

CHINESE

— ENGLISH LEGAL
DOCUMENTS

中英对照

涉外
法律
文书

(附词汇详解)

主编 徐浩然

主审 Norman Godwin



延边大学出版社

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前 言

随着中国加入 WTO 后国际经济往来的日趋火热,以及外国律师事务所的纷至沓来给中国律师带来的竞争和挑战,培养和锻造具有相当国际经济法律理念、实务能力和外语水平的中国律师,已成为中国法律服务业的当务之急。有关数据显示,中国目前共有约 11 万名执业律师,但其中真正能用英语作为工作语言、参加涉外法律活动的律师还不到 2000 名。中国的涉外非诉讼业务市场在很大程度上被外资所控制,极大地限制了中国本地律所分割此巨大蛋糕的空间。

在涉外非诉讼法律服务中,法律文书,尤其是针对国际经济贸易交往中的英文法律文书,是其服务的重要部分。因此,也就成为中国律师首先要补习的第一课。据悉,很多中国律师就是因为以用英语起草合格的法律文书的能力不足,而流失了大量的涉外法律业务。在此背景下,我们作为早期踏入涉外律师业的从业人员,经过多年对中英文双语法律文书的收集、筛选、整理,形成了现在这套具有应用和参考价值的汉英对照法律文书。它的宗旨就是帮助中国律师尽快掌握涉外律师业务中所涉及的法律文书格式、英语规范表达等技能,尽快与中国市场上的外国律师相抗衡,打开属于自己的涉外非诉讼业务市场。

就内容而言,本书涵盖了国际经济合作、国际贸易及律师实务等三大范畴,基本能解决涉外律师业务中可能遇到的法律文书问题。同时,我们认为,本书至少具有以下几个方面的特征:(1)作为源语言的中文文书范本取材广泛、典型、完整。既非面面俱到,也非断章取义。每一篇文书都能充分代表其应用领域。(2)作为目标语言的英文文本,经英美法国家执业律师多次审定,具有相当权威的语言、专业水准。(3)每章后所附的法律术语详解,极大地方便了读者学习、领会相关法律法规文书的内涵,也有利于读者进一步提高自己的法律英语水平。

本书的最终完稿,得益于我的同事为我提供的大力帮助。在此,我要对英国某律师事务所执业律师 Norman Godwin 先生对本书英文部分的最后审定工作,表示诚挚的谢意;对提供大量原始素材的其他律师,也表示衷心感谢。

当然,本书是否完全切合中国律师的实际需要,还有待时间的验证。同时,鉴于编者在语言和专业方面的局限,本书势必会存在这样或那样的问题。希望读者和专家批评指正,以便我们不断改进,以更好地服务于中国涉外律师业务的发展。

编 者

2005 年 7 月于上海

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第 一 章

外资企业的设立

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第一节 可行性研究报告

FEASIBILITY STUDY REPORT

1. 本报告的目的和范围

1. PURPOSE AND SCOPE OF THIS REPORT

本可行性研究报告的主要目的是研究并证明在北京市设立中外合资企业生产真空冷冻干燥机及其零备件的可行性,并详述拟议中该项目的规模和范围。

The primary purpose of this Feasibility Study Report is to study and demonstrate the feasibility of establishing a Sino-foreign joint venture in Beijing for the manufacturing of vacuum freezing dryer and its spare parts in Beijing and setting out the scale and scope of the proposed project.

2. 项目情况

2. PROJECT DESCRIPTION

(1) 公司名称

公司的中文名称为:[],英文名称为[]。

(1) Company Name

The name of the Company shall be [] in Chinese, and [] in English.

