

## FOREWORD

Since the convention of the Third Plenary Session of the Eleventh Central Committee of the CPC, China has been implementing the policy of opening up to the outside world and actively developing foreign economic interchange with a view to accelerating her socialist modernization drive. Among the many forms of foreign economic cooperations accepted, establishing foreign investment enterprises has been a major mode in the country's utilization of foreign investment, importation of overseas technologies and learning of foreign experience in business operations and management.

With further relaxation in respect to the country's policy concerning utilization of foreign investment, progressive perfection of her foreign economic laws and regulations and improvement of her investment climate, more and more foreign and overseas Chinese businessmen will be wishing to make investment in China and to cooperate with Chinese enterprises and other economic organizations in launching equity joint ventures and other businesses. Under these circumstances, domestic professionals engaged in utilization of foreign investment are desirous of having a handbook which contains China's major foreign economic laws and regulations and relevant management rulings, and which thus serves as a useful reference for practical work.

In July 1985 we compiled the *SHANGHAI OVERSEAS INVESTMENT MANUAL* and since then it has gone through two revisions. Now we are presenting this revised and enlarged edition in which recently promulgated laws and regulations encouraging foreign investment are incorporated. Aware that we lack experience in compiling a book like this and that it is too much to hope that imperfections have been entirely avoided, we

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should be grateful if users of this Manual who detect errors  
would be so kind as to bring them to our notice.

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*Compiler*

# CONTENTS

## I. RELEVANT LAWS AND REGULATIONS ON APPROVAL OF FOREIGN INVESTMENT ENTERPRISES

1. The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment ..... 1
2. Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment ..... 6
3. Regulations of the People's Republic of China on the Registration of Joint Ventures Using Chinese and Foreign Investment ..... 52
4. Provisional Regulations of the State Administration for Industry and Commerce Concerning the Proportion of Registered Capital to Total Investment of Sino-Foreign Joint Ventures ..... 55
5. The Interim Articles on the Duration of Sino-Foreign Equity Joint Ventures ..... 58
6. Law of the People's Republic of China on Sino-Foreign Contractual Cooperative Enterprises ..... 60
7. The Law of the People's Republic of China on Enterprises Operated Exclusively with Foreign Capital ..... 68
8. Detailed Rules for Implementing Law of the People's Republic of China on Enterprises Operated Exclusively with Foreign Capital ..... 73
9. Provisions of Shanghai Municipality on Application and Approval of Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Cooperative Ventures and Enterprises Operated Exclusively with Foreign Capital ..... 99

## II. RELEVANT LAWS AND REGULATIONS ON TAXATION AND FOREIGN EXCHANGE CONTROL CONCERNING

## FOREIGN INVESTMENT ENTERPRISES

10. Individual Income Tax Law of the People's Republic of China ..... 105
11. Detailed Rules and Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China ..... 109
12. The Income Tax Law of the People's Republic of China Concerning Enterprises with Foreign Investment and Foreign Enterprises ..... 116
13. Detailed Rules and Regulations for the Implementation of the Income Tax Law of the People's Republic of China Concerning Enterprises with Foreign Investment and Foreign Enterprises ..... 126
14. Interim Provisions of the State Council of the PRC on Reduction in or Exemption from Enterprise Income Tax and the Consolidated Industrial and Commercial Tax for Special Economic Zones and Fourteen Coastal Cities(unofficial text) ..... 166
15. Some Provisions of the People's Republic of China Concerning the Reduction of or Exemption from Income Tax in the Absorption of Foreign Funds ..... 173
16. Rules of the Ministry of Finance for Implementing the Relevant Articles as Contained in the "Provisions of the State Council of the People's Republic of China for the Encouragement of Foreign Investment" ..... 179
17. Rules of Shanghai Taxation Bureau for Implementation of Relevant Articles in "Provisions of Shanghai Municipality for Encouragement of Foreign Investment" Concerning Preferential Treatments in Taxation ..... 183
18. Interim Provisions of the Ministry of Finance Concerning the Reduction of or Exemption from Income Tax on Royalties for Proprietary Technology ..... 187
19. Provisional Regulations for Exchange Control of the People's Republic of China ..... 195
20. Rules for the Implementation of Foreign Exchange Control

Relating to Individuals.....	205
21. Rules for the Implementation of the Examination and Approval of Applications by Individuals for Foreign Exchange .....	209
22. Provisional Regulations of the People's Bank of China on Providing Foreign Exchange Guarantees by Institutions inside China .....	212
23. Regulations of the People's Bank of China Shanghai Branch for Implementation of Relevant Articles in "Provisions of Shanghai Municipality for Encouragement of Foreign Investment" Concerning Priorities in Loan-Granting .....	215
24. Rules for the Implementation of Exchange Control Regulations Relating to Enterprises with Overseas Chinese Capital, Enterprises with Foreign Capital and Chinese-Foreign Joint Ventures .....	218
25. Rules for the Implementation of Foreign Exchange Control in the Pudong Waigaoqiao Bonded Zone of Shanghai .....	225

