

Law of the PRC on Chinese-Foreign Equity Joint Ventures

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979

Amended in accordance with the Decision on Amending the Law of the PRC on Chinese-Foreign Equity Joint Ventures adopted at the Third Session of the Seventh National People's Congress on April 4, 1990

Amended in accordance with the Decision on Amending the Law of the PRC on Chinese-Foreign Equity Joint Ventures adopted at the 13th Session of the Standing Committee of the Ninth National People's Congress on March 15, 2001

Amended in accordance with the Decision on Amending Four Laws Including the Law of the PRC on Wholly Foreign-Owned Enterprises adopted at the 22nd Session of the Standing Committee of the Twelfth National People's Congress on September 3, 2016

Note: This Law was repealed on January 1, 2020 upon the entry into force of the Foreign Investment Law of the PRC. It is preserved here for historical and reference purposes.

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Article 1 — The People's Republic of China permits foreign companies, enterprises, other economic organizations, or individuals (hereinafter referred to as "foreign joint venturers") to establish equity joint ventures within the territory of China, together with Chinese companies, enterprises, or other economic organizations (hereinafter referred to as "Chinese joint venturers"), on the principle of equality and mutual benefit and subject to the approval of the Chinese government.

Article 2 — The Chinese government shall protect, in accordance with the law, the investments made by foreign joint venturers, the profits due to them, and their other lawful rights and interests in equity joint ventures in accordance with the agreements, contracts, and articles of association approved by the Chinese government. All activities of equity joint ventures shall comply with the provisions of the laws, regulations, and rules of the People's Republic of China. The State shall not nationalize or expropriate equity joint ventures. Under special circumstances, the State may, as required by the public interest, expropriate equity joint ventures in accordance with legal procedures and provide corresponding compensation.

Article 3 — The agreements, contracts, and articles of association of equity joint ventures shall be submitted to the department in charge of foreign economic relations and trade under the State Council (hereinafter referred to as the "examining and approving authority") for examination and approval. The examining and approving authority shall decide whether to approve or disapprove the application within three months. After approval, the equity joint venture shall register with the department in charge of industry and commerce administration of the State Council, obtain a business license, and commence business operations.

Article 4 — Equity joint ventures shall take the form of a limited liability company. The proportion of the investment contributed by the foreign joint venturer(s) shall generally not be less than 25 percent of the registered capital. The parties to the joint venture shall share profits, risks, and losses in proportion to their respective contributions to the registered capital. No party may transfer its registered capital without the consent of the other parties.

Article 5 — The parties to an equity joint venture may contribute their investment in the form of cash, in kind, industrial property rights, and other property rights. The technology and equipment contributed by a foreign

joint venturer as its investment must be advanced technology and equipment that truly meet China's needs. Where a foreign joint venturer causes losses through fraud by using outdated technology and equipment, it shall compensate for such losses. The investment contributed by a Chinese joint venturer may include the right to use the site of the joint venture for the duration of the joint venture. Where the right to use the site is not part of the Chinese joint venturer's investment, the joint venture shall pay a site use fee to the Chinese government.

Article 6 — An equity joint venture shall have a board of directors. The composition of the board of directors shall be stipulated in the contract and the articles of association after consultation between the parties to the joint venture. The board of directors shall have a chairman and one or two vice-chairmen. The board of directors shall decide the major matters of the joint venture. The discussion and determination of major matters of an equity joint venture, such as the expansion of the enterprise's scope of business, the amendment of the articles of association, changes in the board membership, the suspension or dissolution of the joint venture, must be passed by the board meeting with the agreement of all directors. Other matters may be decided in accordance with the rules of procedure stipulated in the articles of association. The chairman shall be the legal representative of the joint venture. Where the chairman is unable to perform his or her duties, the vice-chairman authorized by the chairman shall perform the duties on behalf of the chairman. Where a joint venture has two vice-chairmen and the chairman is unable to perform his or her duties, the board of directors shall designate one of the vice-chairmen to perform the duties on behalf of the chairman.

