

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

Foreign Contractual Ventures, the Law of the People's Republic of China on Chinese-Foreign Joint Ven-

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 its products and increase foreign earnings; (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 economic development, creation of environmental pollution and law, incompatibility with the requirement of Chinese national 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 prospect to the joint venture to be established with a foreign venturer proposal and a preliminary feasibility study report with refer. Only after such proposal and preliminary feasibility study report have been examined and agreed to by the department in

venture undertake work with the feasibility study as the core examining and approving agency, may the parties to the joint charge of the venture and transmitted to and approved by the 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 the source of funds for the Chinese partner has already been within the limit prescribed by the State Council, and 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 Au-

cil (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 Approvin Agency shall decide whether to approve or disapprove documents presented by the Chinese partner, the Examining and the joint venture. If the Agency discovers anything inappropriate 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-

tics, range of business, operation methods, registered capitals, the number of the employees, duration of business, establishment or cancellation of branch offices; the enterprise must re-approval and go through procedures for notification of the joint port them to the original examining and approving agency for venture's registration at the original agency for registration.

如果合营企业的法人名称、住所、经营场所、法定代表人、经济性质、经营范围、经营方式、注册资本、从业人数、经营期限、分支机构的设立或撤销有任何变化，均应报原审批机构批准，原登记管理机构办理变更登记。

When a joint venture is dissolved because of the close of reasons, the enterprise must report it to the original examining business, being canceled, announcement of bankruptcy or other and approving agency for approval and carry out procedures for cancellation of registration at the original agency for registration and administration with its business license turned in for cancellation.

合营企业歇业、被撤销、宣告破产或者由于其他原因终止营业时，应当报原审批机构批准，向原登记管理机构交回企业营业执照，办理注销登记。

2.3 Organizational Form and Registered Capital 合营企业的组织形式和注册资本

2.3.1 Organizational Form 合营企业的组织形式

The Law on Chinese-Foreign Joint Ventures provides that a joint venture is a limited liability company. The parties to the enterprise shall share the benefits and bear the risks and losses in proportion to their respective contribution to the registered

capital. The liabilities of each party to the enterprise is limited to the amount of investment contributed by the party to the enterprise. The enterprise bears its liabilities to the others with its total assets.

《中外合资经营企业法》规定，合营企业的形式为有限责任公司。合营各方按注册资本的比例分享利润和分担风险及亏损。合营企业的股东以其出资为限对企业的债务承担有限责任；合营企业以其全部资产对企业的债务承担责任。

2.3.2 Registered Capital 合营企业的注册资本

The registered capital refers to the total amount of capital registered with the agency for registration to establish an enterprise, and is made up of the sum of the amount of investment which the parties to the enterprise have undertaken to contribute

the rate of the amount of investment by the foreign parties shall to it. The Law on Chinese-Foreign Joint Ventures provides that

venture. But there is no limit on the maximum rate for foreign not be less than 25% of the registered capital of the equity joint parties, which is attractive to the foreign investors.

合营企业的注册资本是指为设立合营企业，在登记管理机构注册的资本总额，应为合营各方认缴的出资额之和。《中外合资经营企业法》规定，在合营企业的注册资本中，外国合营者的投资比例一般不低于 25%。但并未限定上限，有利于吸引外资。

When a party wished to assign all or part of its investment, the other parties have the right of preemption. When a party assigns all or part of its investment to a third party, the party must obtain the consent of the other parties and approval of the original terms offered by the party to a third party shall not be more favourable than the terms to the other parties to the joint ven-

tures.

合营一方如转让其全部或部分出资额时，合营他方有优先购买权；向第三方转让时，须经合营他方同意，并经原审批机构批准，且转让的条件不得比向合营他方转让的条件优惠。

A joint venture may not reduce its registered capital during the term of its operation for the reason that the registered capital is the basis for the operation of the joint venture and is the minimum amount of capital warranty for the liabilities of the enterprise. But the enterprise may increase the registered capital, which shall be approved at a meeting of its board of directors and reported to the original examining and approving agency for approval. The enterprise shall undertake the procedure for modification of registration with the agency for registration and administration.

合营企业在合营期限内不得减少企业的注册资本。合营企业的注册资本是合营企业生产经营所必需的基础，也是合营企业承担债务的最低资金担保限额。但合营企业的注册资本可以增加，由董事会会议通过，报原审批机构批准，并向登记管理机构办理变更登记手续。

2.4 Investment Contribution Methods and Period of Investment 出资方式 and 出资期限

A joint venture may contribute its investments in the following ways:

a. Investment in cash : Chinese currency or freely convertible foreign currency;

b. Investment with physical objects: buildings, plants, machinery and equipment or other materials. The machinery or

equipment shall be essential for the use in production by the joint venture, and it cannot be manufactured by the Chinese ventures, or if it can be manufactured by the Chinese ventures,

equipment shall not exceed the current normal price for the same guaranteed. And the capitalized value of such machinery or its quality and supply during the prescribed period cannot be type of items on the international market.

c. Industrial property rights, proprietary technology and the rights to the use of land which are assigned a fixed value : Industrial property rights or proprietary technology as investment contributed by foreign partners must be able to produce new products urgently needed in China, or products suitable for export ; to improve markedly the performance and quality of existing products and raise productivity ; or to conserve raw or processed materials, fuel or power.

