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Volume IV

《中华人民共和国合伙企业法》的修订

——立法进程资料汇编（2001~2002年）

THE AMENDMENT OF THE PARTNERSHIP ENTERPRISE LAW OF
THE PEOPLE'S REPUBLIC OF CHINA

Materials on the Drafting Process, 2001—2002



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《ZHONGHUA RENMIN GONGHEGUO HEHUO QIYEF A》DE XIUDING

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前 言

中国无疑是当今新兴的、最具有吸引力的风险资本市场之一。这里有数以万计的年轻而具有活力的公司，它们具有巨大的经济增长的潜力，尤其是高科技领域，正是风险资本公司寻找的最理想的投资市场。而且风险资本对于中小型企业的发展至关重要，甚至在中国向市场经济的转化过程中都能发挥重要的作用。风险资本公司通常选择一个有前途的公司，购买该公司的股份，然后，通过初始的公众募集或是运用其他方式出让他们持有的股份而获得利润，投资过程在3~7年左右。风险资本产业在中国于20世纪90年代初才刚刚起步，但是至2001年底，中国已有180家风险资本公司，投资额达到6亿美元，有力地证明了风险资本产业发展之迅速。但是，很多风险资本的产业决策者仍然认为，由于缺乏对于风险投资产业完善的立法，对于大规模的风险投资而言，中国市场仍然不够成熟。尤其是1997年颁布的《合伙企业法》，不允许成立有限合伙企业，而有限合伙却是绝大多数风险资本公司最为偏爱的合法的投资形式，因此引起了投资者普遍的批评。这项立法上的缺陷促使全国人大财经委已经开始细致研究《合伙企业法》并作出必要的修订。当然，这项工作的主要目的仍然是吸收更多的风险资本，因此，有关有限合伙的规定极有可能会被纳入新的《合伙企业法》。

本书旨在给大家介绍修改《合伙企业法》的整个讨论过程，其中包括2001年和2002年举行的两次修改《合伙企业法》研讨会上与会者撰写的文章以及提供的相关的材料。在这两次研讨会上，起草小组与中外法律专家们针对《草案》彼此交换了意见。所以，

这两次研讨会为评论草案并给起草小组提建议提供了良好的机会。本书的目的还在于使中国的立法程序更为透明和通俗易懂。这份资料汇编反映了中国未来的合伙企业法的真实想法和意图，是非常难得一见的，具有重要价值的立法文献。首先，它告诉我们参与立法人员所采用的不同的思考方法，帮助我们明确立法者在制定法律的过程中的意图，从而在执行法律的过程中便于进行法律解释。其次，立法过程的透明化也是实现法治的重要一步。透明化可以使公众理解立法，并且从一定程度上使公众参与到立法过程中来。因此，本书也可以作为实现中国法治进程的一个部分，法治原则通过1999年宪法修正案被明确写入《中华人民共和国宪法》第5条第一款；也是中国履行其加入世界贸易组织（WTO）协议中关于法律的透明化义务的一个部分，因为世界贸易组织要求其成员国在国家和地方立法中都要做到透明。

2001年和2002年的研讨会及本书的出版由中华人民共和国全国人民代表大会财政经济委员会和德国技术合作公司全国人大财经委咨询项目共同组织并筹办。全国人大财政经济委员会负责重新起草中国的《合伙企业法》，全国人大财经委咨询项目是财经委与德国技术合作公司的合作项目，德国技术合作公司受德国联邦经济发展合作部委托。

根据《中华人民共和国宪法》，全国人大是中国最高国家权力机关和立法机关，近3 000名代表出席的全体会议，每年仅召开一次。因此，大多数立法由其常务委员会主持，全国人大常委会目前有155名委员，故全国人大常委会应该被视为全国人大实际的决策机构。拥有155名委员的全国人大常委会从规模上不小于其他国家的国会。在全国人大全体会议和常委会的领导下，还设有九个专门委员会，负责国家政治的不同领域，财经委即其中的一个专门委员会，目前由34名委员组成。同其他国家设立的议会委员会相比，财经委办公规模较大，其办公室的25名人员由经济学家和律师组成。财经委的工作范围包括起草商业财政以及国家

经济法律，所以，起草的法律必须体现中国经济体制由计划经济向市场经济的转化。就一项新的立法，财经委设立一个起草小组，制定草案并提交全国人大常委会或全国人大全体会议讨论决议。起草小组的人员中，首先包括由财经委委员组成的指导小组；其次，是由其他政府部门，特别是与即将制定的法律有利害关系的国家各部委的专业人员组成的专家小组，利益集团的代表，专家学者，他们为自己所代表的实体发表意见和提出建议。再次，是由财经委的工作人员组成一个小组，进行实际的起草工作。这三个小组总体组成立法起草小组。

本书开篇对《合伙企业法》进行修订的原因，以及中国风险资本产业的基本情况进行一个简短的介绍。第一部分汇集了2001年在北京举行的研讨会上的全部讲稿，特别重要的是编者——全国人大财经委法案室主任朱少平的讲稿，这篇讲稿反映了立法者的立场和意图。第二部分是2002年在北京举行的研讨会上的讲稿。两次研讨会是起草小组成员聚集在一起就《合伙企业法》的修改彼此之间进行交流并与中外专家沟通的会议。两次研讨会的总结都汇编进了本书。其他的材料放在附录部分，主要包括《合伙企业法》的法律资料以及作者简介。

