



中华人民共和国中外合资经营企业法
中华人民共和国外资企业法
国务院关于鼓励外商投资的规定
及实施办法

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

THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA
ON ENTERPRISES OPERATED EXCLUSIVELY
WITH FOREIGN CAPITAL

PROVISIONS OF THE STATE COUNCIL FOR THE
ENCOURAGEMENT OF FOREIGN INVESTMENT
AND ITS IMPLEMENTATION MEASURES

法律出版社

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Exclusively with Foreign Capital**

**Provisions of the State Council for the
Encouragement of Foreign Investment
and Its Implementation Measures**

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说 明

为了扩大对外经济合作和技术交流,改善投资环境,吸收外商投资,引进先进技术,促进中国国民经济发展,近年来,我国陆续发布了一些涉外的法律和法规。为了适应当前形势的需要,我们编辑了这本法规汇编以供人们使用。

法律出版社法规编辑室

1987年7月



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PREFACE

With a view to expanding economic co-operation and technological exchange with other countries, improving China's investment environment, attracting more foreign capital, introducing advanced technology and promoting the development of its national economy, in recent years, some laws and regulations concerning foreign investment have been promulgated by the People's Republic of China. In order to meet the current situation and the need of foreign investors, we edit this collection of laws and regulations to use for everyone.

The Editorial Staff of Laws and Regulations of
the Publishing House of Law

July, 1987

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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,1979年7月8日公布施行)

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、企业和其它经济组织或个人(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、企业或其它经济组织(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。

第三条 合营各方签订的合营协议、合同、章程,应报中华人民共和国外国投资管理委员会,该委员会应在三个月内决定批准或不批准。合营企业经批准后,向中华人民共和国工商行政管理总局登记,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百分之二十五。

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。董事会设董事长一人,由中国合营者担任;副董事长一人或二人,由外国合营者担任。董事会处理重大问题,由合营各方根据平等互利原则协商决定。

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。

合营企业职工的雇佣、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。

具有世界先进技术水平合营企业开始获利的头两年至三年可申请减免所得税。

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 合营企业应在中国银行或者经中国银行同意的银行开户。

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它资金,可按合营企业合同规定的货币,通过中国银行按外汇管理条例汇往国外。

鼓励外国合营者将可汇出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它正当收入,按中华人民共和国税法缴纳个人所得税后,可通过中国银行按外汇管理条例汇往国外。

第十二条 合营企业合同期限,可按不同行业、不同情况,由合营各方商定。合营企业合同期满后,如各方同意并报请中华人民共和国外国投资管理委员会批准,可延长期限。延长合同期限的申请,应在合同期满六个月前提出。

第十三条 合营企业合同期满前,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,报请中华人民共和国外国投资管理委员会批准,并向工商行政管理总局登记,可提前终止合同。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它仲裁机构仲裁。

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 JOINT VENTURES

**(Adopted by the Second Session of the Fifth
National People's Congress on July 1, 1979
and Promulgated on and Effective as
of July 8, 1979)**

Article 1 With a view to expanding international economic co-operation and technical exchange, the People's Republic of China permits foreign companies, enterprises, other economic organizations or individuals (hereafter referred to as " foreign joint venturers") to join with Chinese companies, enterprises or other economic organizations (hereafter referred to as "Chinese joint venturers") in establishing joint ventures in the People's Republic of China in accordance with the principle of equality and mutual benefit and subject to approval by the Chinese Government.

Article 2 The Chinese Government protects, in accordance with the law, the investment of foreign joint venturers, the profits due them and their other lawful rights and interests in a joint venture, pursuant to the agreement, contract and articles of association

approved by the Chinese Government.

All the activities of a joint venture shall comply with the provisions of the laws, decrees and pertinent regulations of the People's Republic of China.

Article 3 The joint venture agreement, contract and articles of association signed by the parties to the venture shall be submitted to the Foreign Investment Commission of the People's Republic of China, and the Commission shall, within three months, decide whether to approve or disapprove them. After approval, the joint venture shall register with the General Administration for Industry and Commerce of the People's Republic of China, obtain a licence to do business and start operations.

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

The proportion of the investment contributed by the foreign joint venturer(s) shall generally not be less than 25 % of the registered capital of a joint venture.

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

No assignment of the registered capital of a joint venturer shall be made without the consent of the other parties to the venture.

Article 5 Each party to a joint venture may make its investment in cash, in kind or in industrial property rights, etc.

The technology and the equipment that serve as a foreign joint venturer's investment must be advanced technology and equipment that actually suit our country's needs. If the foreign joint venturer causes losses by deception through the intentional use of backward technology and equipment, it shall pay compensation for the losses.

The investment of a Chinese joint venturer may include the right to the use of a site provided for the joint venture during the period of its operation. If the right to the use of the site does not constitute a part of a Chinese joint venturer's investment, the joint venture shall pay the Chinese Government a fee for its use.

The various investments referred to above shall be specified in the joint venture contract and articles of association, and the value of each (excluding that of the site) shall be jointly assessed by the parties to the venture.

Article 6 A joint venture shall have a board of directors, which shall have its size and composition stipulated in the contract and the articles of association after consultation between the parties to the venture, and the directors shall be appointed and replaced by the parties to the venture. The board of directors shall have a chairman, whose office shall be assumed by the Chinese joint venturer(s), and one or two vice-chairmen, whose office(s) shall be assumed by the foreign joint venturer(s). In handling major prob-

items, the board of directors shall reach a decision through consultation by the parties to the venture, in accordance with the principle of equality and mutual benefit.

The board of directors is empowered, pursuant to the provisions of the articles of association of the joint venture, to discuss and decide all major problems of the venture: expansion programmes, proposals for production and operating activities, the budget for revenues and expenditures, distribution of profits, plans concerning manpower and pay scales, the termination of business and the appointment or employment of the president, the vice-president(s), the chief engineer, the treasurer and the auditors, as well as their powers and terms of employment, etc.

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

The employment and dismissal of the staff and workers of a joint venture shall be provided for in accordance with the law in the agreement and contract of the parties to the venture.

Article 7 After payment out of the gross profit earned by the joint venture of the 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 staff and workers, and a venture expansion fund, as provided in the articles of association of the