Capital and Technology: China Rejoins the Modern Business World — An Analysis of China’s Equity Joint Ventures Law*

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Introduction

As one of the key legal underpinnings of the process of modern economic reform and outward opening which has transformed the People's Republic of China (hereinafter "China") over the past decade, the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment (hereinafter the "Joint Ventures Law" or "Law") has contributed to bringing China back into the world's economic mainstream.

In an effort to attract foreign investors, China adopted the Joint Ventures Law at the Second Session of the Fifth National People's Congress on July 1, 1979. The law represents one of the earliest milestones in China's process of modern economic reform. Before the reforms were instituted, no such law had ever existed to expressly authorize joint Chinese-foreign business ventures. Foreign investment, together with for-

* The authors wish to thank Mr. Yan Cunhou, a personal friend in the office of the Consulate General of the People's Republic of China in San Francisco for the contribution of materials and information concerning the subject matter of this article. The authors are also grateful for the comments on an earlier draft of the article provided by Mrs. Deidra D. Deamer, Executive Vice President of Unison International, San Francisco/Beijing/Shanghai, a company doing business exclusively with China.


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1. Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investments [hereinafter Joint Ventures Law]. See Appendix I for the full text of the law in English. The authors, confronted with various "unofficial" translations of the Joint Ventures Law, utilized several English versions of the law and compared them with the official Chinese version to arrive at what is perhaps a more accurate and complete translation.

2. As matter of fact, few laws existed at all in China before 1979. For instance, no statutory system of contract law existed before the contract law relating to foreign parties was
eign trade and importation of technology, are the major components of the opening-to-the-outside-world policy under which the Joint Ventures law is a key vehicle. In conformity with the Constitution of China which allows foreign nationals to conduct business on Chinese soil, the Joint Ventures Law explicitly permits foreign equity investment in China. To put the Joint Ventures Law in perspective, Part I of this article begins with a brief consideration of China and its dominant, socialist ideology and modern historical experience. Part II presents a summary discussion of the Joint Ventures Law, including its history and a description of its provisions. Part III focuses, provision by provision, on the content and application of the Law as recently amended. Finally, Part IV sets forth some observations about certain problematic areas of the Joint Ventures Law and suggest possible solutions.

promulgated in July 1985. See Law of the People's Republic of China on Economic Contracts Involving Foreign Interest (adopted at the Tenth Session of the Standing Committee of the Sixth National People's Congress, promulgated by Order No. 22 of the President of the People's Republic of China on March 21, 1985, and effective July 1, 1985) [hereinafter Foreign Contracts Law]. Likewise, no civil code existed until the General Principles of Civil Law were promulgated in April 1986. See General Principles of the Civil Law of the People's Republic of China (adopted at the Fourth Session of the Sixth National People's Congress, promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986, and effective as of January 1, 1987). The new Chinese corporations code has yet to come out as of the date of this writing, but is in the process of being drafted. Accordingly, the Joint Ventures Law is a "pioneer" in terms of the development of the modern Chinese legal system. Before the Joint Ventures Law was enacted, the Chinese government did not permit foreigners to set up enterprises in China. Chinese enterprises also were not permitted to have joint ventures (save for cooperative production arrangements with certain approved socialist nations). No one was allowed to set up enterprises freely. Thus, the most significant role that the Joint Ventures Law plays in the economic reform process is that it permits foreign capital to come into China, and allows joint ventures to exist. See Chu Baotai & Dong Wei Yuan, Legal Issues for Foreign Businesspersons Investing in China 70 (1988) (in Chinese).


5. Joint Ventures Law, supra note 1, art. 1. This article considers only Chinese-foreign equity joint ventures, where Chinese and foreign parties establish and take equity interests in a form of limited liability company in China; references throughout the article to "joint ventures" mean equity joint ventures. So-called "pure contractual" joint ventures (which are partnership-like, contract-based business arrangements between Chinese and foreign parties) and "hybrid" joint ventures (which combine the features of equity and pure contractual joint ventures) — governed by the Law of the People's Republic of China on Contractual Joint Ventures (adopted at the First Session of the Seventh National People's Congress on April 13, 1988) — are not covered.
I. Economic Reform in the Face of Ideology and History

China, the world's most populous country, has been engaged in a process of truly substantial economic reform for over ten years. During this time, China's "door" has again been effectively opened to foreigners. Domestic private enterprises have been allowed to form, a fledgling free market economy has emerged, and significant foreign investment has entered the country.

Despite these developments, and although fundamental changes have recently taken place in the socialist systems and economies of East European nations and the Soviet Union, China steadfastly maintains that it will not go quite as far as to abandon its socialist system. China continues to insist that socialist theory will ultimately prevail over capitalism and other competing systems — the Communist Party still maintains a stronghold in the country. Marxism and Leninism continue to be the backbone of the Communist Party's fundamental theory.6

According to Marxist/Leninist theory, one of the principal characteristics of modern capitalism is the need to export capital.7 The term "investment" is accordingly understood to mean the exportation of capital to underdeveloped countries, during times of capital surplus in the economies of industrialized nations, and the exploitation of cheap labor in underdeveloped countries. Thus, beginning with the Communist Revolution of 1949, little if any foreign capital entered China8 until the current process of economic reform began, and the government and most people in China believed that foreign investment was ill-motivated and exploitative.

Political ideology, of course, is not the sole reason that the Chinese were inclined to reject foreign investment. China's history of economic exploitation at the hands of foreigners has played a large role in generating deep-seated xenophobic feelings in China. For example, in the years following the Opium War of 1840, when British and French soldiers first forcibly opened China's "door" to the industrialized countries of the West, a substantial foreign business presence was established in China. As is well known, foreigners during this period typically leased special districts in the most valuable portions of major Chinese cities at nominal

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8. See infra note 9 and accompanying text.
rates, and generally conducted enterprises that exploited Chinese labor and benefitted foreign interests almost exclusively. China still regards this era as representative of the worst of "semi-feudalism" and "semi-colonialism," and the Chinese continue to be humiliated by accounts of the period, including stories of parks in Shanghai which were off limits to "dogs and Chinese." Such bitter memories of the Chinese have presented a pronounced bias against the reintroduction of foreign investment into the country. It has made no difference whether the foreign investment has come from countries other than those of the industrialized West — the Chinese still remember the Soviet Union's withdrawal of all its investment in China in the 1960's, leaving Chinese industries in disaster.9

Thus, before the onset of economic reform in the late 1970's, China was isolated from the world economy for many years. The Chinese economy that had developed since 1949 was based largely on austere self-reliance. Foreign trade did not play any significant role and was generally limited to rather unsteady relationships with a few other nations that had similar political interests (e.g., Albania, North Korea and North Vietnam). However, the Chinese government embarked on a bold new program of economic reform in late 1978, after acknowledging that China needed foreign technology and capital if the country were to be modernized quickly.

The reform process began in China's countryside. In an attempt to stimulate agricultural production by providing individual farmers with new incentives, the collectively held land10 was divided into separate parcels and given to each household — although formal ownership remained with the state or the collectives. In the cities, private enterprises were allowed to form as a supplement to government-owned enterprises. Foreign trade was encouraged, and legislation followed authorizing foreign investment in Chinese-foreign equity joint ventures. China sought foreign trade and investment to improve the economy. In the early 1980's, a saying attributed to Deng Xiaoping became popular in almost

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9. When the Chinese Communist Party came into power in 1949, the USSR quickly became China's largest trade partner. At the time, China considered the Soviet Union to be its "elder brother." However, as is widely known, this "honeymoon" period lasted only until the 1960's, when, due to increasing political differences with the Chinese, the Soviets withdrew all of the expert personnel and equipment they had in China, thereby leaving around 150 key industrial projects in shambles.

10. After 1949, the Chinese government established a communal farming system in the rural areas of China under which agriculture was conducted as a group enterprise under government supervision.
every household: “white cat, black cat, whichever catches mice is a good cat.”

Currently, China extols the virtues of foreign investment in importing capital, technology, and management skills. The government characterizes foreign investment as leading to increased employment and exportation, as well as producing greater national income. Additionally, these investments have provided many Chinese individuals with training in the area of international trade and business and have helped to improve the existing economy. Apparently, the Chinese government has ignored traditional Marxist/Leninist objections to foreign investment.

II. The Joint Ventures Law

In concise, straightforward language, the Joint Ventures Law contains fifteen articles which set forth: the purpose of joint ventures (Article 1); the legal position of joint ventures (Article 2); the procedures, including Chinese government approvals, for establishing joint ventures (Article 3); the form and the capital of joint ventures (Articles 4 and 5); the organization of joint ventures (Article 6); the handling of joint venture profits and taxation (Article 7); the permissible activities of joint ventures (Articles 8 and 9); the treatment of payments of funds by joint ventures (Articles 10 and 11); the term and termination of joint ventures (Articles 12 and 13); joint venture dispute resolution techniques (Article 14); and the effective date of the law governing joint ventures (Article 15).

