

涉外法律英语

主 编：李 妍



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FOREIGN LANGUAGE TEACHING AND RESEARCH PRESS

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前 言

随着改革开放政策的实施和对外经济合作的加强，我国的涉外法律关系与事件越来越多。这要求人们，特别是法律工作者不但要有足够的法律知识，还要有较高的英语水平，尤其要熟知法律英语。我国目前虽有相当多比较成功的律师，也有相当多的人精通英语，但二者兼顾的人士却不多见。现在市场上有一些法律英语的书籍（包括教材），但都以介绍外国法律为主，没有一种介绍我国涉外法律的中英文对照的普及性读物。

本书以我国现行的法律法规为基础，并参考一些国内外的有关论著，比较全面地向读者介绍了人们普遍关心的关于我国外商投资法、经济合同法、涉外民事法律（如婚姻法、继承法、收养法）等方面的主要内容，同时简要介绍了英美两国的法律体系与律师制度，共分七章：

第一章 外商投资企业法

第二章 合同法

第三章 涉外经济纠纷的诉讼与仲裁

第四章 反倾销的法律规定

第五章 商标和专利制度

第六章 涉外民事法律

第七章 英美的法律制度

在附录中总结归纳了本书中涉及的法律常用术语及常用的涉外经济法律文书的格式与主要内容。

本书的主要特点是采用中英文对照的形式，便于读者对各部门法的理解；使读者既可以通过英语阅读获取法律知识，又可以通过学习法律知识提高自身的英语水平，做到一举两得。本书兼

顾法律知识普及与法律实务两个方面，既适合于各大专院校法律专业高年级学生作为学习法律英语的教材，也可以作为广大法律及英语爱好者的自学参考书；对法律工作者来讲更是一本很好的法律实用手册。

中国政法大学的吴焕宁教授对本书的编写提出了很多宝贵的意见，并对全书进行了审定。对此，我们表示衷心的感谢。

编者
2002 年 10 月

Content

目 录

Chapter One	Laws on Foreign Investment Enterprises	.....	(1)
	外商投资企业法	.....	(1)
Section 1	Concept of Foreign Investment Enterprises	.....	(1)
	外商投资企业的概念	.....	(1)
Section 2	Law on Chinese-Foreign Joint Ventures	.....	(3)
	中外合资经营企业法	.....	(3)
Section 3	Law on Chinese-Foreign Contractual Joint Ventures	.....	(20)
	中外合作经营企业法	.....	(20)
Section 4	Law on Wholly Foreign-owned Enterprises	.....	(36)
	外资企业法	.....	(36)
Chapter Two	Contract Law	.....	(61)
	合同法	.....	(61)
Section 1	Contract and Contract Law	.....	(62)
	合同及合同法	.....	(62)
Section 2	Conclusion of Contracts	.....	(66)
	合同的订立	.....	(66)
Section 3	Effectiveness of Contracts	.....	(78)
	合同的效力	.....	(78)
Section 4	Performance of Contracts	.....	(89)
	合同的履行	.....	(89)
Section 5	Modification and Assignment of Contract	...	(104)

	合同的变更和转让	(104)
Section 6	Termination of the Rights and Obligations of Contracts	(110)
	合同权利义务的终止	(110)
Section 7	Liability for Breach of Contract	(118)
	违约责任	(118)
Section 8	Miscellaneous Provisions	(128)
	其他规定	(128)
Chapter Three	Litigation and Arbitration of Foreign Economic Disputes	(133)
	涉外经济纠纷的诉讼与仲裁	(133)
Section 1	Litigation of Foreign Economic Disputes	(133)
	涉外经济纠纷的诉讼	(133)
Section 2	Arbitration of Foreign Economic Disputes	(145)
	涉外经济纠纷的仲裁	(145)
Chapter Four	Law on Antidumping	(158)
	反倾销的法律规定	(158)
Section 1	Dumping	(158)
	倾销	(158)
Section 2	Antidumping Regulation of PRC	(160)
	中华人民共和国反倾销条例	(160)
Section 3	Brief Introduction to Foreign Antidumping Rules	(167)
	外国反倾销规则简介	(167)
Section 4	Response to Antidumping Cases against Products Exported from China	(175)
	对中国出口产品在国外发生反倾销案件时的应诉	(175)
Chapter Five	Trademark and Patent System	(179)