### III . RELEVANT REGULATIONS ON MANAGEMENT OF FOREIGN INVESTMENT ENTERPRISES

26. The Accounting Regulations of the People's Republic of China for the Joint Ventures Using Chinese and Foreign Investment.....	231
27. Provisions of the Ministry of Labour and Personnel of the People's Republic of China on the Right of Autonomy of Enterprises with Foreign Investment in the Hiring of Personnel and on Wages, Insurance and Welfare Expenses for Staff and Workers .....	261
28. Regulations of the People's Republic of China on Labour Management in Joint Ventures Using Chinese and Foreign Investment.....	264
29. Regulations of Shanghai Municipality on Labour and Personnel Management in Joint Ventures Using Chinese	

and Foreign Investment .....	267
30. Provisions of Shanghai Municipality on Supply and Marketing of Materials and Price Control of Chinese-Foreign Joint Ventures (For Trial Implementation) .....	281
31. Procedures of Shanghai Municipality for Endowment Insurance for Chinese Employees in Chinese-Foreign Joint Ventures (For Trial Implementation) .....	285
32. Regulations of Shanghai Labour Bureau and Shanghai Personnel Bureau for Implementation of Relevant Articles in "Provisions of Shanghai Municipality for Encouragement of Foreign Investment" Concerning Staff and Workers Employment .....	288
33. Regulations of Shanghai Municipality on Liquidation of Enterprises with Foreign Investment .....	291

#### IV. RELEVANT LAWS AND REGULATIONS ON THE CUSTOMS AND INSPECTION OF COMMODITIES

34. Customs Law of the People's Republic of China .....	309
35. Provisional Regulations Governing the Application of the Customs Import and Export Tariff of the People's Republic of China .....	329
36. Procedures of the Customs of the People's Republic of China for the Administration of Materials and Parts that Enterprises with Foreign Investment Need to Import in Order to Perform Product Export Contracts .....	335
37. Detailed Rules of Shanghai Customs of the People's Republic of China Concerning Control Over and Duty Collection and Exemption on Goods, Means of Transport and Personal Effects Entering or Leaving the Waigaoqiao Bonded Zone of Shanghai .....	341
38. The Law of the People's Republic of China on Import and Export Commodity Inspection .....	358
39. Procedures of Shanghai Municipality for Implementation of	

Inspection of Import and Export Commodities .....	368
40. Measures for Exemption of Import and Export Commodities from Inspection (For Trial Implementation)(unofficial translation) .....	377
41. Procedures of Shanghai Municipality on Inspection of Commodities Imported and Exported by Means of Foreign Funds (For Trial Implementation) .....	382
42. Law of the People's Republic of China on Entry and Exit of Aliens .....	387

## **V. RELEVANT REGULATIONS FOR ENCOURAGEMENT OF FOREIGN INVESTMENT**

43. Provisions of the State Council of the People's Republic of China for the Encouragement of Foreign Investment .....	395
44. Regulations of the State Council of the People's Republic of China for Encouraging Overseas-Chinese and Hong Kong, Macao Compatriots to Make Investment .....	401
45. Regulations of the State Council of the People's Republic of China for Encouraging Taiwan Compatriots to Invest in the Mainland .....	407
46. Provisions of Shanghai Municipality for Encouragement of Foreign Investment .....	413
47. Regulations on Preferential Treatment for Foreign-Invested Enterprises to Enjoy Technology-Intensive and / or Knowledge-Intensive Projects in Shanghai .....	416
48. Measures of Shanghai Municipal Electric Power Bureau for Implementation of Relevant Articles in "Provisions of Shanghai Municipality for Encouragement of Foreign Investment" Concerning Priorities in Electricity Supply .....	418
49. Measures of Shanghai Administration of Post and Telecommunication for Implementation of Relevant Articles in "Provisions of Shanghai Municipality for Encouragement of Foreign Investment" Concerning Priorities in Supply of	

Communication Services .....	421
50. Regulations of Shanghai Public Utilities Bureau for Implementation of Relevant Articles in "Provisions of Shanghai Municipality for Encouragement of Foreign Investment" Concerning Priorities in Supply of Water and Gas .....	422

## VI. RELEVANT REGULATIONS ON THE DEVELOPMENT OF LAND AND THE TRANSFER OF LAND-USE RIGHTS

51. Interim Procedures for the Administration of Foreign Investment in the Development and Management of Whole Areas of Land .....	424
52. Notice of the Imposition of Consolidated Industrial and Commercial Tax and Enterprise Income Tax on the Transfer of Land Development and Use Rights by Foreign-Invested Enterprises.....	430
53. Regulations for the Transfer of Land-Use Rights for Valuable Consideration in Shanghai Municipality .....	432
54. Procedures of Shanghai Municipality for Administration of Use of Land in Chinese-Foreign Joint Ventures .....	447

