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# 中华人民共和国中外合资经营企业法（2016修正）

# THE LAW OF THE PEOPLE’S REPUBLIC OF CHINA ON SINO-FOREIGN EQUITY JOINT VENTURES (2016 Revision)

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（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）

(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)

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。

Article 1 In order to expand international economic cooperation and technological exchange, the People's Republic of China shall permit foreign companies, enterprises, other economic organizations or individuals (hereinafter referred to as "foreign joint venturers"), subject to the approval of the Chinese government, to establish equity joint ventures with Chinese companies, enterprises or other economic organizations (hereinafter referred to as "Chinese joint venturers") within the territory of the People's Republic of China based on the principles of equality and mutual benefit.

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。

Article 2 The Chinese Government shall protect, according to the law, the investment of foreign joint ventures, the profits due them and their other lawful rights and interests in an equity joint venture, pursuant to the agreement, contract and articles of association approved by the Chinese Government.

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。

Joint ventures shall observe the laws and regulations of the People's Republic of China in all their activities.

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。

The state shall not nationalize or requisition any equity joint venture. Under special circumstances, when public interest requires, equity joint ventures may be requisitioned by following legal procedures and appropriate compensation shall be made.

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。

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. The examination and approval authority shall decide whether or not to grant approval within three months. When approved, the equity joint venture shall register with the state's competent department in charge of industry and commerce administration, acquire a business license and start operations.

第四条   合营企业的形式为有限责任公司。

Article 4 Joint ventures shall take the form of limited liability companies.

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。

The proportion of the foreign joint venturer's investment in an equity joint venture shall be, in general, not less than 25 percent of its registered capital.

合营各方按注册资本比例分享利润和分担风险及亏损。

The profits, risks and losses of an equity joint venture shall be shared by the parties to the venture in proportion to their contributions to the registered capital.

合营者的注册资本如果转让必须经合营各方同意。

The transfer of a Party's registered capital shall be subject to the consent of the Parties to the joint venture.

第五条   合营企业各方可以现金、实物、工业产权等进行投资。

Article 5 Each party to an equity joint venture may contribute cash, capital goods, industrial property rights, etc.,

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。如果有意以落后的技术和设备进行欺骗，造成损失的，应赔偿损失。

The technology and equipment of foreign joint venturers as investment must be advanced technology and equipment that really suit our country's needs. In case of losses caused by deception through the intentional provision of outdated technology and equipment, the compensation shall be made for such losses.

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。

The investment contributed by a Chinese joint venturer may include the right to the use of a site provided for the equity joint venture during the period of its operation. If the right to the use of the site is not taken as a part of the Chinese joint venturer's investment, the equity joint venture shall pay the Chinese Government for its use.

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。

The above investments shall be specified in the contracts and articles of association of JVCO and the price of such investments (except for the Site) shall be assessed and agreed upon by the Parties.

第六条   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。

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 chairman and vice chairman of the board shall be determined by the Parties through consultation or elected by the Board of JVCO. Where the post of chairman of the board is assumed by one party to the joint venture, the other party shall assume the post of vice-chairman. The board of directors shall make major decisions concerning the joint venture based on the principles of equality and mutual benefit.

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。

The functions and powers of the board of directors are, as stipulated in the articles of association of the equity joint venture, to discuss and decide all major issues concerning the venture, namely, the venture's development plans, proposals for production and business operations, the budget for revenues and expenditures, the distribution of profits, the plans concerning manpower and wages, the termination of business, and the appointment or employment of the president, the vice-president (s), the chief engineer, the treasurer and the auditors, as well as their functions, powers and terms of employment, etc.

正副总经理(或正副厂长)由合营各方分别担任。

The posts of general manager and deputy general manager (or factory manager and deputy factory manager) shall be split between the parties to the joint venture.

合营企业职工的录用、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。

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

第七条   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。

Article 7 The employees of a joint venture may, in accordance with the law, establish a trade union organization to conduct trade union activities and protect the lawful rights and interests of employees.

