

Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures

Promulgation date: 10-31-2000 Department: Standing Committee of the National People's Congress

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(Adopted at the First Session of the Seventh National People's Congress, and revised according to the Decision on Modifying the Law of the People's Republic of China 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, and promulgated by Order No.40 of the President of the People's Republic of China on October 31, 2000)

Article 1. This Law is formulated to expand economic cooperation and technological exchange with foreign countries and to promote the joint establishment, on the principle of equality and mutual benefit, by foreign enterprises and other economic organizations or individuals (hereinafter referred to as the foreign party) and Chinese enterprises or other economic organizations (hereinafter referred to as the Chinese party) of Chinese-foreign contractual joint ventures (hereinafter referred to as contractual joint ventures) within the territory of the People's Republic of China.

Article 2. In establishing a contractual joint venture, the Chinese and foreign parties shall, in accordance with the provisions of this Law, prescribe in their 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 manners of operation and management and the ownership of the property at the time of the termination of the contractual joint venture.

A contractual joint venture which meets the conditions for being considered a legal person under Chinese law, shall acquire the status of a Chinese legal person in accordance with law.

Article 3. The state shall, according to law, protect the lawful rights and interests of the contractual joint ventures and of the Chinese and foreign parties.

A contractual joint venture must abide by Chinese laws and regulations and must not injure the public interests of China.

The relevant state authorities shall exercise supervision over the contractual joint ventures according to law.

Article 4. The state shall encourage the establishment of productive contractual joint ventures that are export-oriented or technologically advanced.

Article 5. For the purpose of applying for the establishment of a contractual joint venture, such documents as the agreement, the contract and the articles of association signed by the Chinese and foreign parties shall be submitted for examination and approval to the department in charge of foreign economic relations and trade under the State Council or to the department or local government authorized by the State Council (hereinafter referred to as the examination and approval authority). The examination and approval authority shall, within 45 days of receiving the application, decide whether or not to grant approval.

Article 6. When the application for the establishment of a contractual joint venture is approved, the parties shall, within 30 days of receiving the certificate of approval, apply to the administrative authorities for industry and commerce for registration and obtain a business license. The date of issuance of the business license of a contractual joint venture shall be the date of its establishment.

A contractual joint venture shall, within 30 days of its establishment, carry out tax registration with the tax authorities.

Article 7. If the Chinese and foreign parties, during the period of operation of their contractual joint venture, agree through consultation to make major modifications to the contractual joint venture contract, they shall report to the examination and approval authority for approval. If the modifications include items involving statutory industry and commerce registration or tax registration, they shall register the modifications with the administrative authorities for industry and commerce and with the tax authorities.

Article 8. The investment or conditions for cooperation contributed by the Chinese and foreign parties may be provided in cash or in kind, or may include the right to the use of land, industrial property rights, non-patent technology or other property rights.

Article 9. The Chinese and foreign parties shall, in accordance with the provisions of the laws and regulations and the agreements in the contractual joint venture contract, duly fulfil their obligations of contributing full investment and providing the conditions for cooperation. In case of failure to do so within the prescribed time, the administrative authorities for industry and commerce shall set another time limit for the fulfilment of such obligations; if such obligations are still not fulfilled by the new time limit, the matter shall be handled by the examination and approval authority and the administrative authorities for industry and commerce according to relevant state provisions.

The investments or conditions for cooperation provided by the Chinese and foreign parties shall be verified by an accountant registered in China or the relevant authorities, who shall provide a certificate after verification.

Article 10. If a Chinese or foreign party wishes to make an assignment of all or part of its rights and obligations prescribed in the contractual joint venture contract, it must obtain the consent of the other party or parties and report to the examination and approval authority for approval.

Article 11. A contractual joint venture shall conduct its operational and managerial activities in accordance with the approved contract and articles of association for the contractual joint venture. The right of a contractual joint venture to make its own operational and managerial decisions shall not be interfered with.

Article 12. A contractual joint venture shall establish a board of directors or a joint managerial institution which shall, according to the contract or the articles of association for the contractual joint venture, decide on the major issues concerning the venture. If the Chinese or foreign party assumes the chairmanship of the board of directors or the directorship of the joint managerial institution, the other party shall assume the vice-chairmanship of the board or the deputy directorship of the joint managerial institution. The board of directors or the joint managerial institution may decide on the appointment or employment of a general manager, who shall take charge of the daily operation and management of the contractual joint venture. The general manager shall be accountable to the board of directors or the joint managerial institution.

If a contractual joint venture, after its establishment, chooses to entrust a third party with its operation and management, it must obtain the unanimous consent of the board of directors or the joint managerial institution, report to the examination and approval authority for approval, and register the change with the administrative authorities for industry and commerce.