## VII. OTHER RELEVANT LAWS AND REGULATIONS

55. Foreign Economic Contract Law of the People's Republic of China .....	454
56. Patent Law of the People's Republic of China .....	481
57. Regulations on Implementing the Patent Law of the People's Republic of China .....	498
58. Trademark Law of the People's Republic of China .....	528
59. Detailed Regulations for the Implementation of the Trademark Law of the People's Republic of China .....	539
60. Regulations on Administration of Technology Import Contracts of the People's Republic of China.....	553
61. Detailed Rules for the Implementation of the Regulations on Administration of Technology Import Contracts of the	



People's Republic of China .....	557
62. China International Economic and Trade Arbitration Commission Arbitration Rules .....	567
63. Provisional Rules of Procedure of the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade .....	578
64. Measures Relating to the Substitution of Importation by Products Manufactured by Sino-Foreign Joint and Cooperative Ventures .....	585
65. Provisions of the Ministry of Foreign Economic Relations and Trade on the Purchase and Export of Domestic Products by Foreign Investment Enterprises to Balance Foreign Exchange Accounts .....	591
66. Rules of the Ministry of Foreign Economic Relations and Trade for Foreign-Investment Enterprises Applying for Import and Export Licenses .....	594
67. Implementing Rules of the Ministry of Foreign Economic Relations and Trade for Examination and Confirmation of Export Enterprises and Technologically Advanced Enterprises with Foreign Investment .....	597
68. Measures of Shanghai Municipality on Handling Complaints Made by Foreign Investment Enterprises .....	602
69. Provisions of Shanghai Municipality for the Control of Resident Representative Offices of Foreign Enterprises (For Trial Implementation) .....	621
70. Regulations of Shanghai Municipality on Management of Construction Projects Contracted Out to Foreign Designing and Building Enterprises .....	627

## **VII. SHANGHAI ECONOMIC AND TECHNOLOGICAL DEVELOPMENT ZONES**

71. Minhang Economic and Technological Development Zone .....	636
72. Hongqiao Economic and Technological Development Zone .....	637

73. Caohejing Hi-Tech Park .....	639
74. Briefing on Pudong New Area .....	640

## **IX. RELEVANT REGULATIONS ON SHANGHAI ECONOMIC AND TECHNOLOGICAL DEVELOPMENT ZONES**

75. Regulations on Economic and Technological Development Zones in Shanghai .....	645
76. Ten Policies for the Development of Shanghai Pudong New Area .....	652
77. Examination and Approval Measures for Foreign-Invested Enterprises in Shanghai Pudong New Area .....	654
78. Regulations on Reduction and Exemption of Enterprise Income Tax and Consolidated Industrial and Commercial Tax to Encourage Foreign Investment in Shanghai Pudong New Area .....	657
79. Regulations of Shanghai Municipality for Encouragement of Foreign Investment in the Pudong New Area .....	661
80. Provisions of Land Administration in Shanghai Pudong New Area .....	668
81. Provisional Measures on Planning, Construction and Administration in Shanghai Pudong New Area .....	674
82. Customs Regulations of the People's Republic of China Concerning Control over the Goods, Means of Transport and Personal Articles Entering or Leaving the Waigaoqiao Free Trade Zone of Shanghai .....	677
83. Measures on Administration of the Waigaoqiao Free Trade Zone of Shanghai .....	685
84. Regulations for Administration of Financial Institutions with Foreign Capital and Financial Institutions with Chinese and Foreign Joint Capital in Shanghai .....	694
85. Interim Regulations on Shanghai Caohejing Hi-Tech Park .....	709
86. Provisions on Preferences for Enterprises with Foreign Investment in Minhang and Hongqiao Economic and Technological Development Zones of Shanghai .....	722

## **X. A GUIDE TO INVESTMENT IN SHANGHAI**

87. Ways of Introducing Foreign Investment .....	725
88. Procedures for Foreign Investment .....	729
89. Sample Contract for Joint Ventures Using Chinese and Foreign Investment .....	732
90. Sample Articles of Association for Joint Ventures Using Chinese and Foreign Investment .....	751
91. Contents Requirements of the Project Proposal for a Joint Venture Using Chinese and Foreign Investment .....	766
92. Contents Requirements for the Feasibility Study Report of a Joint Venture Using Chinese and Foreign Investment .....	768
93. Shanghai Foreign Investment Commission .....	770
94. Departments for Approving Foreign Investment Projects in Districts, Counties and Bureaus .....	771
95. Foreign Investment Consulting Firms in Shanghai ...	775
96. Economic and Legal Witness in Shanghai .....	781
97. Shanghai Foreign Exchange Transaction Centre .....	783
98. Shanghai Material Supply Corporations for Foreign-Funded Enterprises .....	785