合营企业应当为本企业工会提供必要的活动条件。

Joint ventures shall provide their trade unions with the necessary conditions for union activities.

第八条   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。

Article 8 The net profit of an equity joint venture shall be distributed among the parties to the venture in proportion to their respective contributions to the registered capital, after payment out of its gross profit of the equity joint venture income tax, pursuant to the tax laws of the People's Republic of China, and after deduction from the gross profit of a reserve fund, a bonus and welfare fund for workers and staff members and a venture expansion fund, as stipulated in the venture's articles of association.

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。

A joint venture may, in accordance with relevant tax laws and administrative regulations of the state, enjoy preferential tax reduction and exemption.

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。

A foreign joint venturer that reinvests its share of the net profit within the territory of China may apply for partial refund of the income tax already paid.

第九条   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。

Article 9 A joint venture shall, on the strength of its business license, open a foreign exchange account with a bank or other financial institution authorized to engage in foreign exchange business by the State Administration of Foreign Exchange.

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。

Joint ventures shall conduct their foreign exchange business in accordance with the Administrative Regulations of the People's Republic of China on Foreign Exchange.

合营企业在其经营活动中，可直接向外国银行筹措资金。

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

合营企业的各项保险应向中国境内的保险公司投保。

The insurances appropriate to a joint venture shall be furnished by insurance companies within the territory of the People's Republic of China.

第十条   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。

Article 10 Materials, such as raw materials and fuel, which are required under the approved business scope of a joint venture, may be purchased on the domestic or international market according to the principles of fairness and reasonableness.

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或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。

A joint venture is encouraged to sell its products outside China. It may sell its export products on foreign markets directly or through associated agencies or China's foreign trade agencies. Its products may also be distributed on the Chinese market.

合营企业需要时可在中国境外设立分支机构。

Whenever necessary, an equity joint venture may establish branches outside China.

第十一条   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。

Article 11 A foreign party to a joint venture may, on the expiry or suspension of a joint venture, after performing its obligations as stipulated in the law and in any agreement or contract, remit abroad its net share of profits and any other funds distributed to it using the currency stipulated in the joint venture contract and in accordance with the Administrative Regulations of the People's Republic of China on Foreign Exchange.

鼓励外国合营者将可汇出的外汇存入中国银行。

Foreign parties shall be encouraged to deposit in the Bank of China any foreign exchange which they may remit abroad.

第十二条   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。

Article 12 Wages and other lawful income earned by expatriate employees of joint ventures may, after the payment of individual income tax in accordance with the tax laws of the People's Republic of China, be remitted abroad in accordance with the Administrative Regulations of the People's Republic of China on Foreign Exchange.

第十三条   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。

Article 13 The operating term of any joint venture shall be determined in accordance with its industry and individual circumstances. Equity joint ventures engaged in certain lines of trade shall specify their duration in the contracts, while equity joint ventures engaged in certain other lines of trade may choose to or not to specify their duration in the contracts. Where the operating period for a joint venture is set and the parties subsequently agree to extend the operating period, they shall apply to the approval authority no later than six months prior to the date on which the operating period is due to expire. The examination and approval authorities shall, within one month after receipt of the application, make a decision on whether or not to approve the application.

第十四条   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。

Article 14 Subject to the approval of the approval authority and registration with the state industry and commerce administration department, where a joint venture suffers heavy losses, one party to a joint venture fails to perform its obligations under the contract or articles of association, or any force majeure event occurs, etc., the joint venture contract may be terminated by agreement of the parties. In cases of losses caused by a breach of contract, the financial responsibility shall be borne by the party in breach.

第十五条   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。

Article 15 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.

第十六条   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。

Article 16 Any dispute between the parties to a joint venture that its board of directors fails to resolve through consultation may be resolved through conciliation or arbitration by an arbitral body in China or through arbitration by an arbitral body agreed upon by the parties.

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。

If the parties to a joint venture have not included an arbitration clause in their contract or have not subsequently reached a written arbitration agreement, they may bring an action in a people's court.

第十七条   本法自公布之日起生效。

Article 17 This Law shall take effect from the date of promulgation.