第七条 合营企业获得的毛利润，按中华人民共和国税法规定缴纳合营企业所得税后，扣除合营企业章程规定的储备基金、职工奖励及福利基金、企业发展基

金，净利润根据合营各方注册资本的比例进行分配。

合营企业依照国家有关税收的法律和行政法规的规定，可以享受减税、免税的优惠待遇。

外国合营者将分得的净利润用于在中国境内再投资时，可申请退还已缴纳的部分所得税。

第八条 合营企业应凭营业执照在国家外汇管理机关允许经营外汇业务的银行或其他金融机构开立外汇帐户。

合营企业的有关外汇事宜，应遵照中华人民共和国外汇管理条例办理。

合营企业在其经营活动中，可直接向外国银行筹措资金。

合营企业的各项保险应向中国的保险公司投保。

第九条 合营企业生产经营计划，应报主管部门备案，并通过经济合同方式执行。

合营企业所需原材料、燃料、配套件等，应尽先在中国购买，也可由合营企业自筹外汇，直接在国际市场上购买。

鼓励合营企业向中国境外销售产品。出口产品可由合营企业直接或与其有关的委托机构向国外市场出售，也可通过中国的外贸机构出售。合营企业产品也可在中国市场销售。

合营企业需要时可在中国境外设立分支机构。

第十条 外国合营者在履行法律和协议、合同规定的义务后分得的净利润，在合营企业期满或者中止时所分得的资金以及其他资金，可按合营企业合同规定的货币，按外汇管理条例汇往国外。

鼓励外国合营者将可汇的外汇存入中国银行。

第十一条 合营企业的外籍职工的工资收入和其他正当收入，按中华人民共和国税法缴纳个人所得税后，可按外汇管理条例汇往国外。

第十二条 合营企业的合营期限，按不同行业、不同情况，作不同的约定。有的行业的合营企业，应当约定合营期限；有的行业的合营企业，可以约定合营期限，也可以不约定合营期限。约定合营期限的合营企业，合营各方同意延长合营期限的，应在距合营期满六个月前向审查批准机关提出申请。审查批准机关应自接到申请之日起一个月内决定批准或不批准。

第十三条 合营企业如发生严重亏损、一方不履行合同和章程规定的义务、不可抗力等，经合营各方协商同意，报请审查批准机关批准，并向国家工商行政管理主管部门登记，可终止合同。如果因违反合同而造成损失的，应由违反合同的一方承担经济责任。

第十四条 合营各方发生纠纷，董事会不能协商解决时，由中国仲裁机构进行调解或仲裁，也可由合营各方协议在其他仲裁机构仲裁。

第十五条 本法自公布之日起生效。本法修改权属于全国人民代表大会。

THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON CHINESE-FOREIGN EQUITY JOINT VENTURES

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

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 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.

Article 2 The Chinese Government protects, by the legislation in force, the investments of foreign parties, the profits due them and their other lawful rights and interests in equity joint ventures, pursuant to the agreements, contracts and articles of association approved by the Chinese Government.

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.

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.

Article 3 All parties to an equity joint venture shall submit their agreements, contracts and articles of association to the State's Competent Department of Foreign Economic 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 Industries and Commerce, and start operation after receiving its business licence.

Article 4 An equity joint venture shall take the form of a limited liability company.

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.

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.

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 an equity 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 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.

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.

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.

Article 6 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.

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 programmes, the budget, distribution of profits, plans concerning manpower 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 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.

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.

Article 7 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 reserve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture.

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 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.

Article 8 An equity joint venture shall, on the strength of its business licence, 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 conduct its foreign exchange transactions in accordance with the Foreign Exchange Regulations of the People's Republic of China.

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

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

Article 9 The production and business programmes of an equity 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., 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.

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.

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

Article 10 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.

A foreign party is encouraged to deposit 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 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.

Article 12 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 approving authority 6 months before the expiration of the operation period. The examining and approving authority shall, within 1 month of receipt of the application, decide whether to approve or disapprove it.

Article 13 If there occur heavy losses, the failure of a party to perform its obligations under the 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 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.

Article 15 The present law comes into force on the date of its promulgation. The right to amendment is vested in the National People's Congress.