(2) 合资双方

中方合资者为北京 ABC 深冷设备股份有限公司(以下简称“甲方”),为一家按照中国法律组建和存续的股份有限公司。该公司为高科技型企业,其经营业务和经营范围为开发研制生产制药机械设备及其备件、开发有关技术并销售自产产品。

外方合资者为 XYZ 集团有限公司(以下简称“乙方”),为一家按照香港法律组建和存续的有限责任公司。该公司为科技类企业,致力于向内地引进国外先进的机械设备和技术,技术力量强,资金雄厚,信誉良好。

(2) The Parties to the Joint Venture

The Chinese Party to the joint venture is Beijing ABC Cryogenic Process Equipment Co. , Ltd. (hereinafter referred to as “Party A”), a company limited by shares organized and existing under the laws of the PRC. It is a high-tech enterprise and its operations and scope of business cover the development, research and production of pharmaceutical manufacturing equipment and their spare parts,

development of relevant technology, and distribution of self-produced products.

The foreign party to the joint venture is XYZ Limited (hereinafter referred to as "Party B"), a limited liability company organized and existing under the laws of Hong Kong. It is a science and technology enterprise with strong technical force, financial strength and good reputation, and is dedicated to introduction of foreign advanced machinery, equipment and technology to the mainland.

(3) 项目的性质和地点

公司为一家中外合资有限责任公司,其法定地址在北京市朝阳区望京利泽中园。

合资双方应按照合资双方之间签订的合资合同中规定的方式和时间缴付公司的注册资本,并根据其在公司中所持的股份占公司注册资本总额的比例参与公司利润的分配。

合资双方仅在其承诺对公司注册资本缴付的出资范围内承担公司的风险和亏损。

(3) Nature and Location of the Project

The Company shall be a Sino-foreign equity joint venture company with limited liability with its legal address at Wangjing Lize Zhongyuan, Chaoyang District, Beijing.

The Parties shall contribute to the registered capital of the Company in the manner and at the time stipulated in the equity joint venture contract made between the Parties and shall participate in the distribution of profits of the Company in proportion to their shares in the registered capital of the Company.

The Parties shall share the risks and losses of the Company only to the extent of its commitment to contribute to the registered capital of the Company.

(4) 公司的期限

公司的成立日为其营业执照签发之日。公司的合资期限为自成立日起 15 年,经合资双方事先书面同意可顺延 5 年。

(4) Term of the Company

The establishment date of the Company shall be the date of issuance of its business license. The joint venture term of the Company shall be 15 years from the establishment date which may be extended by 5 years upon expiration subject to prior written consent of the Parties.

3. 经营宗旨和经营范围

3. PURPOSE AND SCOPE OF OPERATION

(1) 经营宗旨

合资双方建立合资公司旨在加强合资双方的经济技术合作,发挥合资双方各自的优势,使合资双方获得满意的经济效益。合资双方的目标是将合资公司发展成为中国境内具有良好的市场竞争力和发展前景的制药机械生产企业。

(1) Purpose of Operation

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The Parties aim to establish the Company to strengthen the economic and technical cooperation between the Parties, to fully exploit their respective advantages and to generate satisfactory economic benefits to the Parties. The purpose of the Parties is to develop the Company to a competitive pharmaceutical machinery manufacturer with a bright prospect for development in the PRC.

(2) 公司的经营范围

公司的经营范围包括开发研制生产制药机械及设备、备件,开发有关技术并销售自产产品。

(2) The Scope of Operation of the Company

The business scope of the Company shall be the development and manufacture of pharmaceutical manufacturing machinery and relevant equipment and spare parts, development of relevant technologies and sales of self-produced products.

(3) 公司的生产规模

预计公司 2004 年的销售额可能为人民币[]万元。根据现行的市场条件和需求,公司的产品种类和生产量可在取得合资双方的一致同意后作进一步修改。

公司设立伊始,将不拟投资建造自有厂房和设施,而是向甲方租赁场地,以满足其生产的需要。

(3) Scale of Production of the Company

It is anticipated that the sales revenue of the Company for 2004 may be RMB[]. Subject to prevailing market conditions and demands, the range of products and the production capacity of the Company may be further revised upon unanimous consent being obtained from the Parties.