Article 13. The employment, dismissal, remuneration, welfare, labour protection and labour insurance, etc. of the staff members and workers of a contractual joint venture shall be specified in contracts concluded in accordance with law.

Article 14. The staff and workers of a contractual joint venture shall, in accordance with law, establish their trade union organization to carry out trade union activities and protect their lawful rights and interests.

A contractual joint venture shall provide the necessary conditions for the venture's trade union to carry out its activities.

Article 15. A contractual joint venture must establish its account books within the territory of China, file its accounting statements according to relevant provisions and accept supervision by the financial and tax authorities.

If a contractual joint venture, in violation of the provisions prescribed in the preceding paragraph, does not establish its account books within the territory of China, the financial and tax authorities may impose a fine on it, and the administrative authorities for industry and commerce may order it to suspend its business operations or may revoke its business license.

Article 16. A contractual joint venture shall, by presenting its business license, open a foreign exchange account with a bank or any other financial institution which is permitted by the exchange control authorities of the state to conduct transactions in foreign exchange.

A contractual joint venture shall handle its foreign exchange transactions in accordance with the provisions of the state on foreign exchange control.

Article 17. A contractual joint venture may obtain loans from financial institutions within the territory of China and may also obtain loans outside the territory of China.

Loans to be used by the Chinese and foreign parties as investment or conditions for cooperation, and their guarantees, shall be provided by each party on its own.

Article 18. The various kinds of insurance coverage of a contractual joint venture shall be furnished by insurance institutions within the territory of China.

Article 19. A contractual joint venture may, within its approved scope of operation, import materials it needs and export products it produces. A contractual joint venture may purchase the raw and processed materials, fuels, etc. needed, within its approved scope of operation, on the domestic market or the world market, according to the principles of fairness and reasonableness.

Article 20. A contractual joint venture shall, in accordance with state provisions on tax, pay taxes and may enjoy the preferential treatment of tax reduction or exemption.

Article 21. The Chinese and foreign parties shall share earnings or products, undertake risks and losses in accordance with the agreements prescribed in the contractual joint venture contract.

If, upon the expiration of the period of a venture's operation, all the fixed assets of the contractual joint venture, as agreed upon by the Chinese and foreign parties in the contractual joint venture contract, are to belong to the Chinese party, the Chinese and foreign parties may prescribe in the contractual joint venture contract the ways for the foreign party to recover its investment ahead of time during the period of the venture's operation. If the foreign party, as agreed upon in the contractual joint venture contract, is to recover its investment prior to the payment of income tax, it must apply to the financial and tax authorities, which shall examine and approve the application in accordance with state provisions concerning taxes.

If, according to the provisions of the preceding paragraph, the foreign party is to recover its investment ahead of time during the period of the venture's operation, the Chinese and foreign parties shall, as stipulated by the relevant laws and agreed in the contractual joint venture contract, be liable for the debts of the venture.

Article 22. After the foreign party has fulfilled its obligations under the law and the contractual joint venture contract, the profits it receives as its share, its other legitimate income and the funds it receives as its share upon the termination of the venture, may be remitted abroad according to law.

The wages, salaries or other legitimate income earned by the foreign staff and workers of contractual joint ventures, after the payment of the individual income tax according to law, may be

remitted abroad.

Article 23. Upon the expiration or termination in advance of the term of a contractual joint venture, its assets, claims and debts shall be liquidated according to legal procedures. The Chinese and foreign parties shall, in accordance with the agreement specified in the contractual joint venture contract, determine the ownership of the venture's property.

A contractual joint venture shall, upon the expiration or termination in advance of its term, cancel its registration with the administrative authorities for industry and commerce and the tax authorities.

Article 24. The period of operation of a contractual joint venture shall be determined through consultation by the Chinese and foreign parties and shall be clearly specified in the contractual joint venture contract. If the Chinese and foreign parties agree to extend the period of operation, they shall apply to the examination and approval authority 180 days prior to the expiration of the venture's term. The examination and approval authority shall decide whether or not to grant approval within 30 days of receiving the application.

Article 25. Any dispute between the Chinese and foreign parties arising from the execution of the contract or the articles of association for a contractual joint venture shall be settled through consultation or mediation. In case of a dispute which the Chinese or the foreign party is unwilling to settle through consultation or mediation, or of a dispute which they have failed to settle through consultation or mediation, the Chinese and foreign parties may submit it to a Chinese arbitration agency or any other arbitration agency for arbitration in accordance with the arbitration clause in the contractual joint venture contract or a written agreement on arbitration concluded afterwards.

The Chinese or foreign party may bring a suit in a Chinese court, if no arbitration clause is provided in the contractual joint venture contract and if no written agreement is concluded afterwards.

Article 26. The detailed rules for the implementation of this Law shall be formulated by the department in charge of foreign economic relations and trade under the State Council and reported to the State Council for approval before implementation.

