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中国对外经济法规汇编

第三辑

PUBLISHERS' NOTE

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

(Issued by the State Council on September 20, 1983)

CHAPTER I GENERAL PROVISIONS

Article 1 These Regulations are formulated for the purpose of facilitating the smooth implementation of the Law of the People's Republic of China on Chinese-Foreign Joint Ventures (hereafter referred to as the "Chinese-Foreign Joint Venture Law").

Article 2 Chinese-foreign joint ventures (hereafter referred to as "joint ventures") established in China with approval granted in accordance with the Chinese-Foreign Joint Venture Law are Chinese legal persons subject to the jurisdiction and entitled to the protection of Chinese law.

Article 3 Joint ventures established in China shall be capable of promoting China's economic development and raising its scientific and technological standards, and shall be beneficial to socialist modernization. The principal lines of business in which the establishment of joint ventures is permitted are:

- (1) Energy resources development, and the construction materials, chemical and metallurgical industries;
- (2) The machine-building, instrument and meter industries, and offshore oil-mining equipment manufacturing;

(3) Electronic industry, computer industry and communications equipment manufacturing;

(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.

Article 4 A joint venture that applies for establishment shall emphasize economic results and satisfy one or more of the following requirements:

(1) It will adopt advanced technology and equipment 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 venture, and achieve quick results and large profits with a small investment;

(3) It will be able to expand the export of its products and increase foreign exchange earnings; and

(4) It will be able to train technical and managerial personnel.

Article 5 Application for the establishment of a joint venture shall not be approved if the proposed joint venture would involve any of the following circumstances:

(1) Injury to China's sovereignty;

(2) Violation of China's laws;

(3) Incompatibility with the requirements of China's national economic development;

(4) Creation of environmental pollution; or

(5) Obvious inequity, infringing the rights and interests of one of the parties to the venture, in the signed agreement, contract or articles of association that they have concluded.

Article 6 Except as otherwise provided, the government

department in charge of the Chinese venturer shall be the department in charge of the joint venture (hereafter referred to as the "department in charge of the venture"). In the event that the joint venture involves two or more Chinese venturers under the jurisdiction of different departments or different areas, the relevant departments and areas shall, through consultation, designate a single department to be the department in charge of the venture.

The department in charge of the venture shall be responsible for guiding, assisting and supervising the joint venture.

Article 7 A joint venture has the right to conduct its business independently within the scope prescribed by China's laws and regulations and the joint venture agreement, contract and articles of association. All relevant departments shall provide support and assistance to the joint venture.

CHAPTER II ESTABLISHMENT AND REGISTRATION

Article 8 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 (hereafter referred to as the "Ministry of Foreign Economic Relations and Trade"). Upon approval, the Ministry of Foreign Economic Relations and Trade shall issue a certificate of approval.

If a joint venture meets the following conditions, the Ministry of Foreign Economic Relations and Trade may authorize the people's government of the relevant province, autonomous region or municipality directly under the central authority, or the relevant ministry or bureau under the State Council (hereafter referred to as the "authorized

agency") to examine and approve the joint venture:

(1) The total amount of investment is within the limit prescribed by the State Council, and the source of funds for the Chinese venturer has already been fixed; and

(2) The joint venture will not require any additional allocation of raw and processed materials by the state, nor will it affect the national balance of fuel and power supplies, communication and transportation, or foreign trade export quotas.

After the authorized agency has approved the establishment of the joint venture, it shall report such decision to the Ministry of Foreign Economic Relations and Trade for the record, and the Ministry of Foreign Economic Relations and Trade shall issue a certificate of approval.

(The Ministry of Foreign Economic Relations and Trade and the authorized agency are hereafter referred to collectively as the "examining and approving agency.")

Article 9 A joint venture shall be established in accordance with the following procedures:

(1) The Chinese venturer shall submit to the department in charge of the venture 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 execute the joint venture agreement, contract and articles of association.