The Company will not initially be investing in building and constructing its own plants and facilities. Instead, the Company shall lease premises from Party A to meet its production needs.

4. 注册资本和出资

4. REGISTERED CAPITAL AND CAPITAL CONTRIBUTIONS

(1) 注册资本

公司的投资总额和注册资本分别为 57 万美元和 40 万美元,在遵守《中华人民共和国中外合资经营企业法》和其他有关法律法规的要求及公司章程之规定的前提下,合资双方可以决定增加或减少公司的注册资本。

(1) Registered Capital

The total amount of investment and the registered capital of the Company shall be US \$ 570,000 and US \$ 400,000 respectively. Subject to compliance with the requirements of the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures and other relevant laws and regulations and the provisions of the Articles of Association of the Company, the Parties may decide to increase or reduce the registered capital of the Company.

(2) 出资方式及时间

各方将以现金方式认缴公司的注册资本。其中,甲方应投入等值于 20 万美元的人民币(按每一出资日当天的汇率计算),占公司注册资本的 50%;乙方应出资 20 万美元,占公司注册资本的 50%。每一方对公司注册资本的出资应在不迟于成立日 90 天内全额缴清。

(2) Form and Timing of Capital Contributions

The parties shall contribute to the registered capital of the Company by way of cash. In particular, Party A shall contribute an amount in RMB equivalent to US \$ 200,000 (calculated at the exchange rate on the date of each capital contribution), accounting for 50% of the registered capital of the Company; and Party B shall contribute US \$ 200,000, accounting for 50% of the registered capital of the Company. Each Party shall make full payment of its capital contribution to the registered capital of the Company no later than 90 days after the establishment date.

(3) 管理和组织结构

公司设董事会。董事会由 4 名董事组成,包括董事长一名和副董事长一名。甲方和乙方分别有权提名两位董事。

董事会的组成和职权以及有关事项应在公司章程中予以规定,并按公司章程实施。

公司应采用总经理负责制,总经理负责公司的日常经营管理工作。

总经理应具备中国法律所要求的任职资格,并且应由董事会任命。管理人员的薪酬和聘用条件应按照董事会制定的政策确定。

(3) Management and Organization Structure

The Company shall have a board of directors consisting of 4 directors, including one chairman and one vice-chairman. Each of Party A and Party B shall have the right to nominate 2 director candidates.

The constitution, functions and powers of the Board and related matters shall be provided in and implemented in accordance with the Articles of Association of the Company.

The Company shall adopt a management system under which the general manager shall be responsible for the day-to-day management and operations of the Company.

The general manager shall be qualified to hold such a position under PRC law and shall be appointed by the Board. All compensation and terms of employment of the management personnel shall be set in accordance with the policies laid down by the Board.

(4) 劳动和人事管理

公司将引进并采用先进的生产技术和科学的管理方法。公司需要的人员数目应由总经理根据国外类似规模生产企业的一般惯例确定,并根据中国的具体情况予以调整。

预计公司在 2004 年在职员工的总数将为 80 人(包括外籍人员)。

(4) Labor and Personnel Management

The Company will adopt advanced production technology and scientific management techniques. The number of personnel required by the Company shall be determined by the general manager in accordance

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with the general practice of similar manufacturing enterprises overseas but modified in light of the specific conditions in China.

In 2004, it is expected that the Company will have a total permanent workforce of 80 persons (including foreign expatriate personnel).

5. 地理位置、气候和交通条件

5. GEOGRAPHIC LOCATION; CLIMATIC AND TRANSPORTATION CONDITIONS

(1) 地理位置

公司的生产及管理机构将设在北京朝阳区望京利泽中园,生产及办公设施总面积约 2000 平方米,系从甲方租入。

(1) Geographic Location

The Company shall have its production and management office in Wangjing Lize Zhongyuan, Chaoyang District, Beijing, with a total production and office facilities area of 2000m² leased from Party A.

