ภาคผนวก

¶360-090 Law of the People's Republic of China on Sino-foreign Equity Joint Venture Enterprises

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Amended 4 April 1990 at the 3rd Session of the 7th National People's Congress in accordance with the Decision to Revise the Law of the People's Republic of China on Sino-foreign Equity Joint Venture Enterprises

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Article 1. In order to expand international economic co-operation and technological exchange, the People's Republic of China shall permit foreign companies, enterprises and other economic entities or individuals (hereinafter referred to as foreign partners) to establish, within the territory of the People's Republic of China, equity joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as Chinese partners), in accordance with the principles of equality and mutual benefit that are subjected to the approval by the Chinese government.

Article 2. The Chinese government, pursuant to the provisions of agreements, contracts and articles of association which it has approved, shall protect foreign partners' investment in equity joint ventures, profits due to them and their other legal rights and interests in accordance with the law.

All activities of an equity joint venture shall be governed by the laws and regulations of the People's Republic of China.

The State shall not subject equity joint ventures to nationalisation or expropriation. In special circumstances, however, in order to meet public interest requirements, the State may expropriate an equity joint venture in accordance with the legal procedures, but certain compensation must be paid.

Article 3. Equity joint venture agreements, contracts and articles of association to which the various parties to an equity joint venture are signatories shall be submitted to the state department in charge of foreign economics and trade (hereinafter referred to as an examining and approval authority) for examination and approval. An examining and approval authority shall decide whether or not to grant the approval within three months. Once approved, an equity joint venture shall register with a state administration for industry and commerce and commence its operations after obtaining a business licence.

Article 4. An equity joint venture shall take the form of a limited liability company.

The proportion of investment contributed by a foreign partner as its share of the registered capital of an equity joint venture shall in general be no less than 25 per cent.

Equity joint venture partners shall share profits and bear risks and losses in proportion to their contribution to the registered capital of an equity joint venture.

The transfer of one party's share of the registered capital shall be effected only with the consent of the other parties to the equity joint venture.

Article 5. Each party to an equity joint venture may contribute cash, capital goods, industrial property rights, etc., as its investment in the enterprise.

Technology and equipment contributed as investment by a foreign partner must genuinely be an advanced technology and equipment appropriate to China's needs. If losses occur due to deception resulting from the intentional supply of outdated technology or equipment, compensation shall be paid.

The investment contribution of a Chinese partner may include providing site-use rights for an equity joint venture during its period of operations. If site-use rights are not part of the Chinese partner's investment contribution, the equity joint venture shall be required to pay site-use fees to the Chinese government.

The various items of investment mentioned above shall be specified in the equity joint venture contract and articles of association. The value of each item (excluding the site) shall be determined by the equity joint venture partners through joint assessment.

Article 6. An equity joint venture shall establish a board of directors composed of a certain number of members determined through consultation by the equity joint venture partners and stipulated in the equity joint venture contract and articles of association. Each equity joint venture partner shall be responsible for the appointment and replacement of its own directors. The chairperson and deputy chairperson shall be selected by the equity joint venture partners through consultation or shall be elected by the board of directors. Where the chairperson is appointed from one party to an equity joint venture, the deputy chairperson shall be appointed from the other party. The board of directors, in accordance with the principles of equality and mutual benefit, shall decide all the important matters of an equity joint venture.

A board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the equity joint venture, all the important issues concerning the enterprise, namely, enterprise development plans, production and operational projects, its income and expenditure budget, profit distribution, labour and wage plans, suspension of operations; as well as the appointment or hiring of general manager, deputy general manager, chief engineer, chief accountant and auditor, and determining their functions and powers, remuneration, etc.

The general and deputy general managers (or general and deputy factory heads) shall be appointed separately by each of the joint venture partners.

Matters such as the recruitment, dismissal, remuneration, welfare benefits, labour protection and labour insurance of employees of an equity joint venture shall be stipulated in contracts concluded in accordance with the law.

