

中华人民共和国中外合资经营企业法 (2016修正)

Law of the People's Republic of China on Sino-foreign Equity Joint Ventures (Revision 2016)

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中华人民共和国中外合资经营企业法 (2016修正)

(1979年7月1日第五届全国人民代表大会第二次会议通过 根据1990年4月4日第七届全国人民代表大会第三次会议《关于修改〈中华人民共和国中外合资经营企业法〉的决定》第一次修正 根据2001年3月15日第九届全国人民代表大会第四次会议《关于修改〈中华人民共和国中外合资经营企业法〉的决定》第二次修正 根据2016年9月3日第十二届全国人民代表大会常务委员会第二十二次会议《关于修改〈中华人民共和国外资企业法〉等四部法律的决定》第三次修正)

第一条

中华人民共和国为了扩大国际经济合作和技术交流,允许外国公司、企业和其它经济组织或个人(以下简称外国合营者),按照平等互利的原则,经中国政府批准,在中华人民共和国境内,同中国的公司、企业或其它经济组织(以下简称中国合营者)共同举办合营企业。

第二条

中国政府依法保护外国合营者按照经中国政府批准的协议、合同、章程在合营企业的投资、应分得的利润和其它合法权益。

合营企业的一切活动应遵守中华人民共和国法律、法规的规定。

国家对合营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,对合营企业可以依照法律程序实行征收,并给予相应的补偿。

第三条

合营各方签订的合营协议、合同、章程,应报国家对外经济贸易主管部门(以下称审查批准机关)审查批准。审查批准机关应在三个月内决定批准或不批准。合营企业经批准后,向国家工商行政管理主管部门登记,领取营业执照,开始营业。

Law of the People's Republic of China on Sino-foreign Equity Joint Ventures (Revision 2016)

(Adopted on 1 July 1979 by the 2nd Session of the 5th National People's Congress Revised on 4 April 1990 by the 3rd Session of the 7th National People's Congress pursuant to the Decision on Revision of the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures Revised on 15 March 2001 by the 4th Session of the 9th National People's Congress pursuant to the Decision on Revision of the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures Revised on 3 September 2016 pursuant to the Decision of the Standing Committee of the National People's Congress on Revision of Four Laws Including the Law of the People's Republic of China on Wholly Foreign-owned Enterprises)

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

<p>第四条</p> <p>合营企业的形式为有限责任公司。</p> <p>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百分之二十五。</p> <p>合营各方按注册资本比例分享利润和分担风险及亏损。</p> <p>合营者的注册资本如果转让必须经合营各方同意。</p>	<p>operations after obtaining a business licence.</p> <p>Article 4 An equity joint venture shall take the form of a limited liability company.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p>第五条</p> <p>合营企业各方可以现金、实物、工业产权等进行投资。</p> <p>外国合营者作为投资的技术和设备，必须确实是适合我国需要的先进技术和设备。如果有以落后的技术和设备进行欺骗，造成损失的，应赔偿损失。</p> <p>中国合营者的投资可包括为合营企业经营期间提供的场地使用权。如果场地使用权未作为中国合营者投资的一部分，合营企业应向中国政府缴纳使用费。</p> <p>上述各项投资应在合营企业的合同和章程中加以规定，其价格(场地除外)由合营各方评议商定。</p>	<p>Article 5</p> <p>Each party to an equity joint venture may contribute cash, capital goods, industrial property rights, etc., as its investment in the enterprise.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p>第六条</p> <p>合营企业设董事会，其人数组成由合营各方协商，在合同、章程中确定，并由合营各方委派和撤换。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。中外合营者的一方担任董事长的，由他方担任副董事长。董事会根据平等互利的原则，决定合营企业的重大问题。</p> <p>董事会的职权是按合营企业章程规定，讨论决定合营企业的一切重大问题：企业发展规划、生产经营活动方案、收支预算、利润分配、劳动工资计划、停业，以及总经理、副总经理、总工程师、总会计师、审计师的任命或聘请及其职权和待遇等。</p> <p>正副总经理(或正副厂长)由合营各方分别担任。</p> <p>合营企业职工录用、辞退、报酬、福利、劳动保护、劳动保险等事项，应当依法通过订立合同加以规定。</p>	<p>Article 6</p> <p>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.</p> <p>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.</p> <p>The general and deputy general managers (or general and deputy factory heads) shall be appointed separately by each of the joint venture partners.</p> <p>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</p>

