

¶360-110 Law of the People's Republic of China on Sino-foreign Cooperative Joint Venture Enterprises

Adopted 13 April 1988 at the 1st Session of the 7th National People's Congress

Revised 31 October 2000 at the 18th Meeting of the Standing Committee of the National People's Congress by the Decision on the Revision of the "Law of the People's Republic of China on Sino-foreign Cooperative Joint Venture Enterprises"

Article 1. This Law is formulated in order to expand economic co-operation and technological exchange with foreign parties and to encourage foreign enterprises and other economic entities or individuals (hereinafter referred to as foreign partners) to establish joint Sino-foreign co-operative enterprises (hereinafter referred to as co-operative enterprises) within Chinese territory together with enterprises or other economic entities of the People's Republic of China (hereinafter referred to as Chinese partners) in accordance with the principles of equality and mutual benefit.

Article 2. When Chinese and foreign partners establish a co-operative enterprise, provisions on such items as investment or terms for co-operation, distribution of earnings or products, sharing of risks and losses, method of business management and the ownership of property on the expiry of the contract term shall be prescribed in the co-operative enterprise contract in accordance with the provisions of this Law.

A co-operative enterprise, which complies with the provisions of Chinese law for a legal person, shall acquire the status of a Chinese legal person.

Article 3. The State shall protect the legal rights and interests of co-operative enterprises as well as the Chinese and foreign partners in accordance with the law.

A co-operative enterprise shall abide by the laws and regulations of the People's Republic of China and shall not harm the public interests of Chinese society.

The relevant State organs shall supervise co-operative enterprises in accordance with the law.

Article 4. The State shall encourage the establishment of export-oriented or technologically advanced production-type co-operative enterprises.

Article 5. When applying to establish a co-operative enterprise, the agreement, contract, articles of association and other relevant documents signed by the Chinese and foreign partners shall be submitted for examination and approval to the State Council department in charge of foreign economic relations and trade or a department or local government authorized by the State Council (hereinafter referred to as an examining and approving organ). The examining and approving organ shall make a decision on whether or not to approve the application within 45 days of its receipt.

Article 6. Following approval of an application to establish a co-operative enterprise, an application for registration and a business licence shall be made to the administration for industry and commerce within 30 days of receiving the certificate of approval. A co-operative enterprise shall be deemed to be established from the date of issue of its business licence.

155,602

Legislation

A co-operative enterprise shall register with the taxation organ for tax purposes within 30 days of its establishment.

Article 7. If, during the term of co-operation, the Chinese and foreign partners agree through consultation to make a major amendment to the co-operative enterprise contract, the matter shall be reported to the examining and approving organ for approval. If the amendment involves items for official industrial or commercial registration or tax registration, procedures for registration of the amendment shall be conducted with the administration for industry and commerce or the taxation organ.

Article 8. Investment or terms for co-operation by Chinese and foreign partners may be in the form of cash, kind, land-use rights, industrial property rights, non-patented technology and other property rights.

Article 9. The Chinese and foreign partners shall discharge their obligations both to subscribe their investment in full and to provide conditions for co-operation on schedule, in accordance with the provisions of the laws and regulations and the provisions agreed on in the co-operative enterprise contract. In the event of failure to fulfil such obligations, the administration for industry and commerce shall stipulate a deadline for fulfilment and, if obligations are still not fulfilled by the stipulated date, the examining and approving organ and the administration for industry and commerce shall handle the matter in accordance with the relevant regulations.

The investment or terms for co-operation to be contributed by Chinese and foreign partners shall be examined and verified by an accountant registered in China or a relevant organ and a certificate shall be issued.

Article 10. If any one party to Sino-foreign co-operation wishes to assign, in full or in part, its rights and liabilities as prescribed in the co-operative enterprise contract, the agreement of the other party shall be obtained and the matter shall be reported to the examining and approving organ for approval.

Article 11. A co-operative enterprise shall conduct business management activities in accordance with the approved co-operative enterprise contract and articles of association and its right of autonomy in the area of business management shall not be interfered with.

Article 12. A co-operative enterprise shall set up a board of directors, or a joint management body, to make decisions on major issues involving the co-operative enterprise in accordance with the provisions of the co-operative enterprise contract or articles of association. One party of the Chinese and foreign partners shall appoint a person to hold the position of chairman of the board of directors or head of the joint management body and a person appointed by the other party shall hold the position of deputy chairman of the board of directors or deputy head. The board of directors or the joint management body may decide on the appointment or engagement of a general manager to conduct the daily business management of the co-operative enterprise. The general manager shall be responsible to the board of directors or the joint management body.

After the establishment of a co-operative enterprise, if a party other than the Chinese and foreign partners is engaged to manage the business, the unanimous agreement of the

1360-110

Legislation

155,603

members of the board of directors or the joint management body must be obtained. The matter shall be reported to the examining and approving organ for approval and the change shall be registered with the administration for industry and commerce.

Article 13. Matters such as the recruitment and dismissal of employees, remuneration, welfare benefits, labour protection and labour insurance shall be stipulated in contracts signed in accordance with the law.