During the first ten years after the promulgation of the Joint Ventures Law, foreign businesspersons came to China in great numbers looking for investment opportunities. The enticements drawing these foreign joint venturers included China’s rich natural resources; its large, inexpensive and tractable labor force; its vast number of industrial enter-

11. This saying is generally understood to mean that whatever economic system works well — whether socialist, capitalist, or some mixture of the two — the results will be good for the nation.
12. See LIU DING, supra note 7, at 284-85.
13. Id. at 286.
14. CHU BAOTAI & DONG WEI YUAN, supra note 2, at 59-60.
15. Some Chinese scholars suggest that this state of affairs does not represent any conflict under Marxist/Leninist theory, maintaining that socialist countries may and should take advantage of foreign capital to develop their socialist economies. See LIU EN ZHAO, supra note 3, at 76.
16. Some prime examples are bauxite (for aluminum), iron ore, coal, gold, and oil.
17. The magnitude of China’s labor force is immediately recognizable when one considers the general population of more than 1 billion.
prises;\textsuperscript{18} and its potential market of one billion-plus consumers.\textsuperscript{19} In the late 1970's, some of the foreign investors established wholly-owned businesses in China, creating what are known as “foreign enterprises.” Others established equity joint venture businesses. By April 1990, the Chinese government had approved more than 12,000 such equity joint ventures, with contractual commitments by foreign investors of $12.5 billion dollars — $7.3 billion dollars of which had already been invested.\textsuperscript{20}

During this first decade of economic reform, however, it became apparent that the Joint Ventures Law, as written in 1979 during the early stages of China's economic reform, needed to be improved in a number of ways, particularly to address areas overlooked when China first adopted the Law. The Law was ultimately amended at the Third Session of the Seventh National People's Congress on April 4, 1990. The discussion below will examine the Joint Ventures Law, as amended in 1990, in the order in which the individual articles appear in the Law.

III. Content and Application of the Joint Ventures Law

A. Article 1

1. Development of Economy and Promotion of Technology

The purpose of the Joint Ventures Law is to create an environment of protection so as to encourage foreign investment in China, and especially, technological exchange.\textsuperscript{21} China is still, as it officially acknowledges, a developing country with an economy which is not yet equal to those of western nations. The economic reform begun in the 1970's was

\textsuperscript{18} Estimated to be around 400,000 total. China's largest areas of industry are in its heavy industrial sectors, including steel, automobile/truck, oil, and chemical production. Light industries (e.g., the manufacture of shoes, textiles, bicycles, and toys) and agriculture are also significant.

\textsuperscript{19} CHU BAOTAI & DONG WEI YUAN, supra note 2, at 69.

\textsuperscript{20} People's Daily, Apr. 5, 1990, at 3, col. 1 (overseas Chinese language ed.). Recent statistics relating to Chinese exports are an indicator of the importance of enterprises with foreign investment to China's economy. In the first half of 1990, export by enterprises with foreign investment totaled $2.9 billion dollars. The figure for all of 1989 was $4.9 billion dollars. People's Daily, Aug. 2, 1990, at 1, col. 3 (overseas Chinese language ed.). The major export products included electronic equipment, machinery, textiles, finished clothing, shoes, toys, and various plastic products. Id. During 1990, the Chinese government approved 7,276 foreign investment projects (an increase of 25.9% from 1989), with contractual commitments by foreign investors of $6.5 billion dollars (an increase of 17.3% from 1989) — $3.4 billion dollars of which had already been invested. Of the 7,276 projects, 4,093 are equity joint ventures. People's Daily, Jan. 4, 1991, at 1, col. 2 (overseas Chinese language ed.). Note that the People's Daily, China's national newspaper, is an official organ of the Chinese government, and the reports it publishes thus carry significant authority.

\textsuperscript{21} See Joint Ventures Law, supra note 1, art. 1 (setting forth the twin goals of expansion of international cooperation and technological exchange).
and is intended to take China quickly into the modern economic world. For this weighty purpose alone, China badly needs foreign capital and technology.

In general, the Law permits those joint ventures that are able to "promote the development of China's economy and the raising of scientific and technical levels." The implementing regulations under the Joint Ventures Law (hereinafter the "Regulations") specify that permissible joint ventures are principally in the following industries: (1) energy development, building material, chemical, and metallurgical industries; (2) machine manufacturing, instrument/meter manufacturing, and offshore oil exploitation equipment manufacturing industries; (3) electronics, computer, and communications equipment manufacturing industries; (4) textile, foodstuffs, medicine, medical apparatus, and packaging industries; (5) agriculture, animal husbandry, and fish breeding industries; and (6) tourism and service trades.

In order to establish a joint venture, the interested parties must meet one of the following requirements:

(1) employ advanced technology and adopt modern, scientific management methods which enable increases in the variety of products produced, the raising of quality and output, and the conservation of energy and materials.

(2) provide benefits in terms of technical innovation that result in quicker and greater profits for less investment.

(3) enable the expanded production of exportable products and result in increasing foreign exchange income.

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22. Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment, art. 3 [hereinafter Regulations]. See Appendix II for the full text of the Regulations in English. The authors have modified the translation of the Beijing Review Press (which is relied upon, unofficially, by the Chinese government) to conform with the authors' version of the Joint Ventures Law. The Regulations were promulgated by the State Council of the People's Republic of China on September 20, 1983. The State Council is amending the Regulations to conform to the recent amendments in the Joint Ventures Law. People's Daily, Apr. 3, 1990, at 1, col. 5 (overseas Chinese language ed.).

23. Regulations, supra note 22, art. 3. Government officials have disclosed recently that, in the future, China will emphasize foreign investment in: (1) projects related to energy, transportation, communications, agriculture, and raw materials; (2) projects that can improve the function of products, reduce waste, enlarge production capacity, and develop economic and technological efficiency; (3) projects that can meet the needs of both Chinese and international markets, improve the quality of products to develop new markets, and increase exports; and (4) projects to make new materials that meet market needs both internally and externally and fill in perceived gaps in China's production capabilities. The government is currently considering the issuance of certain preferential policies to promote such key projects. People's Daily, Mar. 24, 1990, at 3, col. 6 (overseas Chinese language ed.).
(4) enable the training of technical and managerial personnel.\textsuperscript{24}

Neither the Law nor the Regulations mentions what the result will be if the parties fail to meet one or more of these requirements.\textsuperscript{25} But the implication is that the venture will not be approved. Joint venture applicants should, at least until the Law or the Regulations are clarified, tailor their plans specifically to comply with the regulatory requirements — with the Chinese party taking primary responsibility for compliance review — rather than to seek approval of innovative proposals. Nevertheless, the requirements explicitly state that approval will be denied if the joint venture: (1) constitutes a detriment to China’s sovereignty; (2) constitutes a violation of Chinese law; (3) causes nonconformity with the requirements of the development of China’s national economy; (4) causes environmental pollution; or (5) causes obvious inequity in the joint venture agreement, contract, or articles of association,\textsuperscript{26} thereby impairing the rights and interests of one party.\textsuperscript{27}

2. Principle of Equality and Mutual Benefit

Article 1 of the Joint Ventures Law requires that all joint ventures in China be based on the principle of equality and mutual benefit, and joint ventures in violation of this overriding principle will not be permitted. This principle was first articulated by China’s late premier Zhou Enlai, together with Indian premier Jawaharlal Nehru in the 1950’s as an objective for all international activities,\textsuperscript{28} and has come to be a general concept of modern international law.\textsuperscript{29} The Chinese invariably assert the principle in their dealings with foreigners.

\textsuperscript{24} Regulations, supra note 22, art. 4.
\textsuperscript{25} Chinese laws are enacted by the National People’s Congress. Regulations are issued by the State Council. Although regulations serve as supplements to or commentaries on the laws, they may generally be viewed as having equivalent authority. For a discussion of what some commentators view as the “inconsistent pattern” of Chinese foreign-related statutes on the issue of whether legislative silence amounts to rejection or prohibition, see Reiley & Fu, Doing Business in China After Tiananmen Square: The Impact of Chinese Contract Law and the U.N. Convention on Sale of Goods on Sino-American Business Transactions, 24 U.S.F. L. Rev. 25, 34 (1989).
\textsuperscript{26} See infra notes 53-61 and accompanying text as to these three documents.
\textsuperscript{27} Regulations, supra note 22, art. 5.
\textsuperscript{28} Under the principle of equality and mutual benefit, on April 29, 1954, China and India entered into a treaty concerning commerce and transportation between Tibet and India. As will be seen below from the discussion of other articles of the Joint Ventures Law, each party to a joint venture has equal power to negotiate the three principal joint venture documents, \textit{i.e.}, the agreement, the contract, and the articles of association. Each party also has equal power to manage the joint venture and share profits, according to each party’s proportionate contribution.
\textsuperscript{29} The principle was accepted by all attendees of the Bandung (Indonesia) Conference in April 1955, the first significant diplomatic gathering of major Asian countries after World War
As the most populous developing country in the world, and as a matter of history, China is very sensitive to concerns of equality and mutual benefit. It is therefore likely that the responsible Chinese authorities will not permit joint venture that even suggests a conflict with this principle.\textsuperscript{30} Moreover, any perceived adverse impact on China's sovereignty will also cause the rejection of a joint venture application.\textsuperscript{31}

3. Eligible Parties

Although a foreign individual is free to invest in China and become a party to a joint venture, apparently no Chinese individual has the same right: a foreign party to a joint venture must cooperate with "Chinese companies, enterprises or other economic entities."\textsuperscript{32} This silent exclusion of Chinese individuals appears to bar them from participation in joint ventures.\textsuperscript{33}

Accordingly, China's growing number of individual private businesspersons are prohibited from participating as joint venture parties. The private business enterprises, however, which have developed under the ongoing process of economic reform in China can qualify as "other economic entities," and be joint venture parties. Nonetheless, experienced foreign investors are more likely, as a practical matter, to pursue joint ventures with state-owned enterprises rather than private businesses in order to smooth the way for required government approvals.\textsuperscript{34}

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II. It was also recognized by China and the United States on January 1, 1979, when the two countries formally established diplomatic relations.