Article 7. Employees of an equity joint venture may establish a trade union organisation according to the law for the promotion of trade union activities and the protection of the legal rights and interests of employees.

An equity joint venture shall provide its enterprise trade union with the necessary facilities for its activities.

Article 8. After payment of equity joint venture income tax on an enterprise's gross profit, pursuant to the tax laws of the People's Republic of China, and after deductions therefrom as stipulated in its articles of association regarding reserve funds, employee bonus and welfare funds and enterprise development funds, the net profit of an equity joint venture shall be distributed between the equity joint venture partners in proportion to their investment contribution to the enterprise's registered capital.

An equity joint venture may enjoy preferential treatment in the form of tax reductions or exemptions in accordance with the provisions of the relevant state tax laws and administrative regulations.

A foreign partner that reinvests its share of an equity joint venture's net profit within the Chinese territory may apply for a rebate on that portion of income tax already paid.

Article 9. An equity joint venture shall present its business licence to a bank or other financial institution authorised by a state exchange control organ to engage in foreign exchange dealings and shall open a foreign exchange account.

An equity joint venture shall conduct its foreign exchange transactions in accordance with the *Regulations of the People's Republic of China for Foreign Exchange Control.*

An equity joint venture may, in its business operations, obtain funds directly from foreign banks.

The various items of insurance required by an equity joint venture shall be furnished by insurance companies within the Chinese territory.

Article 10. An equity joint venture, within its approved scope of operations and in accordance with the principles of fairness and reasonableness, may purchase raw materials, fuels, and other such materials from both domestic and international markets. An equity joint venture shall be encouraged to sell its products outside China. It may sell its export products on foreign markets through its own direct channels or its associated agencies or through China's foreign trade establishments. Its products may also be sold on the domestic Chinese market.

If deemed necessary, an equity joint venture may establish branch organisations outside China.

Article 11. Net profit received by a foreign partner after executing obligations prescribed by the relevant laws, agreements and contracts, funds received on the termination or suspension of an equity joint venture's operations and other relevant funds may be remitted abroad in accordance with the exchange control regulations and in the currency specified in the equity joint venture contract.

A foreign partner shall be encouraged to deposit in the Bank of China foreign exchange that it is entitled to remit abroad.

Article 12. Wage income and other legitimate income earned by equity joint venture employees of foreign nationality may be remitted abroad in accordance with the exchange control regulations after payment of individual income tax pursuant to tax laws of the People's Republic of China.

Article 13. The duration of an equity joint venture's term of operations may differ, depending on the line of business and other differing circumstances. The term of operations of some types of equity joint ventures shall be set, while the term of operations of other types of equity joint ventures may be set in some cases, but not set in others. In the case of an equity joint venture which has its term of operations set, the term may be extended subject to the agreement of all equity joint venture partners and the lodging of an application with the examining and approval authority six months before the expiry of the joint venture term. The examining and approval authority shall decide whether to approve or reject an application within one month of its receipt.

Article 14. In the event of an equity joint venture incurring heavy losses, one party failing to execute its obligations as prescribed in the equity joint venture contract or articles of association, or force majeure, etc.; the contract may be terminated subject to the negotiation and agreement reached by all parties of an equity joint venture, the approval of examining and approval authority and registration with a state administration for industry and commerce. If a loss is incurred due to a breach of contract, the party that violated the contract provisions shall bear the financial liability for the loss.

Article 15. Any dispute arising between equity joint venture partners that the board of directors is unable to settle through consultation may be resolved through conciliation or arbitration by a Chinese arbitral body or through arbitration conducted by an arbitral body agreed on by all parties of an equity joint venture.

If the parties of an equity joint venture have not stipulated an arbitration clause in their contract or do not reach a written arbitration agreement after a dispute has arisen, they may file a lawsuit in a people's court.

Article 16. This Law shall take effect from the date of promulgation.