	商标和专利制度	(179)
Section 1	Trademark System	(179)
	商标制度	(179)
Section 2	Patent System	(193)
	专利制度	(193)
Chapter Six	Civil Law with Foreign Elements	(214)
	涉外民事法律	(214)
Section 1	Civil Legal Relationship with Foreign Elements	(214)
	涉外民事法律关系	(214)
Section 2	Marriage Involving Foreigners	(218)
	涉外婚姻	(218)
Section 3	Succession with Foreign Elements	(227)
	涉外继承	(227)
Section 4	Adoption Concerning Foreigners	(234)
	涉外收养	(234)
Section 5	Civil Procedure Involving Foreign Parties ...	(239)
	涉外民事诉讼程序	(239)
Chapter Seven	English and American Legal System	(247)
	英美的法律制度	(247)
Section 1	English Legal System	(247)
	英国的法律制度	(247)
Section 2	American Legal System	(274)
	美国的法律制度	(274)
Appendix	Legal Terms	(295)
	法律术语	(295)
Bibliography	.....	(311)

Chapter One Laws on Foreign Investment Enterprises

外商投资企业法

Section 1 Concept of Foreign Investment Enterprises

外商投资企业的概念

Enterprises with part or sole foreign investment are the enterprises established within Chinese territory, in accordance with the laws of the People's Republic of China and the principle of equality and mutual benefit, with capital provided jointly by Chinese investors and foreign investors or solely by foreign investors. Foreign enterprises, other economic entities or natural persons shall conduct as foreign investors. Chinese investors include Chinese enterprises and other economic entities except natural persons.

外商投资企业是依照中华人民共和国法律的规定,按照平等互利的原则,由外国投资者与中国投资者共同投资或者独资投资,在中国境内设立的企业。外国投资者可以是外国企业、经济组织或个人;中国投资者包括中国企业和其他经济组织但不包括个人。

Foreign investment enterprises are divided into three categories. They are wholly foreign-owned enterprises, Chinese-foreign equity joint ventures and Chinese-foreign contractual joint ventures. These three categories of enterprises are collectively called "three-capital" enterprises.

外商投资企业根据投资形式的不同,分为外资企业、中外合资经营企业、中外合作经营企业。人们通常将这三类企业统称为“三资企业”。

Enterprises with part or sole foreign investment are Chinese legal subjects. Those that conform to the conditions for becoming legal persons under the relevant Chinese regulations shall obtain such status in accordance with the law. Such enterprises are protected by Chinese law. The Chinese Government shall not nationalize or expropriate any foreign capital enterprises. Under special circumstances, based on the need of the social public interests, they may be expropriated under legal procedures and against commensurate compensation. In the meantime, foreign capital enterprises are subject to the jurisdiction of Chinese law. It is clearly provided that foreign capital enterprises must comply with Chinese laws and regulations and should not infringe social public interests of China. The government departments of China execute the control and supervision over the foreign capital enterprises.

外商投资企业是中国的法律主体,如符合中国法律关于法人条件的规定,依法取得中国法人资格。外商投资企业受中国法律的保护,中国政府对中外合资经营企业和外资企业不实行国有化和征收;在特殊情况下,根据社会公共利益的需要,可以依照法律程序征收,并给予相应的补偿。同时,外商投资企业必须遵守中国的法律、法规,不得损害中国的社会公共利益,国家机关依法对外商投资企业实行管理和监督。

Laws regulating on foreign capital enterprises are the Law of the People's Republic of China on Chinese-Foreign Joint Ventures, the Law of the People's Republic of China on Chinese-Foreign Contractual Ventures, the Law of the People's Republic

of China on Enterprises with Sole Foreign Investment and three regulations for the implementation of the above laws.

中国规范外商投资企业的法律主要有:《中华人民共和国中外合资经营企业法》、《中华人民共和国中外合作经营企业法》和《中华人民共和国外资企业法》,以及这三个法律的实施细则。

Section 2 Law on Chinese-Foreign Joint Ventures

中外合资经营企业法

2.1 Chinese-Foreign Joint Ventures 中外合资经营企业

Chinese-Foreign joint ventures (hereinafter referred to as Joint Ventures) are the enterprises which are established within Chinese territory, in accordance with the laws of China and the principle of equality and mutual benefit, and in which foreign enterprises, other economic organizations or natural persons and Chinese enterprises, other economic organizations jointly contribute capital and manage the enterprise, share benefits, losses and risks.