30. See infra notes 42-43, 133, and accompanying text as to required Chinese government approvals. Chinese government officials insist that the success of foreign investment derives from the principle of equality and mutual benefit. Without "benefit" to their interests, foreign investors will not come to China to invest. Equally true, with no "benefit" to its interests, China will not be interested in any proffered foreign investment. People's Daily, Mar. 24, 1990, at 3, col. 6 (overseas Chinese language ed.).

31. Regulations, supra note 22, art. 5. For example, any provision in a joint venture contract stating (or suggesting) that — to the possible detriment of a Chinese party or of the Chinese nation — a foreign court would have sole jurisdiction over the joint venture or that foreign law only would apply, would appear to be grounds for the Chinese government to reject an application. However, it also appears that the Chinese government may as a practical matter show flexibility in approving some nonconforming joint venture applications.

32. Joint Ventures Law, supra note 1, art. 1

33. Again, for a discussion of the "inconsistent pattern" of Chinese foreign-related statutes on the issue of whether legislative silence indicates rejection of prohibition — and whether it specifically "amounts to rejection of Chinese individuals" as contractual parties, see Reiley & Fu, supra note 25, at 25, 34. Chinese scholars, however, interpret such foreign-related statutes to exclude Chinese individuals. See, e.g., GUO SHOUKANG, INTERNATIONAL TECHNOLOGY TRANSFER 61 (1988) (in Chinese).

34. See infra notes 42-43, 133 and accompanying text as to required Chinese government approvals. In China, only state-owned enterprises are subject to central planning, which pro-
A Chinese enterprise or other economic entity is not eligible to be a joint venturer if it is: (1) a “non-economic administrative company;”35 (2) an enterprise with no investment capital and not capable of securing loans; (3) an enterprise that has failed to receive joint venture approval from the department in charge; (4) a government agency; (5) an organization such as a labor union or women’s association; (6) a research and academic unit with funds from the government; (7) an individual enterprise; (8) a branch of the military; or (9) a university or other school.36

B. Article 2

1. Status as a Chinese Legal Person

A Chinese-foreign joint venture is considered a Chinese legal person, i.e., a juristic person.37 Therefore, like all other Chinese enterprises, it is subject to the jurisdiction and protection of Chinese law.38

The formation of a joint venture contract — its validity, interpretation, execution, and the settlement of disputes under it — are expressly governed by Chinese law, including international treaties and conventions to which China is a signatory.39 In fact, all joint venture activities are “governed by the laws, decrees and pertinent rules and regulations of China.”40

However, with such governance comes benefits: Chinese law, fully protects both the foreign parties to the joint ventures and the joint ventures themselves. Article 2 of the Joint Ventures Law expressly provides that the Chinese government “protects . . . the resources invested by a foreign party . . . and [its] profits.”41

35. This term has no clear meaning in Chinese and is difficult to approximate in English. However, it is clear that, as a result of Chinese government organizational changes over the past decade or so, many of these “non-economic” entities are actually former government agencies which carry on nonproducing, supervisory, or administrative activities.

36. CHU BAOTAI & DONG WEI YUAN, supra note 2, at 112-13. Universities and schools are included on the list because in China they are operated by the government.

37. Regulations, supra note 22, art. 2. The Chinese term for “legal person,” “fa ren,” is defined as “an . . . organization, as opposed to a natural person, that is qualified to possess civil rights and obligations.” DICTIONARY OF [CHINESE] JURISPRUDENCE 600 (Shanghai Dictionary Publishing House 1984) (in Chinese).

38. Regulations, supra note 22, art. 2.

39. Id. art. 15. See infra notes 59-60 and accompanying text as to the contract required for a joint venture.

40. Joint Ventures Law, supra note 1, art. 2.

41. The Constitution of the People's Republic of China also specifically provides that a foreign party's lawful rights and interests are protected by Chinese law. PEOPLE'S REPUBLIC OF CHINA CONST. art. 18 (1982). While the Joint Ventures Law does not provide expressly
The Chinese government "shall" also provide "support and assistance" to joint ventures.\textsuperscript{42} Despite the free market-type economy's rise in prominence under the ongoing process of economic reform, the planned economy of Marxist/Leninist theory still dominates Chinese economic thought. Therefore, government support and assistance — and not merely its grant of necessary approvals — remain vital to the success of joint ventures.\textsuperscript{43} Accordingly, the Chinese authorities always give priority to joint ventures over competing domestic business projects.\textsuperscript{44}

2. Nationalization/Condemnation Issues

Nationalization (or expropriation) and condemnation of assets continue to be serious concerns to foreign investors in developing countries. Investing industrial countries (and individual investors from those countries) and the recipient developing countries have always had different opinions about what compensation should be paid if nationalization or condemnation occurs as a consequence of war or other crises.\textsuperscript{45} The industrial countries of the world generally assert that compensation should be adequate, effective, and prompt with respect to the condemned property and the condemnee's interests.\textsuperscript{46} On the other hand, the developing countries insist that the compensation be limited to that which is "appropriate" for the particular situation, irrespective of whether the amount ultimately awarded equals the fair market value, or satisfies the standard advocated by the industrial countries.\textsuperscript{47}

The Joint Ventures Law, prior to the 1990 amendments, did not address the issue of nationalization or condemnation at all. It was implicit, however, that nationalization and condemnation were possible, since China refers to itself officially as a developing country and has generally stood in agreement with other such countries on international legal issues. Thus, the silence in the prior law on the nationalization and con-

\textsuperscript{42} Regulations, supra note 22, art. 7.

\textsuperscript{43} See infra notes 132-135 and accompanying text.

\textsuperscript{44} The Chinese government gives priority to joint ventures in the supply of energy, capital, and exchange of foreign currency. People's Daily, Mar. 24, 1990, at 3, col. 6 (overseas Chinese language ed.). See also infra notes 132-136 and accompanying text.

\textsuperscript{45} L. HENKIN & R. PUGH, INTERNATIONAL LAW 1111-20 (2d ed. 1987).

\textsuperscript{46} Id.

\textsuperscript{47} Id. See also Robertson & Chen, New Amendments to the Chinese Equity Joint Venture Law: Will They Stimulate Foreign Investment?, 18 INT'L BUS. LAW. 372, 373 (1990).
demnation issue was at times deeply troubling to foreign investors, particularly after the incident in Tiananmen Square on June 4, 1989.

As a practical matter, some experienced foreign investors put a just compensation clause into their joint venture contracts requiring the Chinese party to compensate them if nationalization or condemnation occurred. The untested assumption of these investors was that the Chinese joint venture party — and the Chinese government — would abide by such clauses in the event of nationalization or condemnation, so as not to discredit China’s “open-door” economic policy. Other investors in China contracted for individual investment insurance which became available when their nations and China entered into investment guarantee agreements. Yet these actions still did not provide the type of protection which the foreign investors would have preferred to receive as a form of guarantee from the Chinese government.

As amended, Article 2 expressly provides that “China will not nationalize or condemn joint ventures;” however, “under special circumstances where public interests require, China may condemn joint ventures through legal process and with just compensation.” This amendment means that foreign investors in Chinese joint ventures have protection against the unrestricted nationalization or condemnation which was theoretically possible under prior law. The amendment to Article 2 effectively eliminates the continuing conflict between China and

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48. Such an agreement has existed between the United States and China since October 30, 1980. The United States-China agreement relates specifically to investment insurance, including reinsurance, and investment guarantees administered by the United States Overseas Private Investment Corporation (“OPIC”) that promise coverage for loss from political risks on any investment guarantee provided by OPIC for projects in China. Article 3 of the agreement provides that insofar as OPIC makes payment to any American investor, the Chinese government shall recognize such payment and the succession of OPIC to the investor’s title, rights, claims, and causes of action. While OPIC cannot assert any right greater than that of the investor it pays, the United States reserves the right to assert a claim in its sovereign capacity under international law. Also, under Article 4 of the agreement, the Chinese government has agreed to make appropriate arrangements for another entity to succeed to the rights of an American investor if OPIC is for any reason prevented from doing so.