Article 14. Co-operative enterprise employees shall abide by the law in establishing a trade union organization for the promotion of trade union activities and the protection of their legal rights and interests.

A co-operative enterprise shall provide its enterprise trade union with the necessary facilities for its activities.

Article 15. A co-operative enterprise shall establish books of account within the territory of the People's Republic of China, shall submit accounting statements in accordance with regulations and shall accept supervision by the financial and taxation organs.

If a co-operative enterprise violates the provisions of the previous paragraph and does not establish books of account within the Chinese territory, the taxation organ may issue a fine and the administration for industry and commerce may order the closure of operations or may revoke the business licence of the co-operative enterprise.

Article 16. A co-operative enterprise shall present its business licence and open a foreign exchange account with a bank or other financial institution authorized by an organ of the State Administration of Exchange Control to engage in foreign exchange dealings.

The foreign exchange dealings of a co-operative enterprise shall be handled in accordance with the relevant State provisions on exchange control.

Article 17. A co-operative enterprise may obtain a loan from a financial institution within Chinese territory or from overseas.

Any loan and the loan guarantee raised by a Chinese or foreign partner for investment or for a contractual provision shall be arranged by the respective party.

Article 18. The various kinds of insurance required by a co-operative enterprise shall be furnished by an insurance organization within Chinese territory.

Article 19. A co-operative enterprise may, within its approved scope of operations, import goods and materials it requires and export the resulting manufactured products. A co-operative enterprise may, within its approved scope of operations and in accordance with the principle of fairness and reasonableness, purchase raw materials, fuel and other requirements from both domestic and international markets.

Article 20. A co-operative enterprise may also enjoy favourable treatment in the form of a reduction of or exemption from tax payments, following its payment of taxes due in accordance with the relevant State regulations.

Article 21. Chinese and foreign partners shall distribute income or products and shall bear the responsibility for risks or losses in accordance with the provisions stipulated in the co-operative enterprise contract.

155,604

[Next page is 155,801]

Legislation

When the Chinese and foreign partners agree in the co-operative enterprise contract that, on the expiry of the duration of the term of co-operation, all the fixed assets of the co-operative enterprise shall revert to ownership by the Chinese partner, methods to allow the foreign partner to recover its investment within the term of co-operation may be stipulated in the co-operative enterprise contract.

If a co-operative enterprise contract stipulates that the foreign partner shall recover its investment before paying income tax, an application shall be submitted to the finance and taxation organs which shall examine and determine an approval of the matter in accordance with the relevant State provisions on taxation.

When the foreign partner recoups its investment within the period of co-operation according to the provisions of the previous paragraph, the Chinese and foreign partners shall be responsible for the liabilities of the co-operative enterprise in accordance with the provisions of the relevant laws and the stipulations of the co-operative enterprise contract.

Article 22. Dividends remaining after a foreign partner has fulfilled all obligations as prescribed in the laws and regulations and the stipulations of the co-operative enterprise contract, and other legal income and funds distributed by the co-operative enterprise at the termination of co-operation may be remitted abroad in accordance with the law.

Income in the form of wages or other legal earnings of employees of foreign nationality of a co-operative enterprise may be remitted abroad after payment of individual income tax in accordance with the law.

Article 23. On the expiry or premature termination of the term of a co-operative enterprise, assets, claims and debts shall be liquidated in accordance with legal procedures. Chinese and foreign partners shall determine ownership of co-operative enterprise property in accordance with the stipulations of the co-operative enterprise contract.

On the expiry or premature termination of the term of a co-operative enterprise, the procedures for the cancellation of registration shall be carried out with the administration for industry and commerce and the taxation organ.

Article 24. The duration of the term of co-operation of a co-operative enterprise shall be determined through a consultation by the Chinese and foreign partners and specified in the co-operative enterprise contract. If the Chinese and foreign partners agree to extend the term of co-operation, an application shall be submitted to the examining and approving organ 180 days before the expiry of the term of co-operation. The examining and approving organ shall decide whether or not to approve the application within 30 days of receipt.

Article 25. If a dispute arises between Chinese and foreign partners over the implementation of a co-operative enterprise contract, the matter shall be resolved through consultation or mediation. If the Chinese and foreign partners are unwilling to use consultation or mediation to resolve the dispute or if consultation or mediation fail to produce a result, the matter may be submitted to a Chinese arbitral body or another arbitral body for arbitration in accordance with the provisions on arbitration in the co-

Legislation**155,801**

operative enterprise contract or an arbitral agreement concluded in writing after the dispute has arisen.

If the Chinese and foreign partners have not included provisions on arbitration in the co-operative enterprise contract and fail to conclude a written arbitral agreement after a dispute has arisen, a suit may be filed in a Chinese court.

Article 26. The State Council department in charge of foreign economic relations and trade shall formulate implementing rules in accordance with the provisions of this Law, to be implemented following their approval by the State Council.

Article 27. This Law shall take effect from the date of promulgation.