上文提及的研讨会和本书都是全国人大财经委咨询项目的工作成果。该项目于1997年正式启动，至今已经为全国人大财经委就以下中国法律草案提供了重要的咨询：《外汇管理法》、《证券法》、《投资基金法》、《信托法》、《中小企业促进法》、《物权法》、《政府采购法》、《破产法》、《招标投标法》、《国家预算法》、《遗产税法》、《军人保险法》，以及对于现有的《公司法》和《合伙企业法》的修改。咨询采用了个人咨询、小型学术研讨会、国际研讨会、研究代表团以及学术培训等多种方式。德国联邦经济合作与发展部代表德国政府，自1997~2004年对此项目投资了近410万欧元。另外，从2005年开始的下个阶段的投资也将被纳入考虑。

“中华人民共和国全国人民代表大会财政经济委员会立法咨询项目”是德国技术合作公司于2001年在北京成立的法律合作办公室的一个组成部分。该法律合作办公室还负责如下四个项目的工作：（1）“中华人民共和国全国人民代表大会常务委员会法制工作委员会立法咨询项目”，（2）：“中华人民共和国全国人民代表大会常务委员会预算工作委员会立法咨询项目”，（3）“中华人民共和国商务部立法咨询项目”，（4）“中华人民共和国劳动与社会保障部立法咨询项目”。

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在此，我们谨代表全国人大财经委和德国技术合作公司向所有参与研讨会和撰写讲稿的专家学者们表示衷心的感谢。来自财经委的巨家仁、王闻越、朱忠良、龚繁荣、翟庆华、刘修文、蔡概还、翟伟、李命志和钟真真，他们的工作对于本项目的成功至关重要。最后还要对德国技术合作公司的工作人员表示感谢，尤其要感谢刘畅、张为民、Holger Hanisch、Andreas Obst、Sandra Nicklisch和Volker Hagemeister，没有他们的辛勤工作就没有这两届研讨会和本书的丰硕成果。

朱少平 葛 毅

Preface

The People's Republic of China is certainly one of the most interesting emerging markets for Venture Capital (VC). There are thousands of young promising companies with the potential of a significant economic growth, especially in the high-tech-sector, which is exactly the kind of investment VC companies are looking for. Moreover, Venture Capital is very important for the development of small and medium-sized enterprises and, therefore, can play an important role in China's transformation to a market economy. VC companies usually invest in a promising company for three to seven years by buying equity and then try to gain profit by initial public offering or by selling their equity in another way. The VC industry started only to exist in China in the early 90s but at the end of 2001 there were already about 180 VC companies which invested US\$ 600 million in China, which proofs the fast growing development of the VC industry. However, many VC fund managers still consider China as immature for big VC Investments because of the insufficient legal framework for the VC industry. Investors especially criticize that the Chinese Partnership Enterprise Law of 1997 does not allow the establishment of a limited partnership. However, limited partnerships are the preferred legal vehicle by almost all VC Companies. Such shortcoming was the main reason why the Financial and Economic Committee (FEC) of the National People's Congress (NPC) started to examine the whole 1997 Partnership Enterprise Law regarding

necessary amendments. Nevertheless, the main purpose remains to attract more VC and, therefore, provisions on limited partnerships will most probably be incorporated into the new Partnership Enterprise Law.

The present publication wants to give an overview of the discussion on the amendment of the Partnership Enterprise Law. It comprises a collection of papers and related materials that were contributed by the participants of two symposia on the amendment of the Partnership Enterprise Law, which were held in 2001 and 2002. At such symposia, the Drafting Group shares their opinions on the draft law with each other and external Chinese and foreign experts. Therefore, the symposia offered an opportunity to comment on the draft law and give advice to the Drafting Group. As a consequence, the present publication pursues the aim of making the legislative procedure in the People's Republic of China more transparent and comprehensible. Such compilation is one of the very few sources documenting the authentic ideas and intensions underlying the future Chinese Partnership Enterprise Law. It is very important to have such source available. First, it is helpful to get information on the different approaches of the people being involved in the legislation process. It may be supportive in identifying the legislator's intensions in drafting the law and, therefore, facilitate the implementation of the law as an interpretation device. Second, to create transparency in the legislation process is an important step towards the rule of law. Transparency allows the public to follow the law making and, to a certain extent, lets the public participate in the legislation process. Thus, the present publication can be seen as part of the implementation of the rule of law principle, which has been adopted in Art. 5 sec. 1 of the Constitution of the People's Republic of China in 1999, as well as part of the Chinese

efforts to comply with the transparency requirements as set up in China's WTO accession agreement, which demands transparency regarding all legal provisions on national and local levels.