Article 7 — The net profit of an equity joint venture shall be distributed among the parties to the joint venture in proportion to their respective contributions to the registered capital after the payment of income tax in accordance with the provisions of the tax law of the People's Republic of China, and after the allocation of the reserve fund, the bonus and welfare fund for workers and staff members, and the enterprise development fund in accordance with the provisions of the articles of association. A foreign joint venturer that reinvests its share of net profit within the territory of China may apply for a refund of part of the income tax already paid. A foreign joint venturer that remits its share of net profit abroad may be exempt from income tax on the remitted amount.

Article 8 — An equity joint venture shall open foreign exchange bank accounts with banks or other financial institutions that have been approved by the State Administration of Foreign Exchange to engage in foreign exchange business. An equity joint venture shall handle its foreign exchange matters in accordance with the regulations of the State on foreign exchange control. An equity joint venture may, in its business and operational activities, directly raise funds from foreign banks. The insurance of an equity joint venture shall be covered by insurance companies in China.

Article 9 — The production and business plans of equity joint ventures shall be reported to the department in charge for filing and shall be carried out through economic contracts. An equity joint venture may, within its approved scope of business, procure raw materials, fuels, and other materials from the international market or from the Chinese market; it may do so directly or through an entrusted agency on terms of equal treatment with its Chinese counterparts.

Article 10 — Equity joint ventures shall be encouraged to sell their products outside China. Export products may be sold in foreign markets through the equity joint venture directly, through its associated sales agencies, or through China's foreign trade agencies. Products of an equity joint venture may also be sold in the Chinese market. Where necessary, an equity joint venture may establish branches and sub-branches outside China.

Article 11 — The net profits that a foreign joint venturer receives as its share after performing its obligations under the laws, agreements, and contracts, its other lawful earnings, and the funds it receives upon the expiration or early termination of the joint venture may be remitted abroad in accordance with the foreign exchange regulations, and may also be purchased for foreign exchange and remitted abroad in accordance

with the law. Foreign workers of an equity joint venture may remit abroad their wages and other lawful earnings purchased for foreign exchange in accordance with the foreign exchange regulations.

Article 12 — The term of operation of an equity joint venture may be extended upon agreement of all parties and subject to approval by the examining and approving authority, with an application submitted six months before the expiration. The examining and approving authority shall decide whether to approve or disapprove the extension within one month of receipt of the application.

Article 13 — Where any of the circumstances for dissolution as stipulated in the contract or the articles of association arises, the equity joint venture may be dissolved. Where serious losses have been incurred, the equity joint venture may be dissolved, with the consent of all parties, after approval by the examining and approving authority and registration with the state administrative department for industry and commerce. Where losses are caused by a party's breach of contract, the breaching party shall bear the financial liability.

Article 14 — Where any dispute arises between the parties to a joint venture and cannot be resolved through consultation or mediation by the board of directors, it may be resolved through arbitration by a Chinese arbitration institution or through arbitration by another arbitration institution as agreed upon by the parties. Where there is no arbitration agreement between the parties, either party may institute a lawsuit in a people's court.

Article 15 — This Law shall enter into force on the date of promulgation. The State Council shall formulate implementing regulations for this Law.

Article 16 — (As amended) The power to amend this Law shall be vested in the National People's Congress.

Disclaimer: This English translation is provided for informational and historical reference purposes only. This Law was repealed on January 1, 2020 and replaced by the Foreign Investment Law of the PRC. While every effort has been made to ensure accuracy, this is not an official translation. The original Chinese text as published by the National People's Congress of the People's Republic of China shall prevail in all legal matters. Neither Dan Young Business Consultancy nor any of its affiliates shall be held liable for any loss or damage arising from reliance on this translation. For official legal advice, please consult qualified legal professionals.