(2) When applying to establish a joint venture, the Chinese venturer shall be responsible for submitting the following formal documents to the examining and

approving agency:

(i) An application for the establishment of the joint venture;

(ii) The feasibility study report jointly prepared by the parties to the joint venture;

(iii) The joint venture agreement, contract and articles of association executed by authorized representatives of each of the parties to the joint venture;

(iv) The list of the candidates for the chairman and vice-chairmen of the board of directors, and directors of the joint venture who have been appointed by the parties to the venture; and

(v) The signed opinions concerning the establishment of the joint venture of the department in charge of the Chinese venturer and the people's government of the province, autonomous region or municipality directly under the central authority in which the joint venture will be located.

The above-listed documents must be written in the Chinese language. Documents (ii), (iii) and (iv) may be written concurrently in a foreign language agreed to by the parties to the venture. The Chinese and foreign-language versions shall have equal effect.

Article 10 Within three months of the date of its receipt of all of the documents specified in Article 9(2) of these Regulations, the examining and approving agency shall decide whether or not to approve them. If the examining and approving authority finds anything inappropriate in any of such documents, it shall request that revision be made within a specified period of time, and it shall refuse to approve them if such revision is not made.

Article 11 Within one month of their receipt of a certificate of approval, the applicants shall, on the strength of that certificate, go through the procedures of registration

at 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 (hereafter referred to as the "agency for registration and administration") in accordance with the provisions of the Procedures of the People's Republic of China for the Registration and Administration of Chinese-Foreign Joint Ventures. The date on which the joint venture's business licence is executed and issued shall be deemed to be such joint venture's date of establishment.

Article 12 A foreign investor that wishes to establish a joint venture in China but that lacks a specific Chinese partner may put forward a preliminary joint venture proposal and authorize the China International Trust and Investment Corporation or the trust and investment agency of the relevant province, autonomous region or municipality directly under the central authority, or a relevant government department or people-to-people organization, to introduce it to a partner with which it may cooperate.

Article 13 As used in this Chapter, "joint venture agreement" refers to the document concluded by the parties to the venture upon reaching agreement on certain important points and principles governing the establishment of the joint venture.

"Joint venture contract" refers to the document concluded by the parties to the venture upon reaching agreement regarding their mutual rights and obligations in establishing the joint venture.

"Joint venture articles of association" refers to the document agreed upon by the parties to the venture that, based upon the principles stipulated in the joint venture contract, sets forth the purpose, organizational principles and operational and managerial methods of the joint venture.

In the event of a conflict between the joint venture agreement and the joint venture contract, the joint venture contract shall govern.

The parties to the venture may agree to omit a joint venture agreement and conclude only a joint venture contract and articles of association.

Article 14 A joint venture contract shall include the following main items:

(1) The respective names, countries of registration and legal addresses of the parties to the venture, and the names, positions and nationalities of their respective legal representatives;

(2) The name, legal address and purpose of the venture, and the scope and scale of its business operation;

(3) The total amount of investment in the joint venture, its registered capital, the amount of investment to be contributed by each party to the venture, the ratio of their contributions, the methods of contributing investments, the time limits for making contributions and provisions concerning incomplete contributions and assignment of investment;

(4) The ratio for the distribution of profits and sharing of losses between the parties to the venture;

(5) The composition of the joint venture's board of directors, the number of directors to be appointed by each party to the venture, the respective responsibilities and powers of its president, vice-president(s) and other senior managerial personnel, and the procedures for employing such personnel;

(6) The principal production equipment and production technology to be used in the joint venture, and their sources of supply;

(7) The manner in which raw and processed materials will

be purchased and products will be sold, and the ratio that sales of products inside China will bear to sales of products outside China;

(8) Arrangements for the receipt and expenditure of foreign exchange funds;

(9) Principles governing the handling of finance, accounting and auditing;

(10) Provisions concerning labour management, wages, welfare benefits, labour insurance and related matters;

(11) The term of the joint venture, and procedures for its dissolution and liquidation;

(12) Liabilities for breach of the contract;

(13) The methods and procedures to be used for resolving disputes between the parties to the venture; and

(14) The language to be used as the language of the contract, and conditions under which the contract becomes effective.

The appendices to a joint venture contract shall have a legal effect equal to that of the joint venture contract itself.