The 2001 and 2002 symposia as well as the present publication were jointly prepared and organized by the Financial and Economic Committee (FEC) of the National People's Congress (NPC) of the People's Republic of China (PRC) and the Project "Advisory Service to the Financial and Economic Committee of the National People's Congress of the PRC". The NPC, namely the FEC of NPC, is in charge of redrafting the Chinese Partnership Enterprise Law. The "Advisory Service to the Financial and Economic Committee of the National People's Congress of the PRC" is a cooperation project between the FEC and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (German Technical Cooperation Corporation), acting on behalf of the German Federal Ministry of Economic Cooperation and Development.

The NPC is according to the Constitution of the People's Republic of China the highest organ of state power and the national legislative body of the PRC. A plenary session with all its nearly three thousand members (currently 2997) is held only once a year. Therefore, most of the legislation is deliberated by the Standing Committee of the NPC, which includes at present 155 members. As a consequence, the Standing Committee should be regarded as the actual decision making body of the NPC. With its 155 members, it is not smaller than many national parliaments of other countries. Furthermore, there are nine special committees in charge of different areas of national politics, which are under the leadership of the plenary session and the Standing Committee. One of these special committees is the FEC, which consists of 34 members at present. In comparison to parliamentary committees of

many other countries, the FEC has a rather big office consisting of 25 persons, most of them economists or lawyers. The FEC's scope of activities includes the drafting of laws related to commercial and financial issues as well as the national economy, hence, such laws necessary to transform the Chinese national economy from a plan-oriented to a market economy. The FEC sets up a Drafting Group, decides on the draft and forwards it to the Standing Committee or the plenary session for deliberation of the new piece of legislation. The Drafting Group includes first a steering team of FEC members. Second, there is an expert team consisting of professionals from other government bodies, especially ministries which have a stake in the intended legislation, representatives of interest groups, scholars and academics, giving advice and representing the opinion of their entities. Third, there is a team consisting of FEC staff, which actually does the drafting work. All the three teams together make up the Drafting Group. The present publication begins with a brief introduction to the reasons, why the Partnership Enterprise Law was due to be amended and with background information on the Chinese VC industry. Part one of the publication compiles all papers presented at the October 2001 symposium in Beijing. Particular important is the paper of the editor Zhu Shaoping, director of the Legislation Department of the FEC Office, which reflects the legislator's ideas. Part two is a compilation of the papers presented at the May 2002 symposium in Beijing. Both symposia were meetings where the Drafting Group got together to discuss the amendments with each other and Chinese and foreign experts. The conclusions of both symposia are included in the compilations. Further material is added in the appendix, which includes the wording of the Partnership Enterprise Law and the contributors' curriculum vitae.

The above mentioned symposia as well as the present publication are part of the working results of the Project "Advisory Service to the Financial and Economic Committee of the National People's Congress of the People's Republic of China". The Project commenced in 1997 and up to now had provided various advisory services to the FEC on the following Chinese draft laws: Foreign Exchange Control Law, Securities Law, Investment Funds Law, Trust Law, Law on the Promotion of Small and Medium Enterprises, Property Law, Government Procurement Law, Bankruptcy Law, Bidding and Tendering Law, National Budget Law, Inheritance Tax Law, Army Insurance Law and amendments to the already existing Company Law and Partnership Enterprise Law. Advisory Services have been provided by individual consultations, workshops, symposia, researches, study tours and training. German Government represented by the German Federal Ministry of Economic Cooperation and Development invested app. 4.1 million Euro from 1997 up to 2004. Further funding may be taken into consideration for a time period commencing in 2005.

The Project "Advisory Service to the Financial and Economic Committee of the National People's Congress of the People's Republic of China" is part of the GTZ Legal Cooperation Office, which has been set up in Beijing in 2001. The GTZ Legal Cooperation Office is furthermore in Charge of the following four Projects: (1) "Advisory Service to the Legislative Affairs Commission of the Standing Committee of the People's National Congress", (2) "Advisory Service to the Budget Affairs Commission of the Standing Committee of the People's National Congress", (3) "Advisory Service to the Ministry of Commerce" and (4) "Advisory Service to the Ministry of Labour and Social Security".

For further information regarding the present publication or one of the above mentioned Projects, please contact the GTZ Legal Cooperation Office at Ta Yuan Diplomatic Office building 1-13-2, No. 14 Liangmahe Nanlu, Beijing 100600, PR China, phone (+86) 10 - 85321401, fax (+86) 10 - 85321405, email <gtznpc@netchina.com.cn> or visit our website at <www.gtz-legal-reform.org.cn>.

On behalf of FEC and GTZ, we thank all contributors for their valuable participation and their papers. FEC's support to our symposia by Ju Jiaren, Wang Wenyue, Zhu Zhongliang, Gong Fanrong, Zhai Qinghua, Liu Xiuwen, Cai Gaihuan, Zhai Wei, U Mingzhi and Zhong Zhenzhen was essential for the success. Last but not least, neither the symposia nor the present publication would have been possible without strong engagement of all members of the GTZ Legal Cooperation Office, especially Liu Chang, Zhang Weimin, Holger Hanisch, Andreas Obst, Sandra Nicklisch and Volker Hagemeister.

Zhu Shaoping
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