(2) 天气情况和交通

见附件[]。

(2) Weather Information and Transportation

See Appendix[].

6. 公司产品及主要生产技术

6. THE COMPANY'S PRODUCTS AND MAJOR PRODUCTION TECHNOLOGY

合营公司主要生产:真空冷冻干燥机及其零备件。我公司生产的大型真空冷冻干燥机用于制备稳定的微生物制剂,使之冷冻并在真空下冻结,从而达到给产品脱水的目的。冷冻干燥可以保持易变质产品的稳定性,停止微生物的新陈代谢,获得易融于水的粉状物。真空冷冻技术属于高精尖技术,我公司生产的真空冷冻干燥机所有的技术关键点均达到国际先进水平:板层技术、制冷系统技术、真空系统技术、循环系统及液压压塞系统技术、气动系统技术等在国内属于首创。主要应用于食品加工业、生物工业和化学工业,常见的可冻处理物质有抗生素、抗凝血剂、疫苗、生物制剂、生物标准制品、血液切片、细菌培养物质、维生素类、花粉等。

The Company mainly produces: vacuum freezing dryers and their spare parts. Large vacuum freezing dryers produced by the Company are used to produce stable microorganism preparation and make such preparation be frozen under vacuum condition so as to dehydrate the products. Vacuum freezing and drying may keep the stability of perishable products and stop the metabolism of microorganism thereof to achieve a powdered form which can be melt in water easily. Vacuum freezing technology is a technology of high-grade and precision. All technical performances of the vacuum freezing dryers produced by the

Company reach the international advanced level: lamella technology, refrigerating system technology, vacuum system technology, recycling system and hydraulic toppler pressing system technology, pneumatic system technology etc. are new inventions in China. These technologies are mainly applied in food processing industry, biological industry and chemical industry. The following are some common substances which can be processed by freezing method: antibiotic, anticoagulant, vaccine, biological preparation, biological standard products, blood chip, bacteria culturing substance, vitamins, pollen etc.

7. 场地、公用事业及环境影响预测

7. PREMISES, UTILITIES AND FORECAST OF EFFECTS ON THE ENVIRONMENT

公司将租用甲方场地作为办公场所及生产设施,具体请见附件[]:甲方有关场地的房地产权证书及建筑平面图。

公司所需的水、电等公用事业由甲方现有的供应商提供,数量足以满足公司生产经营的需要,收费标准应不高于公司所在地企业一般的付费标准。

如前文所述,公司无须建造任何新的建筑物。公司的生产活动不产生任何废水、废气、废渣,符合国家有关环保方面的要求,具体请见附件[]。

The Company will lease Party A's premises as its office and production facilities, the details of which are set out as Appendix []—the Real Estate Ownership Certificate and Floor Plan of the Relevant Premises of Party A.

The water, electricity and other utilities required by the Company shall be provided by the existing suppliers of Party A in a quantity sufficient to meet the needs of production and operation of the Company. The fee rate shall not be higher than the rate generally paid by the enterprises in the place where the Company is located.

As mentioned above, the Company need not construct any new building. The manufacturing activities of the Company will not produce any wastewater, waste gas or solid residue and meet the requirements of the State concerning environmental protection. Details are set out as Appendix [].

8. 市场需求及投资回报分析

8. MARKET DEMAND AND INVESTMENT RETURN ANALYSIS

(1) 市场分析

甲方在大型真空冷冻干燥机的研制和生产方面有着多年的经验,填补了国内空白并起到了替代同类进口设备的作用,且价格仅为进口设备的一半,为国有大型制药企业在技改及 GMP 改造中节省了大量的资金,增强了产品在国内市场上的竞争力,目前产品在国内市场上的占有率已达 60% 以上。合资后,双方资源整合将达到最优化,外销产品将大大增加,创汇能力将大大增强,合资企业的业务将得到快速提升和发展。