合营企业各方可以以下列方式出资 :

a. 现金出资 : 以人民币出资或以可自由兑换的外币出资 ;

b. 实物出资 以建筑物、厂房、机器设备或其他物料作价出资。但这些机器设备必须是合营企业生产所必需的 ; 中国无法生产 , 或虽然能生产但价格过高或者技术性能和供应时间上不能保证需要的 ; 而且对这些实物的作价不得高于同类机器设备当时的国际市场正常价格 ;

c. 用工业产权、专有技术、场地使用权等作价出资。外国合营者出资的工业产权或专有技术必须是能生产中国急需的新产品或出口试销产品 , 或者能显著改进现有产品的性能、质量 , 提高生产效率的 或者能显著节约原材料、燃料、动力的。

If the materials, industrial property rights and proprietary technology are contributed as investment, their fixed value will be determined by the parties to the enterprise on the basis of

negotiations in accordance with the principles of fairness and reasonableness or determined by a third party agreed to by the parties.

以实物出资，或以工业产权、专有技术出资，其作价由合营各方按照公平合理的原则协商确定或聘请合营各方同意的第三者评定。

When a Chinese party does not use the right to the use of land as its investment, the joint venture must pay the land use fee to the Chinese Government.

如果中国合营者不以场地使用权作为出资方式，合营企业应向中国政府交纳场地使用费。

The parties to a joint venture must clearly specify the time limits for contribution of the investment, which may be lump-sum payment or installment payment. In accordance with Regulations for the Contribution of the Parties to a Chinese-Foreign Joint Venture, each party must pay in full the amount of investment within six months from the date on which the business license is issued. When the payment is in installment, the first amount of the investment prescribed in the contract and be paid within three months from the date on which the business license is issued. When the payment is in installment, the first amount of the investment prescribed in the contract and be paid payment of the investment must be more than 15% of the amount of the investment prescribed in the contract and be paid within three months from the date on which the business license is issued.

合营各方应在合营合同中明确规定出资期限，可以一次性付清，也可以分期缴付。根据《中外合资经营企业合营各方出资的若干规定》，合营合同中规定一次缴清出资的，合营各方应当从营业执照签发之日起六个月内缴清；分期缴付出资的，合营各方第一期出资不得低于各自认缴出资额的 15%，并且应当在营业执照签发之日起三个月内缴清。

2.5 Organ of Authority and Management Structure

权力机构和经营管理机构

2.5.1 Organ of Authority 权力机构

The board of directors is the highest authority of a joint venture and shall decide all the major questions relating to the joint venture.

合营企业最高权力机构是董事会，讨论决定合营企业的一切重大问题。

The board of directors consists of no fewer than three members. The apportionment of the number of directors shall be determined with reference to the ratio of their respective investment. The term of office for directors are appointed by each party. The term of office for directors shall be four years and may be renewed with consent of the parties.

董事会的人数不得少于三人，合营各方可依照各自的出资比例协商确定董事名额的分配，并各自委派董事，董事的任期为四年，经各方同意后，可以连任。

The chairman and vice chairman are selected through negotiation by the parties or at the meeting of the board of the directors. Usually the chairman is appointed by one party and the vice chairman is appointed by the other party. The chairman of the board of directors shall be the legal representative of this joint venture.

董事长和副董事长由合营各方协商确定或由董事会选举产生。通常合营一方担任董事长，他方担任副董事长。董事长是合营企业的法定代表。

The board of directors holds a meeting at least once a year and an interim board meeting will be held on motion of one-third or more of the directors. The unanimous approval of the important matters, such as amendment of the articles of association of the joint venture, termination or dissolution of the joint venture, and merger of the joint venture with another economic organizations.

董事会会议每年至少召开一次。经三分之一以上的董事提议，可以召开董事会临时会议。董事会必须一致通过方可作出决议的事项有：合营企业章程的修改；合营企业的终止、解散；合营企业注册资本的增加、转让；合营企业与其他经济组织的合并。

2.5.2 Management Structure 经营管理机构

The management structure of a joint venture is responsible for the day-to-day management of the joint venture. The management structure shall have one general manager and several deputy general managers. The general manager shall implement all resolutions of the board meeting and organize the daily management of the enterprise. The deputy general managers shall assist the general manager in his work. It should be noted that the general manager and deputy general managers may not concurrently hold the positions of the general manager and deputy general managers of another economic organization and participate its commercial competition with the joint venture.

合营企业的经营管理机构负责企业的经营管理工作。经营管理机构设总经理一人，副总经理若干人。总经理执行董事会会议的各项决议，组织领导合营企业的日常管理工作。副总经理协助总经理工作。值得注意的是，总经理和副总经理不得兼任其他经济组织的总经理或副总经理，不得参与其他经济组织对本企业的

商业竞争。

2.6 Term of Business, Dissolution and Liquidation

经营期限、终止和清算

2.6.1 Term of Business 经营期限

The term of a joint venture is usually from 10 to 30 years. The enterprise may decide its term with respect to the specific conditions of the line of business and the project. In the case of a project involving a large investment, a long construction period and a low profit rate, or a project in which highly sophisticated products are produced through advanced technology or key technology provided by the foreign party, or a project in which venture may prolong to 50 years. Upon special approval by the the products are competitive in the world, the term of the joint State Council, the term may be more than 50 years.

合营期限为 10 年至 30 年。合营企业可以根据行业和项目的具体情况，协商决定合营期限。投资大、建设周期长、资金利润率低的项目、由外国合营者提供先进技术或关键技术生产尖端产品的项目、或在国际上有竞争能力的产品的项目，其合营期限可以延长到 50 年。经国务院特别批准可在 50 年以上。

The term of a joint venture is dated from the date when its business license is issued. Six months before the stipulated expiration of the term, the joint venture may submit to the Examining and Approving Agency the application for renewal of the ties and go through the procedure for modification of registration signed by the authorized representatives of each of the parties after being approved.

合营期限从合营企业的营业执照签发之日起算。合营企业的