49. It must be acknowledged that the Chinese characters “xiang ying bu chang” — translated by the authors in the discussion above to be “just compensation” — are somewhat ambiguous. See Robertson & Chen, supra note 47, at 373, 376 (“appropriate compensation”). The Beijing Review Press translates the same characters, in Article 5 of the Laws of the People’s Republic of China on Enterprises Operated Exclusively with Foreign Capital, as “reasonable compensation.” See THE ABC OF INVESTING IN CHINA: CHINA IN FOCUS 189 (Y. Haitao ed. 1989) [hereinafter CHINA IN FOCUS]. BLACK’S LAW DICTIONARY 1138 (5th ed. 1979), however, lists “reasonable” as synonymous with “just.” In addition, it appears that the thrust of the newly amended Article 2 of the Joint Ventures Law, supra note 1, is to authorize recompense to condemnees in accordance with law and justice, i.e., to provide them with “just compensation.” Therefore, the authors believe it is appropriate to use the word “just” and the phrase “just compensation” in an English translation of Article 2 of the Joint Ventures Law.
nations as to the appropriate measure of compensation for nationalization. With the guarantee against unrestricted nationalization, the new Law acknowledges that just compensation is appropriate for situations in which condemnation occurs.

Moreover, since it mandates that condemnation can only be invoked where special public interests require, and that it must be done through established legal procedures, the 1990 amendment would appear ultimately very similar to American eminent domain or condemnation law, derived from the fifth amendment to the United States Constitution.\textsuperscript{50} Of course it remains to be seen whether the new language will operate in a manner similar to American condemnation law.\textsuperscript{51}

C. Article 3

1. Procedures to Establish Joint Ventures

Foreign investors that are interested in Chinese joint ventures may contact an appropriate Chinese enterprise either directly or through Chinese government or other related references.\textsuperscript{52} After preliminary discussions and negotiations, and feasibility studies,\textsuperscript{53} the foreign party needs to sign an agreement, a contract, and articles of association with the Chinese party.\textsuperscript{54} The parties must next apply for approval of the joint ven-

\textsuperscript{50} Which requires that no person shall "be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

\textsuperscript{51} Certain commentators on the Joint Ventures Law are skeptical about the future application of the amended Article 2. See Robertson & Chen, supra note 47, at 373 (stating that the promise not to nationalize may "last precisely as long as the Chinese government wants it to last and no longer," and that the special circumstances where public interests require language would appear to offer little protection from Chinese government takings "motivated by considerations of pure expediency").

\textsuperscript{52} Regulations, supra note 22, art. 12. See infra note 66 and accompanying text.

\textsuperscript{53} Feasibility studies should contain at a minimum: (1) conclusions from market research; (2) an explanation of the technology or technologies used; (3) a list of the supply sources for raw materials and their prices; (4) a list of the sources for labor and wages; (5) a statement of the percentage of projected administrative/management costs; (6) a description of the capacity to obtain financing; (7) a description of the capacity to pay taxes; (8) a statement of the cost, sales price, and profit margin of the products to be produced; (9) a statement of the total investment amount, registered capital, and the share each party contributes; and (10) a description of the foreign currency situation of the joint venture. During examination of a feasibility study report, the Chinese government will look at the joint venture's reputation in terms of capital financing and business capacity, and even at the cooperative attitude and business morality of the joint venture parties. The Chinese government will also review whether the parties have conformed in the past — and whether the joint venture seems likely to conform in the future — to the principle of equality and mutual benefit. CHU BAOTAI & DONG WEI YUAN, supra note 2, at 125-25.

\textsuperscript{54} Regulations, supra note 22, art. 9.
ture from the Chinese government. The three necessary documents should be filed with the responsible government authority, which will approve or reject them within three months.

The required "agreement" is different from the required "contract." The agreement refers only to certain major points and principles governing the establishment of a joint venture. It does not cover all the items necessary for a joint venture; it simply deals with the joint venture's name, capital, organization, term, etc. Although the agreement binds the parties, if it conflicts with the contract, the contract is to prevail.

The contract governs the rights and obligations of the parties to the joint venture. Although the contract is a standard form, it is the key document in the joint venture formation process. If approved by the government, it binds the parties and defines their rights and obligations.

The articles of association cover matters of joint venture management, and can be likened to a combination of the articles of incorporation

55. Under the required application procedure, the Chinese party is responsible for submission to the Chinese government of the following: (1) application for establishment of joint venture; (2) feasibility study report (prepared jointly by the Chinese and foreign party) — in Chinese (although it may also be translated into a foreign language); (3) executed joint venture agreement, contract, and articles of association — in Chinese (although these documents may also be translated into a foreign language); (4) list of candidates for chairman, vice-chairman, and directors — in Chinese (although it may also be translated into a foreign language); and (5) written opinion of the local government organ in the area where the joint venture is to be located as to its establishment. Id.

56. Joint Ventures Law, supra note 1, art. 3. Prior to the 1990 amendments, the "Government" meant the Ministry of Foreign Economic Relations and Trade of China. Now the article reads, "the department in charge of foreign economy and trade." Given the overlapping jurisdictions of many Chinese government organs, this arguably should be interpreted to include a number of ministries in the central government, as well as in each provincial government.

57. Regulations, supra note 22, art. 13.

58. Id. In fact, the parties may agree to dispense with the agreement and merely conclude a joint venture contract and articles of association. Id.

59. Id.

60. It should contain such items as: (1) names, nationalities, professions, and addresses of the joint venture parties; (2) name, address, purpose, and scope of the joint venture; (3) total amount of investment and registered capital of the joint venture and each joint venture party's contribution; (4) ratio of profit distribution and losses to be borne by each party; (5) composition of the joint venture board of directors; (6) principal production equipment and technology; (7) methods for purchasing supplies and selling finished products; (8) income and foreign currency arrangements; (9) finance, accounting, and auditing principles; (10) labor management provisions; (11) term of the joint venture and provisions for dissolution and liquidation; (12) enumeration of liabilities for the breach of governing documents; (13) dispute resolution procedures; and (14) language to be used for the contract and conditions for entry into force. Id. art. 14.
and the bylaws of an American corporation. The terms of articles of association and the joint venture contract must be consistent.

The parties, within one month after receipt of the certificate of approval from the department in charge of foreign economy and trade, must register with the administrative bureau for industry and commerce in the jurisdiction where the joint venture will be located. The joint venture can begin its operations after it receives a license from the bureau. The examination and approval authority of the department in charge of foreign economy and trade is different from the ministerial authority of the administrative bureau. The department in charge of foreign economy and trade is usually the department in charge of the industry and business of the Chinese party. The administrative bureau's authority extends merely to the issuance of licenses to business enterprises — domestic Chinese enterprises, foreign enterprises, and joint ventures — in a particular locale, and to the performance of other related administrative tasks.

The joint venture's relationship with the department in charge is a close one, lasting essentially until the end of the joint venture's term. Even though the joint venture officially enjoys the right of autonomous management, it must continually submit its business plan(s) to the department for review. The joint venture will, however, also receive regular assistance and support from the department. In contrast to this close relationship, so long as the joint venture does not attempt to operate beyond the bounds of its business license, it will have little if anything to do with the administrative bureau after it issues the license.

Subsequent to the initial departmental approval process, a joint venture must file with and receive a permit from the department in charge for any of the following changes: (1) dissolution of the joint venture; (2) transfer of one (or more) party's share; (3) increase in registered capital;

61. Id. art. 13. The articles of association must contain information such as: (1) the joint venture's name and address; (2) the joint venture's purpose, business scope, and term; (3) the names, nationalities, professions, and addresses of the parties to the joint venture; (4) the total amount of investment, registered capital of the joint venture and each party's contribution, and the ratio of profit distribution and losses to be borne by each party; (5) the composition of the joint venture board of directors and its responsibilities, powers, and rules of procedure; (6) operational and managerial details; (7) finance, accounting, and auditing principles; (8) provisions for dissolution and liquidation; and (9) procedures for amendment. Id. art. 16.

62. CHU BAOTAI & DONG WEI YUAN, supra note 2, at 134.

63. Regulations, supra note 22, art. 11.

64. Id. For registration, the joint venture needs to produce: (1) a certificate of approval from the responsible department; (2) duplicates of the joint venture's agreement, contract, and articles of association; and (3) duplicates of any organizational or other certificates from the foreign party's home country. LIU DING, supra note 7, at 298.
(4) change of the joint venture’s name; (5) increase in the number of parties; (6) change or enlargement of joint venture business scope beyond that stated in the contract and articles of association approved by the government; and (7) establishment of a joint venture subsidiary and/or sale agency in China or abroad.65

As discussed above, foreign investors, subject to the examination and approval of the government, may contact Chinese economic entities directly to set up joint ventures.66 Alternatively, foreign investors can ask the Chinese government to find a Chinese joint venture party for them.67 Sometimes foreign investors simply do not know where to begin: Who will the Chinese party be? Where will the joint venture be located? The Chinese government will, through the China International Trust and Investment Corporation (“CITIC”) or its local counterpart in a particular Chinese province, find a Chinese joint venture party and location.68

In all its research, plans and activities relating to the establishment of a joint venture in China, a foreign party will do best, perhaps, to keep in mind what is undoubtedly China’s most valuable natural resource: its huge, inexpensive labor force.69 In spite of the keen Chinese desire under the Joint Ventures Law to encourage technology transfer and related businesses, many foreign investors believe that labor-intensive businesses hold the greatest potential for profit. Successful exploitation of the Chinese labor force in a joint venture project can be as important as any valuable business contacts in China created by the efforts of CITIC or by a foreign party itself.