中外合资经营企业(以下简称合营企业)是指依照中华人民共和国的法律,按照平等互利的原则,由外国企业、其他经济组织或个人同中国企业或其他经济组织在中国设立的共同投资、共同经营、共负盈亏、共担风险的企业。

Chinese-Foreign joint ventures established in China with approval granted according to the Law of the People's Republic of China on Chinese-Foreign Joint Ventures (hereinafter refers to the Law on Joint Ventures), are Chinese legal persons subject to the jurisdiction and entitled to the protection of Chinese law.

依照《中华人民共和国中外合资经营企业法》(以下简称《合资经营企业法》) 批准在中国境内设立的中外合资经营企业是中国的法人, 受中国法律的管辖和保护。

2.2 Establishment of Chinese-Foreign Joint Ventures 中外合营企业的设立

2.2.1 Conditions for the Establishment 设立的条件

In accordance with the Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Joint Ventures (hereinafter referred to as the Regulations for the Implementation of the Law of Joint Ventures), the establishment of Chinese-Foreign joint ventures is permitted in such lines of business as (1) energy resources development, and the construction materials, chemical and metallurgical industries, (2) machine-building, instrument and metal industries, and offshore oil-mining and oil exploitation equipment manufacturing industries, (3) electronic industry, computer industry and communications equipment manufacturing industries, (4) light industries and the textile, food, pharmaceutical, medical apparatus and instruments and packaging industries, (5) agriculture, animal husbandry and aquaculture, and (6) tourism and service trades.

依据《中华人民共和国中外合资经营企业法实施条例》(以下简称《合资经营企业法实施条例》), 允许设立合营企业的主要行业有:

- (1) 能源开发、建筑材料工业、化学工业、冶金工业;
- (2) 机械制造工业、仪器仪表工业、海上石油开采设备的制造业;

- (3)电子工业、计算机工业、通讯设备的制造业；
- (4)轻工业、纺织工业、食品工业、医药和医疗器械工业、包装工业；
- (5)农业、牧业、水产养殖业；
- (6)旅游和服务业。

An application to establishment of a joint venture shall emphasize economic results and the proposed joint venture shall satisfy one or more of the following requirements. (1) It will utilize advanced technology and scientific managerial techniques, enabling it to increase the variety of its products, improve their quality and raise output, and conserve energy and materials; (2) It will benefit the technical renovation of the enterprise enabling it to realize quick results and large profits with a small investment; (3) It will be able to expand the export of its products and increase foreign earnings; (4) It will be able to train technical and managerial personnels.

申请设立的合营企业应注重经济效益,符合下列一项或数项要求:(1)采用先进技术设备和科学管理方法,能增加产品品种,提高产品质量和产量,节约能源和材料;(2)有利于企业技术改造,能做到投资少、见效快、收益大;(3)能扩大产品出口,增加外汇收入;(4)有利于培养技术和管理人员。

However, an application to establish a joint venture will not be approved if the proposed joint venture involves the circumstances such as injury to China's state sovereignty, violation of Chinese law, incompatibility with the requirement of Chinese law, incompatibility with the requirement of Chinese national economic development, creation of environmental pollution and obvious inequity, infringing the rights and interests of one of the parties to the enterprises, in the signed agreement, contract or

articles of association that they have concluded.

然而, 申请设立合营企业如果有损害中国主权, 违反中国法律, 不符合中国国民经济发展要求, 造成环境污染与明显的不公正行为, 或者签订的协议、合同、章程损害合营一方权益的, 将得不到批准。

2.2.2 Procedures for Establishment 设立的程序

A. Application 申请

To establish a joint venture in China, the Chinese venturer shall submit to the competent authorities of this enterprise a project proposal and a preliminary feasibility study report with respect to the joint venture to be established with a foreign venturer. Only after such proposal and preliminary feasibility study report have been examined and agreed to by the department in charge of the venture and transmitted to and approved by the examining and approving agency, may the parties to the joint venture undertake work with the feasibility study as the core and, on this basis, negotiate and sign the joint venture agreement, contract and articles of association.

拟在中国境内设立中外合资经营企业, 应由中国合营者向企业主管部门呈报拟与外国合营者设立合资经营企业的项目建议书和初步可行性研究报告。该建议书与初步可行性研究报告, 经企业主管部门审查同意并报转审批机构批准后, 合营各方才能进行以可行性研究为中心的各项工作, 在此基础上商签合营企业协议、合同、章程。

Chinese venturer is responsible for applying to establish a joint venture and submitting the following formal documents: an application for the establishment of the joint venture, the feasibility study report jointly prepared by the parties to the joint venture, the list of the candidates for the chairman and vice

chairman of the board of directors, and directors of the joint venture who have been appointed by the parties to the joint venture, and the signed opinions concerning the establishment of the joint venture by the department in charge of the Chinese party and the government of the province, autonomous region or municipality directly under the Central Authority, in which the joint venture will be located.