Article 15 The conclusion of a joint venture contract, its legal effect, interpretation and implementation as well as the resolution of disputes arising thereunder, shall be governed by Chinese law.

Article 16 Joint venture articles of association shall include the following main items:

(1) The name and legal address of the joint venture;

(2) The purpose of the joint venture, the scope of its business operations, and its term;

(3) The respective names, countries of registration and legal addresses of the parties to the venture, and the names, positions and nationalities of their respective legal representatives;

(4) The total amount of investment in the joint venture.

its registered capital, the amount of investment to be contributed by each party to the venture, the ratio of their contributions, provisions concerning the assignment of investment, and the ratio for the distribution of profits and sharing of losses;

(5) The composition of the board of directors, its powers and rules of procedure, the term of office of directors, and the responsibilities of the chairman and vice-chairman (or vice-chairmen) of the board;

(6) The establishment of a management structure, its operating rules, the responsibilities of the president, vice-president(s) and other senior managerial personnel, and the procedures for appointing and dismissing them;

(7) The principles governing the financial, accounting and auditing systems;

(8) Dissolution and liquidation; and

(9) Procedures for amending the articles of association.

Article 17 The joint venture agreement, contract and articles of association shall come into effect when approved by the examining and approving agency. The same procedure shall apply when amendments are made.

Article 18 The examining and approving agency and the agency for registration and administration are responsible for supervising and investigating the implementation of the joint venture contract and articles of association.

CHAPTER III ORGANIZATIONAL FORM AND REGISTERED CAPITAL

Article 19 A joint venture is a limited liability company.

The respective liabilities of the parties to the venture are limited to the amount of investment each has undertaken to contribute to the joint venture.

Article 20 The "total amount of investment" in a joint venture (including loans made to the venture) refers to the sum of the capital construction funds and the working capital necessary to allow for production on the scale stipulated in the joint venture contract and articles of association.

Article 21 The "registered capital" of a joint venture refers to the total amount of capital registered with the agency for registration and administration in order to establish the joint venture, and shall consist of the sum of the amounts of investment which the parties to the joint venture have undertaken to contribute to it.

The registered capital of a joint venture shall in general be expressed in Renminbi. It may also be expressed in a foreign currency agreed to by the parties to the venture.

Article 22 During the term of its operation, a joint venture may not reduce its registered capital.

Article 23 A party to a joint venture must obtain the consent of the other party to the joint venture and the approval of the examining and approving agency before assigning all or any part of its investment in the joint venture to a third party.

When a party to a joint venture wishes to assign all or part of its investment, the other party to the joint venture has the right of first refusal.

The terms a party to a joint venture offers when assigning its investment to a third party shall not be more favourable than the terms it offers to the other party to the joint venture.

Any assignment made in violation of the foregoing provisions shall be void.

Article 24 Increases in, assignments of and other forms of disposition of the registered capital of a joint venture shall be approved at a meeting of its board of directors and

reported to the original examining and approving agency for approval. Procedures for modification of the joint venture's registration shall then be carried out at the agency for registration and administration with which it originally registered.

CHAPTER IV METHODS OF CONTRIBUTING INVESTMENT

Article 25 The joint venturers may contribute their respective investments in currency, or may use as their investment buildings, plant, machinery and equipment or other materials, industrial property rights, proprietary technology, the right to the use of a site, etc., each of which shall be assigned a fixed value. If a contribution is made in the form of buildings, plant, machinery and equipment or other materials, industrial property rights or proprietary technology, its fixed value shall be determined by the parties to the venture on the basis of negotiations conducted in accordance with the principles of fairness and reasonableness; or the valuation shall be made by a third party agreed to by the parties to the venture.

Article 26 Foreign currency contributed by a foreign venturer shall be converted into Renminbi at the foreign exchange rate quoted by the State Administration of Exchange Control of the People's Republic of China (hereafter referred to as the "State Administration of Exchange Control") on the date on which the funds are paid, or exchanged for another foreign currency agreed to by the parties.

If a Renminbi cash contribution made by a Chinese venturer needs to be converted into a foreign currency, such conversion shall be made at the exchange rate quoted by the