<p>第七条</p> <p>合营企业的职工依法建立工会组织，开展工会活动，维护职工的合法权益。</p> <p>合营企业应当为本企业工会提供必要的活动条件。</p>	<p>accordance with the law. Article 7</p> <p>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.</p> <p>An equity joint venture shall provide its enterprise trade union with the necessary facilities for its activities.</p>
<p>第八条</p> <p>合营企业获得的毛利润，按中华人民共和国税法规定缴纳合营企业所得税后，扣除合营企业章程规定的储备基金、职工奖励及福利基金、企业发展基金，净利润根据合营各方注册资本的比例进行分配。</p> <p>合营企业依照国家有关税收的法律和行政法规的规定，可以享受减税、免税的优惠待遇。</p> <p>外国合营者将分得的净利润用于在中国境内再投资时，可申请退还已缴纳的部分所得税。</p>	<p>Article 8</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p>第九条</p> <p>合营企业应凭营业执照在国家外汇管理机关允许经营外汇业务的银行或其它金融机构开立外汇帐户。</p> <p>合营企业的有关外汇事宜，应遵照中华人民共和国外汇管理条例办理。</p> <p>合营企业在其经营活动中，可直接向外国银行筹措资金。</p> <p>合营企业的各项保险应向中国境内的保险公司投保。</p>	<p>Article 9</p> <p>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.</p> <p>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.</p> <p>An equity joint venture may, in its business operations, obtain funds directly from foreign banks.</p> <p>The various items of insurance required by an equity joint venture shall be furnished by insurance companies within the Chinese territory.</p>
<p>第十条</p> <p>合营企业在批准的经营范围内所需的原材料、燃料等物资，按照公平、合理的原则，可以在国内市场或者在国际市场购买。</p> <p>鼓励合营企业向中国境外销售产品。出口产品可由合营企业直接与其有关的委托机构向国外市场出售，也可通过中国的外贸机构出售。合营企业产品也可在中国市场销售。</p> <p>合营企业需要时可在中国境外设立分支机构。</p>	<p>Article 10.</p> <p>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.</p> <p>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.</p> <p>If deemed necessary, an equity joint venture may establish branch organisations outside China.</p>
<p>第十一条</p> <p>外国合营者在履行法律和协议、合同规定的义务后分得的净利润，在合营企业期满或者中止时所分得的资金以及其它资金，可按合营企业合同规定的货币，按外汇管理条例汇往国外。</p> <p>鼓励外国合营者将可汇出的外汇存入中国银行。</p>	<p>Article 11</p> <p>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.</p> <p>A foreign partner shall be encouraged to deposit in the Bank of</p>

<p>第十二条</p>	<p>China foreign exchange that it is entitled to remit abroad. Article 12</p>
<p>合营企业的外籍职工的工资收入和其它正当收入，按中华人民共和国税法缴纳个人所得税后，可按外汇管理条例汇往国外。</p>	<p>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.</p>
<p>第十三条</p>	<p>Article 13</p>
<p>合营企业的合营期限，按不同行业、不同情况，作不同的约定。有的行业的合营企业，应当约定合营期限；有的行业的合营企业，可以约定合营期限，也可以不约定合营期限。约定合营期限的合营企业，合营各方同意延长合营期限的，应在距合营期满六个月前向审查批准机关提出申请。审查批准机关应自接到申请之日起一个月内决定批准或不批准。</p>	<p>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.</p>
<p>第十四条</p>	<p>Article 14</p>
<p>合营企业如发生严重亏损、一方不履行合同和章程规定的义务、不可抗力等，经合营各方协商同意，报请审查批准机关批准，并向国家工商行政管理主管部门登记，可终止合同。如果因违反合同而造成损失的，应由违反合同的一方承担经济责任。</p>	<p>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.</p>
<p>第十五条</p>	<p>Article 15</p>
<p>举办合营企业不涉及国家规定实施准入特别管理措施的，对本法第三条、第十三条、第十四条规定的审批事项，适用备案管理。国家规定的准入特别管理措施由国务院发布或者批准发布。</p>	<p>For establishment of equity joint venture enterprises which are not subject to the implementation of special administrative measures for admission stipulated by the State, examination and approval matters stipulated in Article 3, Article 13 and Article 14 of this Law shall be subject to filing administration. Special administrative measures for admission stipulated by the State shall be promulgated by the State Council or promulgated with approval by the State Council.</p>
<p>第十六条</p>	<p>Article 16</p>
<p>合营各方发生纠纷，董事会不能协商解决时，由中国仲裁机构进行调解或仲裁，也可由合营各方协议在其它仲裁机构仲裁。</p> <p>合营各方没有在合同中订有仲裁条款的或者事后没有达成书面仲裁协议的，可以向人民法院起诉。</p>	<p>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.</p> <p>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.</p>
<p>第十七条</p>	<p>Article 17 This Law shall take effect from the date of promulgation.</p>
<p>本法自公布之日起生效。</p>	



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