中国合营者负责向审批机构提出设立合营企业的申请,并报送下列正式文件:设立合营企业的申请书;合营各方共同编制的可行性研究报告;由合营各方授权代表签署的合营企业协议、合同和章程;由合营各方委派的合营企业董事长、副董事长、董事人选名单;由合营者的企业主管部门和合营企业所在地的省、自治区、直辖市人民政府对设立该合营企业签署的意见。

B. Examination and Approval 审批

Regulations for the Implementation of the Law on Chinese-Foreign Joint Ventures provide that the establishment of a joint venture in China is subject to examination and approval by the Ministry of Foreign Economic Relations and Trade of the People's Republic of China (hereinafter referred to as MOFERT). Upon approval, the MOFERT shall issue a certificate of approval.

《中外合资经营企业法实施条例》规定,在中国境内设立合营企业,必须经中华人民共和国对外经济贸易部(以下简称对外经济贸易部)审查批准。批准后,由对外经济贸易部发给批准证书。

But if the total amount of investment for a proposed joint venture is within the limit prescribed by the State Council, and the source of funds for the Chinese partner has already been fixed, and if a joint venture does not require any additional allocation of raw and processed materials by the State, or affect the

national balance of fuel and power supplies, communication and transportation, or foreign trade export quotas, the MOFERT may authorize the government of the relevant province, autonomous region or municipality directly under the Central Authority, or the relevant ministry or bureau under the State Council (hereinafter referred to as the Authorized Agency) to examine and approve the joint venture. The MOFERT and the Authorized Agency are collectively named as the Examining and Approving Agency.

但是,如果投资总额在国务院规定的金额内,中国合营者的资金来源已落实的;不需要国家增拨原材料,不影响燃料、动力、交通运输、外贸出口配额等的全国平衡,对外经济贸易部委托有关的省、自治区、直辖市人民政府或国务院有关部、局(以下简称受托机构)审批;批准后,受托机构应报对外经济贸易部备案,并由对外经济贸易部发给批准证书。对外经济贸易部和受托机构统称为审批机构。

Within three months from the date of its receipt of all the documents presented by the Chinese partner, the Examining and Approvin Agency shall decide whether to approve or disapprove the joint venture. If the Agency discovers anything inappropriate in any of such documents, it shall request the revision be made within a specified period of time, and the Agency shall refuse to approve the joint venture if such revision is not made.

审批机构自接到中国合营者报送的全部文件之日起,三个月内决定批准或不批准。审批机构如发现所报送的文件有不当之处,应要求其限期修改,否则不予批准。

C. Registration 登记

Within one month of the receipt of the certificate of approval, the applicants shall go through the procedure of registra-

tion of the administrative bureau for industry and commerce of the province, autonomous region or municipality directly under the Central Authority in which the joint venture will be located (hereinafter referred to as the Administrative Agency for Registration), with such documents as applications for registration signed by the applicant in charge of the joint venture, the certificate of approval issued by the Examining and Approving Agency, articles of association of the enterprise, capital creditability documents, certificates of verification or warranty for capital, testimony of the identity of the main persons in charge of the enterprise, certificates to use domiciles and places of business and other relevant documents and certificates.

申请设立的合营企业负责人在收到批准书后一个月内,应向合营企业所在地的省、自治区、直辖市工商行政管理局(以下简称登记管理机构)申请开业登记,提交登记申请书、审批机构发给的批准书、合营企业的章程、资金信用证明、验资证明或资金担保、合营企业负责人的身份证明、住所和经营场所使用证明以及其他有关文件、证件。

The Administrative Agency for Registration shall, within 30 days, make decision whether the enterprise is allowed to register or not. After being allowed to register, a business license of the joint venture shall be issued. The date on which the joint venture's business license is executed and issued shall be deemed to be the date of establishment of this joint venture.

登记管理机构在 30 天内,作出核准登记或不予登记的决定。合营企业经核准登记注册后,应签发企业营业执照。合营企业的营业执照签发日期,是该企业的成立日期。

If there is any change to the enterprise's name, domiciles, places of business, legal representatives, economic characteris-