65. CHU BAOTAI & DONG WEI YUAN, supra note 2, at 137.
66. See supra note 52 and accompanying text. Other ways to become involved in joint ventures in China include introductions through overseas Chinese business people and students, research and contacts with Chinese delegations when they are traveling outside of China, the foreign branches of Chinese consulting companies, Chinese companies’ overseas representatives, and Chinese embassy and general consulate offices and their staff.
67. Regulations, supra note 22, art. 12.
68. Id. The credibility — and capacity to participate satisfactorily in a joint venture — of the potential Chinese party located by CITIC bear a stamp, so to speak, of government guarantee.
69. By way of comparison, China’s labor costs are less than ten percent of those of Taiwan and Hong Kong, and only half of those in Thailand, Malaysia, and the Philippines. Wang Jin Feng, Various Aspects of the Investment Environment in China, People’s Daily, Jan. 10, 1990, at 3, col. 3 (overseas Chinese language ed.).
D. Article 4

1. Form and Capital

A joint venture is a limited liability company.70 This is the only form of business entity that is expressly provided for in the Joint Ventures Law; it is unclear whether joint ventures can take other forms such as that of Anglo-American style general and limited partnerships, corporations and proprietary/limited companies. However, the omission of the other forms from the language of the Law, together with actual past practice,71 appear to indicate that they are not available.72 As a result, few joint ventures in China today take any other form than that of a limited liability company.

Joint ventures may not issue stock.73 Each joint venture party contributes its respective proportion of capital according to the joint venture contract.74 However, it is required that the foreign party contribute at least twenty-five percent or more of the total investment in the joint ven-

70. Joint Ventures Law, supra note 1, art. 4. The limited liability company form (in various guises) is commonly used in international business. The reason for its popularity can generally be traced to the ease with which it can be initially funded and set up, its efficient system of management through a board of directors or other centralized managing authority, and its eponymous limitation on the potential liabilities of its constituents. See CHU BAOTAI & DONG WEI YUAN, supra note 2, at 91.

71. One Hong Kong investment company apparently tried to establish a joint venture recently using the form of a limited liability company which would issue shares of stock, but failed to gain government approval because of the restriction on approved joint venture forms imposed by the law. People's Daily, Mar. 21, 1990, at 3, col. 6 (overseas Chinese language ed.).

72. See supra notes 25 & 33 and accompanying text as to the ambiguity about whether silence in Chinese statutes indicates legislative rejection of that which is not explicitly stated. Just before the amendments to the Joint Ventures Law, supra note 1, were effected in April 1990, at least one well-known Chinese legal scholar, Professor Wang Jun Yan, Dean of Hai Nan University Law School, advocated the position that the approved form of a joint venture not be restricted to that of a limited liability company. However, the Joint Ventures Law, as amended, does not reflect his suggestion, indicating that it was apparently considered best to leave the Law intact on the matter. People's Daily, Mar. 21, 1990, at 3, col. 6 (overseas Chinese language ed.).

73. LIU DING, supra note 7, at 301. The parties do, however, receive certificates evidencing their investment in the joint venture. Regulations, supra note 22, art. 32. The capital stock system is still at an incipient, experimental stage in China. In Shenzhen, a special economic zone in southern China, and in the large, industrial city of Shenyang, Liaoning Province (northeast China), local stock exchange programs of a sort have been established; however, these programs, as in most cities in China, are primarily intended for the exchange of government bonds. Although there has been a certain amount of discussion and study of the subject in the past, as yet, no Chinese national stock exchange system has been established. Chinese government officials have also indicated recently that there will be no rapid development of national or local stock exchanges in the near future. People's Daily, July 19, 1990, at 3, col. 5 (overseas Chinese language ed.).

74. Regulations, supra note 22, art. 31.
ture.\textsuperscript{75} If there are two or more foreign investors to the joint venture, their combined investment must also be twenty-five percent or more.\textsuperscript{76}

Under international practice, many countries require that the contribution of foreign investors to a multi-national joint venture under their jurisdiction amount to no more than forty-nine percent of the total investment.\textsuperscript{77} However, the Joint Ventures Law has no ceiling on the percentage of foreign investment in a Chinese-foreign joint venture. This is significant because foreign businesspersons can, if they desire, arrange to have majority control of their joint ventures in China. Foreign parties with majority control, however, must keep in mind the proportionately larger share of responsibilities that accompanies majority control.

As in the case of other limited liability companies worldwide, including American corporations and limited liability companies,\textsuperscript{78} each party to a joint venture is liable for the obligations of the joint venture only to the extent of its equity contribution.\textsuperscript{79} Therefore, a foreign party's home country assets are only exposed in proportion to the investment it contributed to the joint venture.

Additionally, the law prohibits joint ventures from reducing its registered capital during its term.\textsuperscript{80} This prohibition protects the continuity of the joint venture. Therefore, even if one party can no longer participate in the joint venture, it may not withdraw or reduce its contributed capital. What it may do is to transfer its shares to a new party to the joint venture.\textsuperscript{81} However, the assignment by one party of its joint venture interests is subject to the preemptive right of purchase, and requires the written consent of the non-assigning party.\textsuperscript{82}

\textsuperscript{75} Joint Ventures Law, \textit{supra} note 1, art. 4.
\textsuperscript{76} \textit{Liu Ding}, \textit{supra} note 7, at 302.
\textsuperscript{77} \textit{Id.}
\textsuperscript{78} This nontraditional, hybrid form of business entity — which shares corporate and partnership characteristics — has recently gained express statutory authorization in several states in the United States: Colorado, Florida, Kansas, and Wyoming. \textit{See} Maxfield, Wolf, Roche, Keatinge & Shea, \textit{Colorado Enacts Limited Liability Company Legislation}, \textit{19 COLO. LAW.} 1029, 1029 & n.2 (1990) (discussing Colorado's enactment of limited liability company legislation to join the other three states).
\textsuperscript{79} Regulations, \textit{supra} note 22, art. 19. Equity contribution may be in the form of cash, property, and/or industrial/intellectual property rights, etc. \textit{Id.}
\textsuperscript{80} \textit{Id.}
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} \textit{Id.}
E. Article 5

1. Contribution/Investment

There are, as suggested parenthetically above, various ways to contribute investment to a joint venture. The investment can be made with cash, equipment, technology or know-how, etc.\textsuperscript{83} It is no secret that China needs foreign currency to help finance the process of economic reform. Perhaps what China needs most for its modernization is advanced technology. Foreign parties are naturally viewed as ready sources to aid in the satisfaction of this need.\textsuperscript{84}

Since cash has a readily ascertainable value, it is the most ready form of investment. If the investment is in the form of buildings or other premises, equipment or other materials, technology or know-how, the appropriate value of the investment must be established by the mutual agreement of the parties or assessed by a mutually agreed upon third person.\textsuperscript{85}

The Joint Ventures Law explicitly requires that the technology or equipment contributed by the foreign party as investment must be "truly advanced and appropriate to China's needs."\textsuperscript{86} The technology or equipment should be: (1) indispensable to the business of the joint venture; (2) impossible to manufacture in China, or possible to manufacture only at too high a price, or unsatisfactory in terms of technical performance and time of availability to meet the expected demand; and (3) priced no higher than the current international market price for similar technology or equipment.\textsuperscript{87}

The industrial/intellectual property rights and/or know-how contributed by the foreign participant as investment must be: (1) capable of

\textsuperscript{83} Joint Ventures Law, supra note 1, art. 5. Past experience indicates that labor or services may not be counted as capital contributions, but there appears to be no authority squarely dealing with this point. See supra notes 25, 33 & 72 as to the ambiguity about whether or not silence in Chinese laws indicates legislative prohibition.

\textsuperscript{84} A system of laws designed specifically to protect foreign technology has been in place since the mid-1980's. See, e.g., Regulations on Administration of Technology Import Contracts of the People's Republic of China (promulgated by the State Council on May 24, 1985) and Detailed Rules for the Implementation of the Administrative Regulations of the People's Republic of China on Technology Import Contracts [hereinafter Detailed Rules] (approved by the State Council on December 30, 1987, and promulgated by the Ministry of Foreign Economic Relations and Trade on January 20, 1988). However, under Article 4 of the Detailed Rules, when a foreign party to a Sino-foreign equity joint venture contributes industrial property rights or proprietary technology as its investment in the joint venture, the matter shall be governed by the Joint Ventures Law.

\textsuperscript{85} Regulations, supra note 22, art. 25.

\textsuperscript{86} Joint Ventures Law, supra note 1, art. 5.