Article 27. This Law shall come into force as of the date of its promulgation.

中华人民共和国中外合作经营企业法(2000修正)

发布日期：2000-10-31 发布部门：全国人大常委会

生效日期：2000-10-31 类 别：外商投资企业

中华人民共和国主席令

(第四十号)

《全国人民代表大会常务委员会关于修改〈中华人民共和国中外合作经营企业法〉的决定》已由中华人民共和国第九届全国人民代表大会常务委员会第十八次会议于2000年10月31日通过，现予公布，自公布之日起施行。

中华人民共和国主席 江泽民

2000年10月31日

中华人民共和国中外合作经营企业法

(1988年4月13日第七届全国人民代表大会第一次会议通过 根据2000年10月31日第九届全国人民代表大会常务委员会第十八次会议《关于修改〈中华人民共和国中外合作经营企业法〉的决定》修正 2000年10月31日中华人民共和国主席令第40号公布)

第一条 为了扩大对外经济合作和技术交流,促进外国的企业和其他经济组织或者个人(以下简称外国合作者)按照平等互利的原则,同中华人民共和国的企业或者其他经济组织(以下简称中国合作者)在中国境内共同举办中外合作经营企业(以下简称合作企业),特制定本法。

(相关资料:修订沿革 条文释义 相关论文2篇 实务指南)

第二条 中外合作者举办合作企业，应当依照本法的规定，在合作企业合同中约定投资或者合作条件、收益或者产品的分配、风险和亏损的分担、经营管理的方式和合作企业终止时财产的归属等事项。

合作企业符合中国法律关于法人条件的规定的，依法取得中国法人资格。

(相关资料: 裁判文书4篇 修订沿革 条文释义 相关论文3篇 实务指南)

第三条 国家依法保护合作企业和中外合作者的合法权益。

合作企业必须遵守中国的法律、法规，不得损害中国的社会公共利益。

国家有关机关依法对合作企业实行监督。

(相关资料: 裁判文书2篇 修订沿革 条文释义 实务指南)

第四条 国家鼓励举办产品出口的或者技术先进的生产型合作企业。

(相关资料: 修订沿革 条文释义 相关论文2篇 实务指南)

第五条 申请设立合作企业，应当将中外合作者签订的协议、合同、章程等文件报国务院对外经济贸易主管部门或者国务院授权的部门和地方政府(以下简称审查批准机关)审查批准。审查批准机关应当自接到申请之日起四十五日内决定批准或者不批准。

(相关资料: 地方法规2篇 裁判文书6篇 修订沿革 条文释义 实务指南)

第六条 设立合作企业的申请经批准后，应当自接到批准证书之日起三十天内向工商行政管理机关申请登记，领取营业执照。合作企业的营业执照签发日期，为该企业的成立日期。

合作企业应当自成立之日起三十天内向税务机关办理税务登记。

(相关资料: 地方法规2篇 修订沿革 条文释义 实务指南)

第七条 中外合作者在合作期限内协商同意对合作企业合同作重大变更的，应当报审查批准机关批准；变更内容涉及法定工商登记项目、税务登记项目的，应当向工商行政管理机关、税务机关办理变更登记手续。

(相关资料: 地方法规 1 篇 裁判文书 5 篇 修订沿革 条文释义 实务指南)

第八条 中外合作者的投资或者提供的合作条件可以是现金、实物、土地使用权、工业产权、非专利技术和其他财产权利。

(相关资料: 地方法规 1 篇 裁判文书 2 篇 修订沿革 条文释义 相关论文 4 篇 实务指南)

第九条 中外合作者应当依照法律、法规的规定和合作企业合同的约定,如期履行缴足投资、提供合作条件的义务。逾期不履行的,由工商行政管理机关限期履行;限期届满仍未履行的,由审查批准机关和工商行政管理机关依照国家有关规定处理。

中外合作者的投资或者提供的合作条件,由中国注册会计师或者有关机构验证并出具证明。

(相关资料: 部门规章 1 篇 地方法规 1 篇 裁判文书 3 篇 修订沿革 条文释义 相关论文 1 篇 实务指南)

第十条 中外合作者的一方转让其在合作企业合同中的全部或者部分权利、义务的,必须经他方同意,并报审查批准机关批准。

(相关资料: 案例 1 篇 裁判文书 6 篇 修订沿革 条文释义 实务指南)

第十一条 合作企业依照经批准的合作企业合同、章程进行经营管理活动。合作企业的经营管理自主权不受干涉。

(相关资料: 裁判文书 3 篇 修订沿革 条文释义 实务指南)

第十二条 合作企业应当设立董事会或者联合管理机构,依照合作企业合同或者章程的规定,决定合作企业的重大问题。中外合作者的一方担任董事会的董事长、联合管理机构的主席的,由他方担任副董事长、副主任。董事会或者联合管理机构可以决定任命或者聘请总经理负责合作企业的日常经营管理工作。总经理对董事会或者联合管理机构负责。

