

Law of the PRC on Sino-Foreign Contractual Joint Ventures

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

Adopted at the First Session of the Seventh National People's Congress on April 13, 1988

Amended in accordance with the Decision on Amending the Law of the PRC on Chinese-Foreign Contractual Joint Ventures adopted at the 18th Session of the Standing Committee of the Ninth National People's Congress on October 31, 2000

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

Amended in accordance with the Decision on Amending Eleven Laws Including the Accounting Law of the PRC adopted at the 30th Session of the Standing Committee of the Twelfth National People's Congress on November 4, 2017

Note: This Law was repealed on January 1, 2020 upon the entry into force of the Foreign Investment Law of the PRC.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 — This Law is enacted for the purposes of expanding economic cooperation and technological exchange with foreign countries and encouraging foreign enterprises and other economic organizations or individuals (hereinafter referred to as "foreign joint venturers") to establish Chinese-foreign contractual joint ventures (hereinafter referred to as "contractual joint ventures") within the territory of China, together with Chinese enterprises or other economic organizations (hereinafter referred to as "Chinese joint venturers"), on the principle of equality and mutual benefit.

Article 2 — When establishing a contractual joint venture, the parties to the joint venture shall, in accordance with the provisions of this Law, specify in the contractual joint venture contract such matters as the investment or conditions for cooperation, the distribution of earnings or products, the sharing of risks and losses, the form of business management, and the ownership of the property upon the termination of the contractual joint venture. Where a contractual joint venture meets the conditions for being a Chinese legal person, it shall acquire the status of a Chinese legal person in accordance with the law.

Article 3 — The State shall protect the lawful rights and interests of contractual joint ventures and of the Chinese and foreign joint venturers in accordance with the law. Contractual joint ventures must comply with Chinese laws and regulations and shall not impair the public interests of China. The relevant state authorities shall exercise supervision over contractual joint ventures in accordance with the law.

Article 4 — The State shall encourage the establishment of export-oriented or technologically advanced production-oriented contractual joint ventures.

Article 5 — An application for the establishment of a contractual joint venture shall be accompanied by the agreement, contract, and articles of association signed by the Chinese and foreign joint venturers, and shall be submitted to the department in charge of foreign economic relations and trade under the State Council or to the department or local people's government authorized by 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 45 days from the date of

receipt of the application.

Article 6 — Where an application for the establishment of a contractual joint venture is approved, the parties shall apply for registration with the administrative department for industry and commerce and obtain a business license within 30 days from the date of receipt of the approval certificate. The date of issuance of the business license shall be the date of establishment of the contractual joint venture. The contractual joint venture shall undergo tax registration with the tax authorities within 30 days from the date of its establishment.

Article 7 — Where a contractual joint venture, during the term of its operation, agrees to make a major change in the contractual joint venture contract through consultation between the Chinese and foreign joint venturers, the enterprise shall report to the examining and approving authority for approval. Where the change involves legally required items of registration with the administrative department for industry and commerce or for tax registration, the contractual joint venture shall undergo the change in registration.

Article 8 — The investment or conditions for cooperation contributed by the Chinese and foreign joint venturers may be provided in cash, in kind, or in the form of land use rights, industrial property rights, non-patented technology, and other property rights.

Article 9 — The Chinese and foreign joint venturers shall fulfill their obligations to make the full investment and provide the conditions for cooperation within the time limit stipulated in the contractual joint venture contract in accordance with the provisions of laws and regulations. Where the parties fail to make the full investment or provide the conditions for cooperation within the prescribed time limit, the administrative department for industry and commerce shall set a time limit for performance. Where the parties fail to perform within the prescribed time limit, the matter shall be handled by the examining and approving authority and the administrative department for industry and commerce in accordance with the relevant state provisions. The investments and conditions for cooperation contributed by the Chinese and foreign joint venturers shall be verified by an accountant registered in China or the relevant agency, which shall issue a verification certificate.

Article 10 — Where a Chinese or foreign joint venturer transfers all or part of its rights and obligations as stipulated in the contractual joint venture contract, the consent of the other party or parties to the joint venture must be obtained, and the matter shall be reported to the examining and approving authority for approval.

Article 11 — Contractual joint ventures shall conduct their business and operational activities in accordance with the approved contractual joint venture contract and articles of association. The management autonomy of contractual joint ventures shall not be subject to interference.

Article 12 — A contractual joint venture shall establish a board of directors or a joint management committee, which shall decide the major matters of the contractual joint venture in accordance with the provisions of the contractual joint venture contract or the articles of association. Where the Chinese or foreign joint venturer serves as the chairman of the board of directors or the director of the joint management committee, the other party shall serve as the vice-chairman or the deputy director. The board of directors or joint management committee may decide to appoint or hire a general manager, who shall be responsible for the day-to-day business and operational management of the contractual joint venture. The general manager shall be accountable to the board of directors or the joint management committee. Where a contractual joint venture, after its establishment, entrusts a third party other than the Chinese and foreign joint venturers with its business and operational management, the consent of the board of directors or the joint management committee must be obtained, a contract for entrustment of management shall be signed, and the matter shall be reported to the examining and approving authority for approval and to the administrative department for industry and commerce for registration or filing for recordation of the changes.