\textsuperscript{87} Regulations, supra note 22, art. 27.
manufacturing new products urgently needed in China or products suitable for export; (2) capable of improving markedly the performance quality of existing products and of raising productivity; or (3) capable of notable savings in raw materials, fuel, or power.\textsuperscript{88} The foreign investor must present pertinent documentation for the technology contributed as the investment, including copies of letters patent, trademark registrations, etc.\textsuperscript{89}

The Law, by no means, requires that the foreign party contribute technology to the joint venture. Joint ventures may buy technology and/or know-how from unrelated third parties.\textsuperscript{90}

As mentioned above, China badly needs advanced foreign technology. However, China’s experience in importing such technology has not always been pleasant. With the initiation of economic reform in the 1970’s, business enterprises in China have gradually gained autonomy. Using their new freedom, they have eagerly imported foreign technology on their own, but frequently have ignored quality control issues. As a result, some businesses have imported already out-of-date technology. Other imports have simply not been fit for particular Chinese needs.\textsuperscript{91} As a consequence, China has grown extremely cautious about the quality of imported technology, and if the foreign party misrepresents the characteristics of contributed technology or know-how that, subsequent to its import into China, causes any loss, the foreign party will be liable for compensation in the amount of the loss.\textsuperscript{92}

The Chinese party may contribute as investment, along with the other permitted forms of investment, the right to use the site designated for the joint venture.\textsuperscript{93} Land in China is state-owned or collectively owned;\textsuperscript{94} no individual or economic entity has ownership rights.\textsuperscript{95} As a consequence, the Chinese party cannot contribute land per se to the joint venture, but instead can only give it the right to use land. The assign-

\textsuperscript{88} Id. art. 28.

\textsuperscript{89} Id. art. 29.

\textsuperscript{90} CHU BAOTAI & DONG WEI YUAN, supra note 2, at 188.

\textsuperscript{91} Many Chinese scholars have criticized this phenomenon as the "Foreign Leap Forward" — a shorthand phrase for economic development with foreign resources that are unfit for China's situation, similar to what occurred during the "Great Leap Forward" Period of the late 1950's, when the Chinese government embarked with great fanfare on a movement to accelerate the speed of Chinese economic development with unsuitable resources — later having to admit being in error.

\textsuperscript{92} Joint Ventures Law, supra note 1, art. 5.

\textsuperscript{93} Id.

\textsuperscript{94} See supra note 10 and accompanying text for a discussion of collectively held land.

\textsuperscript{95} PEOPLE'S REPUBLIC OF CHINA CONST. art. 10 (1982).
ment of the right to use land is prohibited; a joint venture that uses land has the right to use it only, and no other property rights.96

If the Chinese party has not acquired the right to use the site at the time of forming a joint venture, the Chinese party cannot, of course, contribute that right as its investment. However, the joint venture may lease a site from the Chinese government for a fee.97 Such a site-use fee is to be determined exclusively by the Chinese government, depending on a number of conditions.98 Nevertheless, the fee for such use usually is relatively inexpensive compared to rates to be found in Western countries.

F. Article 6

1. Organization and Governance

As described above, a joint venture is a Chinese limited liability company, with investment contributed by the joint venture parties and no system of shareholding. Thus, no shareholders' meetings or approvals are necessary for joint venture actions. Otherwise, the basic structure and activities of a joint venture are similar to that of an ordinary Anglo-American corporation. There is a board of directors that decides the fundamental matters for the joint venture. As in the case of corporations, certain extraordinary actions require special approval, i.e., the unanimous agreement of the directors present at a board meeting.99

The board of directors must consist of one chairman and one or two vice-chairmen;100 there must be at least three directors.101 The number

96. Regulations, supra note 22, art. 53. However, in some of the special economic zones and "economic and technology development areas" of China — such as Hainan and Shanghai — assignment of land use rights is permitted. Since the Regulations are currently being amended, it seems likely that they will be modified in this respect. In addition, it is noteworthy that Article 10 of the People's Republic of China's Constitution was amended on April 12, 1988 to delete the word "lease" in its prohibition against transfers of real property. The amendment also added the phrase that "land use rights may be transferred according to law." This constitutional change thus makes clear that land use rights throughout China are to be treated differently from land ownership and are transferable. Therefore, the likelihood of change to the Regulations in this respect appears even greater.

97. Joint Ventures Law, supra note 1, art. 5.

98. See Regulations, supra note 22, art. 49 (listing such conditions as the purpose of the use, geographic and environmental conditions, any expenses for acquisition, demolition and relocation, and the joint venture's particular infrastructure requirements). Note that each of China's special economic zones has its own regulations on land use.

99. Id. art. 36. These actions are for: (1) amendment of the articles of association of the joint venture; (2) termination and dissolution of the joint venture; (3) increase in or assignment of the registered capital of the joint venture; and (4) merger of the joint venture with another entity.

100. LIU DING, supra note 7, at 313.

101. Regulations, supra note 22, art. 34.
of the directors appointed by one joint venture party usually represents the proportion of that party's investment in the joint venture.\textsuperscript{102} In rendering any important decision, the board of directors must consult both parties in accordance with the principles of equality and mutual benefit.\textsuperscript{103}

As there is no ceiling on foreign investment in a joint venture, the party who contributes more is entitled to appoint more directors. In practice, the Chinese joint venture parties contribute more. Nevertheless, a party contributing less is also well protected by its right to participate in joint venture management decisions. As discussed above, major joint venture decisions still require unanimous agreement, no matter what the percentage of contributions.

The board of directors appoints executive officers to carry out the joint venture's daily business. Any party can be appointed by the board as the president of the joint venture.\textsuperscript{104} However, if one party serves as the president, the other party must serve as vice president.\textsuperscript{105}

2. Board Chairmanship

The prior Joint Ventures Law provided that the chairman of the board of directors of a joint venture had to be a Chinese party (or its representative). This meant that no matter what percentage of the joint venture assets the foreign party held, it could never occupy the chairmanship of the board. It is an accepted international practice, however, that the investor with the largest investment is entitled to be selected or appointed as the board chairman.\textsuperscript{106}

The Joint Ventures Law, as amended, removes the anomaly and Article 6 now provides that "the chairman and the vice chairman of the board of directors shall be appointed through agreement by the parties to the joint venture or selected by the board of directors." The Law adapts to the circumstances; it delegates the right and power to appoint the chairman of the board, whether Chinese or foreign, to the joint venture

\textsuperscript{102} LIU DING, supra note 7, at 313.

\textsuperscript{103} Joint Ventures Law, supra note 1, art. 6. A board of directors' meeting must be held at least once each year. Special meetings may be held at any time upon a proposal made by more than one-third of the directors. Regulations, supra note 22, art. 35. Some joint ventures will want to have the directors' meeting annually, some semi-annually, some quarterly and so on, depending on the character of each joint venture's business and needs. The place of the meeting should be at the location of the joint venture's legal address, usually the joint venture's physical location in China. Id.

\textsuperscript{104} LIU DING, supra note 7, at 313.

\textsuperscript{105} Id.

\textsuperscript{106} See People's Daily, Apr. 5, 1990, at 3, col. 2 (overseas Chinese language ed.) (emphasizing such practice in commenting on the April 1990 amendments to the Law).
parties. Nevertheless, many foreign investors, even though they have invested more than fifty percent of a joint venture's capital, may still prefer having the Chinese party as the chairman of the board because normally it is easier for the Chinese party to deal with Chinese government authorities to secure necessary approvals and assistance. Presumably this is why the new law does not require the majority contributor to be the chairman, and instead allows the parties to decide by agreement whether a foreign party with a larger investment should be the chairman of the Board.

3. Labor Relations

Labor relations in a joint venture are governed by the Regulations of the Peoples Republic of China on Labor Management in Joint Ventures Using Chinese and Foreign Investment ("Joint Venture Labor Regulations"). These regulations recognize that a joint venture has access to three sources of labor: (1) the original employees of the Chinese party; (2) new hires of Chinese in China; and (3) new foreign hires from abroad. The advantages of hiring the original employees are that they have been trained for the business and are more familiar with the production technology and operation of the enterprise, that they can be reassigned to their new joint venture-related tasks almost immediately, that they will likely feel more responsibility for the enterprise since they have worked there in the past, and that they know each other better, thus enabling readier cooperation. In addition, as mentioned above, there is the significant advantage of overall lower costs involved in hiring Chinese employees. However, one disadvantage in hiring the original Chinese employees is the likelihood of employment of some unqualified personnel. This same disadvantage applies to new, untrained Chinese hires. Meanwhile, although available in theory, new foreign hires normally require salaries at a prohibitively high rate.

Each joint venture has to provide a training program for its employees that includes a strict examination system. Unlike most enterprises

107. Regulations, supra note 22, art. 91. These Regulations require that labor contracts be entered into with either a trade union, or in cases where a joint venture is relatively small, with individual employees. Article 2 of the Regulations calls for the labor contracts to specify the conditions of employment, including responsibilities, wages (which are to be set at the level of 120-150% of the real wages of workers in state-owned enterprises in the same trade or locality), hours, vacations, insurance, discipline, dismissal, etc. Approvals of joint venture management decisions are necessary from the labor management department of the province or other local government with specific jurisdiction over the joint venture's personnel.