合作企业成立后改为委托中外合作者以外的他人经营管理的,必须经董事会或者联合管

理机构一致同意，报审查批准机关批准，并向工商行政管理机关办理变更登记手续。

(相关资料: 地方法规 1 篇 修订沿革 条文释义 相关论文 1 篇 实务指南)

第十三条 合作企业职工的录用、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。

(相关资料: 修订沿革 条文释义 实务指南)

第十四条 合作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。合作企业应当为本企业工会提供必要的活动条件。

(相关资料: 裁判文书 2 篇 修订沿革 条文释义 实务指南)

第十五条 合作企业必须在中国境内设置会计帐簿，依照规定报送会计报表，并接受财政税务机关的监督。

合作企业违反前款规定，不在中国境内设置会计帐簿的，财政税务机关可以处以罚款，工商行政管理机关可以责令停止营业或者吊销其营业执照。

(相关资料: 地方法规 1 篇 修订沿革 条文释义 实务指南)

第十六条 合作企业应当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者其他金融机构开立外汇帐户。

合作企业的外汇事宜，依照国家有关外汇管理的规定办理。

(相关资料: 修订沿革 条文释义 实务指南)

第十七条 合作企业可以向中国境内的金融机构借款，也可以在中国境外借款。

中外合作者用作投资或者合作条件的借款及其担保，由各方自行解决。

(相关资料: 修订沿革 条文释义 实务指南)

第十八条 合作企业的各项保险应当向中国境内的保险机构投保。

(相关资料: 修订沿革 条文释义 实务指南)

第十九条 合作企业可以在经批准的经营范围內,进口本企业需要的物资,出口本企业生产的产品。合作企业在经批准的经营范围內所需的原材料、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。

(相关资料:修订沿革 条文释义 相关论文 1篇 实务指南)

第二十条 合作企业依照国家有关税收的规定缴纳税款并可以享受减税、免税的优惠待遇。

(相关资料:修订沿革 条文释义 实务指南)

第二十一条 中外合作者依照合作企业合同的约定,分配收益或者产品,承担风险和亏损。

中外合作者在合作企业合同中约定合作期满时合作企业的全部固定资产归中国合作者所有的,可以在合作企业合同中约定外国合作者在合作期限内先行回收投资的办法。合作企业合同约定外国合作者在缴纳所得税前回收投资的,必须向财政税务机关提出申请,由财政税务机关依照国家有关税收的规定审查批准。

依照前款规定外国合作者在合作期限内先行回收投资的,中外合作者应当依照有关法律的规定和合作企业合同的约定对合作企业的债务承担责任。

(相关资料:地方法规 1篇 裁判文书 2篇 修订沿革 条文释义 实务指南)

第二十二条 外国合作者在履行法律规定和合作企业合同约定的义务后分得的利润、其他合法收入和合作企业终止时分得的资金,可以依法汇往国外。

合作企业的外籍职工的工资收入和其他合法收入,依法缴纳个人所得税后,可以汇往国外。

(相关资料:裁判文书 4篇 修订沿革 条文释义 实务指南)

第二十三条 合作企业期满或者提前终止时,应当依照法定程序对资产和债权、债务进

行清算。中外合作者应当依照合作企业合同的约定确定合作企业财产的归属。

合作企业期满或者提前终止，应当向工商行政管理机关和税务机关办理注销登记手续。

(相关资料: 地方法规 1 篇 裁判文书 3 篇 修订沿革 条文释义 实务指南)

第二十四条 合作企业的合作期限由中外合作者协商并在合作企业合同中注明。中外合作者同意延长合作期限的，应当在距合作期满一百八十天前向审查批准机关提出申请。审查批准机关应当自接到申请之日起三十天内决定批准或者不批准。

(相关资料: 部门规章 1 篇 裁判文书 2 篇 修订沿革 条文释义 实务指南)

第二十五条 中外合作者履行合作企业合同、章程发生争议时，应当通过协商或者调解解决。中外合作者不愿通过协商、调解解决的，或者协商、调解不成的，可以依照合作企业合同中的仲裁条款或者事后达成的书面仲裁协议，提交中国仲裁机构或者其他仲裁机构仲裁。

中外合作者没有在合作企业合同中订立仲裁条款，事后又没有达成书面仲裁协议的，可以向中国法院起诉。

(相关资料: 修订沿革 条文释义 相关论文 1 篇 实务指南)

第二十六条 国务院对外经济贸易主管部门根据本法制定实施细则，报国务院批准后施行。

(相关资料: 裁判文书 2 篇 修订沿革 条文释义)

第二十七条 本法自公布之日起施行。