## **XI. TAXATION AND CHARGES**

99. Enterprise Income Tax .....	788
100. Consolidated Industrial and Commercial Tax .....	789
101. City Real Estate Tax .....	790
102. Vehicle and Vessel License Tax .....	790
103. Withholding Income Tax .....	791
104. Individual Income Tax .....	791
105. Land Use Fee .....	792
106. Wages, Insurance and Welfare of the Employees .....	798
107. Coal Gas and Liquefied Petroleum Gas .....	800
108. Water .....	801
109. Sewage .....	801
110. Electricity .....	802

111. Telecommunication.....	808
112. Construction License Fee and Handling Charges for Review of License.....	810
113. Standard for the Handling Fees on the Quality Inspection of Construction Projects .....	811
114. Freight and Storage.....	812
115. Insurance Premiums .....	814
116. Rent for Office and House .....	817
117. Automobile Charges .....	817

# I. RELEVANT LAWS AND REGULATIONS ON APPROVAL OF FOREIGN INVESTMENT ENTERPRISES

## 1. The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment

*Adopted on July 1, 1979 at the Second Session of the Fifth National People's Congress; Promulgated on July 8, 1979*

### Article 1

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 participants) to incorporate themselves, within the territory of the People's Republic of China, into joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as Chinese participants) 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 resources invested by a foreign participant in a joint venture and the profits due him pursuant to the agreements, contracts and articles of association authorized by the Chinese Government as well as his other lawful rights and interests.

All the activities of a joint venture shall be governed by

the laws, decrees and pertinent rules and regulation of the People's Republic of China.

### **Article 3**

A joint venture shall apply to the Foreign Investment Commission of the People's Republic of China for authorization of the agreements and contracts concluded between the parties to the venture and the articles of association of the venture formulated by them, and the commission shall authorize or reject these documents within three months. When authorized, the joint venture shall register with the General Administration for Industry and Commerce of the People's Republic of China and start operations under license.

### **Article 4**

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

In the registered capital of a joint venture the proportion of the investment contributed by the foreign participant(s) shall in general not be less than 25 per cent.

The profits, risks and losses of a 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 a 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 participant 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 the losses.

The investment contributed by a Chinese participant may include the right to the use of a site provided for the joint

venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese participant, the joint venture shall pay the Chinese Government for its use.

The various contributions referred to in the present article shall be specified in the contracts concerning the 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**

A joint venture shall have a board of directors with a composition stipulated in the contracts and the articles of association after consultation between the parties to the venture, and each director shall be appointed or removed by his own side. The board of directors shall have a chairman appointed by the Chinese participant and one or two vice-chairmen appointed by the foreign participant(s). In handling an important problem, the board of directors shall reach decision through consultation by the participants 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 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 joint venture.

Procedures covering the employment and discharge of the workers and staff members of a joint venture shall be stipulated according to law in the agreement or contract concluded

between the parties to the venture.

#### **Article 7**

The net profit of a joint venture shall be distributed between the parties to the venture in proportion to their respective shares in the registered capital after the payment of a 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.

A joint venture equipped with up-to-date technology by world standards may apply for a reduction of or exemption from income tax for the first two to three profit-making years.

A foreign participant 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**

A joint venture shall open an account with the Bank of China or a bank approved by the Bank of China.

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

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

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

#### **Article 9**

The production and business programmes of a 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., a joint venture should give first priority to Chinese sources, but may also acquire them directly from the world market with its own foreign ex-



change funds.

A 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.

Wherever necessary, a joint venture may set up affiliated agencies outside China.

#### **Article 10**

The net profit which a foreign participant receives as his share after executing his obligations under the pertinent laws and agreements and contracts, the funds he receives at the time when the joint venture terminates or winds up its operations, and his other funds may be remitted abroad through the Bank of China in accordance with the foreign exchange regulations and in the currency or currencies specified in the contracts concerning the joint venture.

A foreign participant shall receive encouragements for depositing 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 earned by a foreign worker or staff member of a joint venture, after payment of the personal income tax under the tax laws of the People's Republic of China, may be remitted abroad through the Bank of China in accordance with the foreign exchange regulations.

#### **Article 12**

The contract period of a joint venture may be agreed upon between the parties to the venture according to its particular line of business and circumstances. The period may be extended upon expiration through agreement between the parties, subject to authorization by the Foreign Investment Commission of the People's Republic of China. Any application for such extension shall be made six months before the expiration