108. CHU BAOTAI & DONG WEI YUAN, supra note 2, at 180-81.

109. Regulations, supra note 22, art. 92. Not only does China wish to bring in advanced technology through joint ventures, it also desires the dissemination of modern management
in China, which are state-owned and must retain their employees, a joint venture may discharge or fire its employees for cause.\textsuperscript{110} Moreover, the joint venture has discretion under the Regulations to fix salaries, bonuses, and other social benefits so long as they are consistent with other applicable Chinese laws and regulations.\textsuperscript{111}

G. Article 7

1. Profits

The net profit of a joint venture is usually distributed between the parties in proportion to their respective shares in the invested (or "registered") capital of the business, after the payment of a joint venture income tax under Chinese law, and after any reinvestment authorized by the board of directors.\textsuperscript{112} Under Article 87 of the Regulations, profit distribution after payment of taxes are made: First, for reserve funds, bonuses and welfare funds for staff and workers, as well as for expansion funds for the joint venture, with the exact proportion of such allocations to be decided by the board of directors. Second, reserve funds may be used to make up the losses of the joint venture and, with the consent of the responsible government examination and approval authority, to increase the joint venture's capital for production expansion. Third, after the funds for reserves, bonuses and employee welfare and business expansion have been deducted, and if the board of directors decides to distribute the remaining profit, it should be distributed according to the proportion of each participant's investment.

However, profits cannot be distributed unless any losses in previous years have been made up.\textsuperscript{113} Remaining profits from the previous year (or years) can be distributed together with those of the current year.\textsuperscript{114}

\textsuperscript{110} Joint Ventures Law, supra note 1, art. 6. Again, however, approvals are necessary from the labor management department of the province or other local government with specific jurisdiction over the joint venture's personnel. See Regulations, supra note 22, art. 91 (referencing the Joint Venture Labor Regulations).

\textsuperscript{111} See, e.g., Regulations, supra note 22, art. 93 (wage and incentive/bonus systems required to be in accordance with "principles of each according to his work and more pay for more work").

\textsuperscript{112} Joint Ventures Law, supra note 1, art. 7.

\textsuperscript{113} Regulations, supra note 22, art. 88.

\textsuperscript{114} Id.
2. Taxation

A system of taxation is also one of the by-products of China's modern economic reform. Before the late 1970's, the Chinese government levied few taxes. Under Communist Party rule, virtually all business enterprises were state-owned. Each enterprise simply turned in most of its annual income to the government, keeping some to maintain business operations, all as part of the "big pot" phenomenon, i.e., that everyone would make the same wages and eat out of the same pot, and in line with the "iron rice bowl," cradle-to-grave, social welfare system. Taxation was highly disfavored because of historical abuses, particularly in the modern era.

Currently, all enterprises, no matter whether state-owned, collective-owned, wholly foreign-owned, or joint ventures, must now pay tax. At present, different tax laws apply to state-owned enterprises and joint ventures. The state-owned and collective-owned enterprises actually pay more tax than joint ventures.

The Joint Ventures Law requires all joint ventures in China to pay taxes. Employees in joint ventures, like those in other enterprises, pay individual income tax.

The prior Joint Ventures Law did not provide any favorable tax treatment for joint ventures — except in Article 7 where it stated that "a joint venture equipped with up-to-date technology by world standards could apply for a reduction of, or exemption from, income tax for the first two to three profit-making years." Following the old law's 1979 promulgation, however, China has enacted a number of tax statutes and regulations that deal specifically with issues relating to foreign investment. The Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment, adopted in 1980 and amended in 1983 (hereinafter "Joint Ventures Income Tax Law"), provides for a basic thirty percent joint venture income tax (to-
gether with a ten percent local surtax), but there are a number of favorable tax treatments available for certain types of joint ventures.

In the special economic zones of China, most of which are along the coastline, even more advantageous tax provisions, applicable only in those zones, operate to benefit foreign investors in joint ventures. In Article 7, the amended Joint Ventures Law now refers expressly to the new Chinese tax provisions by stating that “[u]nder the tax laws and regulations of [the People’s Republic of China], joint ventures are entitled to favorable tax treatment [including all permitted] deductions and exemptions.”

The amended Law also entitles a joint venture to exemption from customs duties and from the industrial and commercial consolidated tax for certain imported materials. Consequently, under the Law, as

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121. One example is the Preferential Tax Treatment Regulations — Provisions for Encouragement of Foreign Enterprise (promulgated by the State Council on October 11, 1986). An English version of these Regulations can be found in PRICE WATERHOUSE INFORMATION GUIDE: DOING BUSINESS IN THE PRC, at 212, app. XII-A (1988) [hereinafter PRICE WATERHOUSE GUIDE]. A joint venture with advanced technology supplied by the foreign party, or whose products are mainly for export, is entitled under Article 5 of these regulations to priority in the supply of water, electricity, and transportation services. Id. at 213. Such a joint venture also enjoys priority in receiving loans (Article 6), and the foreign party is exempt from income tax if it remits its profits outside of China (Article 7). Id. In addition, the joint venture is entitled to a refund of the total amount of enterprise income tax it has already paid on any reinvested income if its operation in China lasts five years or longer (Article 11). Id. at 214. By comparison, under Article 6 of the Joint Ventures Income Tax Law, a joint venture without advanced technology (or not producing for export) which reinvests in China for not less than five years is only entitled to a refund of 40% of the enterprise income tax paid on the reinvested amount. Joint Ventures Income Tax Law, supra note 120, art. 6.

122. See Tax Incentive Regulations — Special Economic Zones and Fourteen Coastal Cities — Interim Provisions, ch. 1, arts. 1, 3 (promulgated by the State Council on November 15, 1984) [hereinafter Tax Incentive Regulations] (15% joint venture income tax in special economic zones, foreign parties exempt from income tax within special economic zones). An English translation of these Regulations can be found in PRICE WATERHOUSE GUIDE, supra note 121, at 231, app. XIII-B. But see Tax Incentive Regulations, supra, art. 4 (requiring 10% tax on any amounts remitted outside China from the special economic zones by foreign parties).

123. See Regulations, supra note 22, art. 71 (listing machinery, equipment, parts, and other materials which make up part of the foreign party’s, or the joint venture’s total investment; machinery, equipment, parts, and other imported materials using additional capital as to which China cannot guarantee production and supply; and raw materials, auxiliary materials, components, parts, and packing materials imported for use in producing export goods).
amended, foreign investors clearly have the benefit of more tax advantages.\textsuperscript{124}

H. Article 8

1. Finance

Previously, Article 8 of the Joint Ventures Law required a joint venture to open an account with the Bank of China or a bank approved by the Bank of China. Now joint ventures are free to choose any bank or other financial institution "that the foreign currency administration of [the People's Republic of China] permits to conduct foreign currency exchange operations."\textsuperscript{125} As will be discussed below, the foreign party — and foreign employees of the joint venture — may convert and remit their earnings outside China.\textsuperscript{126}

Joint Ventures may borrow from the Bank of China.\textsuperscript{127} For their business operations, joint ventures have unlimited discretion to obtain funds directly from foreign banks.\textsuperscript{128}

2. Insurance

For practical reasons of protection against business and other risks and security for losses, joint ventures, as with virtually all other business enterprises, need to be insured. Under the Joint Ventures Law, it is required that a joint venture be insured using Chinese insurance companies.\textsuperscript{129} The actual history of Chinese insurance company coverage of joint ventures appears to have been quite effective.\textsuperscript{130}

\textsuperscript{124} In this regard, see Joint Ventures Income Tax Law, \textit{supra} note 120, arts. 3-8. \textit{See also} Regulations, \textit{supra} note 22, arts. 8-9; Preferential Tax Treatment Regulations — Provisions for Encouragement of Foreign Enterprise, \textit{supra} note 121, arts 2-11.

\textsuperscript{125} Joint Ventures Law, \textit{supra} note 1, art. 8. The amendment, besides "broaden[ing] the category of financial institutions at which joint ventures may open a foreign exchange account . . . may be interpreted as eliminating any need to obtain government approval prior to opening such an account." Robertson & Chen, \textit{supra} note 47, at 374.

\textsuperscript{126} \textit{See infra} note 142 and accompanying text.


\textsuperscript{128} Joint Ventures Law, \textit{supra} note 1, art. 8.

\textsuperscript{129} \textit{Id.} The State Council promulgated on September 1, 1983 the Regulations on Property Insurance Contracts of China. Summarized in Martindale-Hubbell, \textit{supra} note 127, at 10. Article 21 of those regulations provides that they are expressly applicable to insurance contracts in China relating to foreign parties.

\textsuperscript{130} For example, in Guangdong Province, the Guangdong Insurance Company has over the past ten years paid more than $100 million dollars in claims made on foreign-related (in-
Under Chinese insurance company practice, a joint venture may pay the premium for the required policy with either renminbi (Chinese national currency), foreign currency, or both. Insurance benefits will be paid in the same currency (or mixture of currencies) as the premium is paid.131

I. Article 9

1. Operation

Article 9 of the Joint Ventures Law provides that “[t]he production and business programs of a joint venture shall be filed with the authorities concerned and shall be implemented through business contracts.”