Article 13 — The employment, dismissal, remuneration, welfare benefits, labor protection, and labor insurance of the workers of contractual joint ventures shall be specified in contracts concluded in accordance with the law.

Article 14 — The workers of contractual joint ventures shall establish trade union organizations and carry out trade union activities in accordance with the law, so as to protect the lawful rights and interests of the workers. Contractual joint ventures shall provide necessary facilities for the activities of their trade unions.

Article 15 — A contractual joint venture shall establish account books in China, file its financial and accounting statements in accordance with the relevant provisions, and accept the supervision of the financial and tax authorities. Where a contractual joint venture, in violation of the provisions of the preceding paragraph, fails to establish account books in China, the financial and tax authorities may impose a fine on it, and the administrative department for industry and commerce may order it to cease its business operations or revoke its business license.

Article 16 — A contractual joint venture shall, on the strength of its business license, 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. The foreign exchange matters of a contractual joint venture shall be handled in accordance with the regulations of the State on foreign exchange control. A contractual joint venture may raise funds from financial institutions within or outside China. The insurance coverage of a contractual joint venture shall be taken out with insurance companies in China.

Article 17 — A contractual joint venture may, within its approved scope of business, import the materials it needs and export the products it produces. A contractual 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 on terms of equal treatment with its Chinese counterparts.

Article 18 — The relevant tax authorities shall levy taxes on contractual joint ventures in accordance with the provisions of the relevant state tax laws, and contractual joint ventures may enjoy preferential treatment in respect of tax reduction or exemption.

Article 19 — The Chinese and foreign joint venturers to a contractual joint venture shall distribute their earnings or products and bear risks and losses in accordance with the provisions of the contractual joint venture contract. Where, in accordance with the provisions of the contractual joint venture contract, all the fixed assets of the contractual joint venture are to revert to the Chinese joint venturer upon the expiration of the term of operation of the contractual joint venture, the Chinese and foreign joint venturers may agree in the contractual joint venture contract on the methods for the foreign joint venturer to recover its investment in advance during the term of operation of the joint venture. Where it is agreed in the contractual joint venture contract that the foreign joint venturer shall recover its investment in advance before the payment of income tax, an application shall be submitted to the financial and tax authorities, which shall examine and approve the application in accordance with the relevant state provisions on taxation. Where, in accordance with the provisions of the preceding paragraph, the foreign joint venturer recovers its investment in advance during the term of operation of the joint venture, the Chinese and foreign joint venturers shall bear liability for the debts of the contractual joint venture in accordance with the provisions of the relevant laws and the contractual joint venture contract.

Article 20 — Contractual joint ventures shall set aside a reserve fund and a bonus and welfare fund for workers in accordance with state provisions.

Article 21 — The lawful profits of foreign joint venturers and their other lawful earnings, as well as the remaining funds upon the termination or early termination of the contractual joint venture, may be remitted abroad in accordance with the law. The wages and other lawful earnings of foreign workers of contractual joint ventures may be remitted abroad in accordance with the law after the payment of individual income tax.

Article 22 — Upon the expiration or early termination of the term of operation of a contractual joint venture, the assets, claims, and debts shall be liquidated in accordance with the statutory procedures. The Chinese and foreign joint venturers shall, in accordance with the provisions of the contractual joint venture contract, determine the ownership of the property of the contractual joint venture. Upon the expiration or early termination of the term of operation of a contractual joint venture, the contractual joint venture shall undergo cancellation of registration with the administrative department for industry and commerce and the tax authorities.

Article 23 — The term of operation of a contractual joint venture shall be negotiated and agreed upon by the Chinese and foreign joint venturers and shall be specified in the contractual joint venture contract. Where the Chinese and foreign joint venturers agree to extend the term of operation, an application shall be submitted to the examining and approving authority 180 days prior to the expiration of the term of operation. The examining and approving authority shall decide whether to approve or disapprove the extension within 30 days from the date of receipt of the application.

Article 24 — Where any dispute arises between the Chinese and foreign joint venturers in the performance of the contractual joint venture contract or the articles of association, it shall be resolved through consultation or mediation. Where the Chinese and foreign joint venturers are unwilling to resolve the dispute through consultation or mediation, or where consultation or mediation fails, the parties may submit the dispute to a Chinese arbitration institution or another arbitration institution for arbitration in accordance with the arbitration agreement. Where the Chinese and foreign joint venturers have not included an arbitration clause in the contractual joint venture contract and have not subsequently reached a written arbitration agreement, either party may institute a lawsuit in a people's court.

Article 25 — The State Council shall formulate implementing rules for this Law. The detailed rules for the implementation of this Law shall be submitted to the State Council for approval before implementation.

Article 26 — China shall encourage foreign investors to establish contractual joint ventures within the territory of China.

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

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.