A joint venture is a Chinese business enterprise, and its operation is in China. Although a joint venture enjoys “the rights to conduct operations and management autonomously,” it is still a part of the Chinese economy. Even while the free market-based economy is emerging in significance, as noted above, the concept of the centrally planned economy predominates in China. By filing with the authorities concerned, a joint venture will enjoy at least the same, or even more rights (e.g., joint ventures are to be given priority in acquiring supplies)132 than other enterprises in China.

As a practical matter, most experienced foreign investors always make sure, before they enter a joint venture contract, that a government authority exists which will assist the joint venture. Under the wing of a responsible bureaucracy and as part of the centrally planned economy, a joint venture’s operation should actually become even easier, probably contrary to the experience of most foreign parties in dealing with the governments of their own countries.133

Joint ventures “should give first priority” to purchasing materials from Chinese sources.134 Joint ventures usually prefer to buy materials in the domestic Chinese market because they are much less expensive than in other world markets and, to a certain extent, the sources of suppl-

131. LIU DING, supra note 7, at 322.
132. Regulations, supra note 22, art. 54.
133. For instance, Article 113 of the Regulations requires the Chinese government offices in charge of visas to simplify procedures for joint venture staff and workers from foreign countries. Id. art. 113.
134. Joint Ventures Law, supra note 1, art. 9.
ply are steadier and more secure. In addition, compared to what would be charged in Western countries, the joint venture normally does not have to pay much for transportation within China. Nonetheless, a joint venture may get its materials directly from the world market. Yet joint ventures in China generally only buy from outside China, when necessary, those materials that are of clearly better quality than Chinese goods or that are manufactured with advanced technology that is not available in the Chinese domestic market.

Although not required, a joint venture is encouraged to sell its products on the international market. There are a number of ways for a joint venture to effectively market and sell its products abroad. The most common method is for the foreign party to agree, in the joint venture contract, to take the responsibility to sell the products in the world market. This is logical since the foreign party is usually more familiar with world market conditions. By assuming this responsibility, the foreign party relieves the Chinese party of a burden and can thus bargain for additional rights in the contract.

However, the foreign party must also be sure that there is an active market existing for the products and that it really has the ability to sell them. Otherwise, upon failing to perform satisfactorily within the term required in the contract, the foreign party will likely be exposed to a claim of breach of the joint venture contract.

Joint ventures may also sell their products in the world market through auction-type bidding, or they may ask the Chinese government to sell them. By exporting their products abroad, joint ventures can earn foreign currency. Clearly, exportation of products is a key issue in establishing a joint venture in China simply because foreign parties can thereby generate revenue in foreign currency.

The Chinese government has enacted favorable rules and policies to encourage the exportation of joint venture products: (1) a joint venture may be exempted from customs duty and industrial and commercial consolidated tax for its exportation unless the exportation is specifically pro-

135. See Regulations, supra note 22, arts. 65, 66. See supra note 132 and accompanying text.
136. Joint Ventures Law, supra note 1, art. 9. As to the appropriate price for purchasing materials in China, see Regulations, supra note 22, art. 65.
137. Regulations, supra note 22, art. 60.
138. Generally, under this alternative, the foreign party puts out the joint venture's products for bid among its various contacts.
139. Under this alternative, use can be made of CITIC, Chinese delegations traveling outside China, the foreign branches of Chinese consulting companies, and Chinese embassy and general consulate offices overseas. See supra notes 66-67 and accompanying text.
hibited; (2) a joint venture is exempted from customs duties and industrial and commercial consolidated tax for importation of materials needed in its production operations; (3) a joint venture may keep all the foreign currency it earns by selling its products abroad, while a state-owned enterprise can keep only a part of such revenue, as determined by the government.\footnote{140} However, if the products are those that China urgently needs or normally imports, they can be sold primarily in the Chinese market.\footnote{141}

J. Articles 10 and 11

1. Remission of Capital

Both the foreign party to a joint venture and individual foreign employees in a joint venture can remit outside China all of their share of the foreign exchange remaining after deduction of taxes on the operation of the joint venture or on personal income, as the case may be.\footnote{142} The foreign party to a joint venture will be subject to an income tax of ten percent on the remitted amount. The Chinese party will be subject to China's domestic income tax rates, which range from five to forty-five percent.

Under Chinese foreign currency controls, foreign currency is freely convertible into renminbi, but not vice versa. Therefore most joint ventures in China, at the time of their establishment, plan either to manufacture products for export or to satisfy specific Chinese import needs on an import substitution basis. In this way it is possible for a joint venture to generate foreign currency revenue. However, foreign investors may work around Chinese foreign currency controls by engaging in a variety of compensation arrangements. These methods generally call for investment of foreign currency in a joint venture in China with an agreement to receive in return products which are useful to the foreign investors' other business in China or elsewhere.\footnote{143}

\footnote{140} CHU BAOTAI & DONG WEI YUAN, supra note 2, at 214.

\footnote{141} Regulations, supra note 22, art. 61. Examples of urgently needed or normally imported products include computers, communications equipments, and other "high-tech" items. As to the procedures for selling in the Chinese market, see id. arts. 64, 66.

\footnote{142} Joint Ventures Law, supra note 1, arts. 10, 11.

\footnote{143} Article 6 of the State Council Regulations on Joint Ventures' Balance Between Foreign Exchange Revenues and Expenditures (promulgated by the State Council on January 15, 1986). An English translation of these Regulations can be found in CHINA IN FOCUS, supra note 49, at 185-86. Article 6 provides that "to achieve balance between foreign exchange revenues and expenditures, Sino-foreign joint ventures may make use of their foreign party's sales outlets, to promote the export of domestic (Chinese) products, through comprehensive compensation arrangements, but subject to the approval" of the authority. Id.
Under section 9 of the State Council Regulations on Joint Ventures' Balance Between Foreign Exchange Revenues and Expenditures, "a foreign party involved in two or more joint ventures in China (including those in different areas and different departments) may run a deficit in one or surplus in another with regard to the foreign exchange portion of its legitimate income. In such cases, readjustment of the deficit may be made by pooling foreign exchange reserves among its joint ventures, subject to the approval of the state foreign exchange control authorities."

Joint ventures may also swap their profits (if in renminbi) for foreign currency in the "public" auction market using brokers, where available. Currently, for example, this alternative is possible in designated areas such as Shanghai and Shenzhen (a southern China special economic zone) — in 1989, $8.5 billion dollars were exchanged. The rate for currency swaps in Shanghai in 1990 was $1 dollar to 5.49-5.93 renminbi.

Joint ventures may in addition sell products which are desired by Chinese foreign trade corporations to such corporations for foreign exchange under Article 64 of the Regulations. Many foreign investors in joint ventures have contended with the Chinese currency controls by simply reinvesting any profits within China.

Given the recent availability of currency swapping, the Chinese foreign currency controls have become less restrictive in practice. It has been suggested that there should no longer be any such controls, and that free currency convertibility is helpful to the economy, will attract additional foreign investment, and is consistent with the principle of equality and mutual benefit.

K. Article 12

1. Term

The old Article 12 of the Joint Ventures Law provided that joint venture agreements had to have finite terms, although "the contract period of a joint venture could be agreed upon between the parties to the venture according to the particular line of business and circumstances." In actual practice, however, this sentence was understood to mean that the parties to the joint venture would usually need to limit the term of

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146. See, e.g., Guo Ci Qing, The Future of International Finance of Foreign Investment in China, People's Daily, June 7, 1990, at 2, col. 3 (overseas Chinese language ed.).
the contract to a relatively brief period. This discouraged some foreign investors who wished to invest in China over a long period, although other foreign investors were still able to pursue and conclude long-term joint venture contracts.

Under Article 12 of the Law as amended:

The contract period of a joint venture shall be determined according to its particular line of business and circumstances. Joint ventures of some types of business should have [definite] contractual terms; joint ventures of certain other types of business may or may not have contractual terms.

The Law is thus more practical and consistent with current international practice. Under the Law, no term is required for some joint ventures — for example, those with large-scale investment, complex "high" technology and anticipated long-term return on investment.\(^\text{147}\) On the other hand, however, joint ventures to explore natural resources, to provide services and for conventional industrial reprocessing should, practically speaking (with regard to informal Chinese government policy in such areas), have contractually limited terms.\(^\text{148}\) Accordingly, the Law provides additional guidance now available for joint venture investors in determining the appropriate term for their joint ventures.

The term of a joint venture begins from the day when the joint venture is issued a business license by the administrative bureau for industry and commerce in the appropriate local jurisdiction.\(^\text{149}\) The joint venture parties may extend the duration of the joint venture.\(^\text{150}\)

L. Article 13

1. Termination

Under Article 102 of the Regulations, a joint venture may be dissolved by any of the following: (1) the running of the complete term of the joint venture; the inability of the joint venture to continue operations due to heavy losses; (2) the inability of the joint venture to continue operations due to the failure of one of the joint venture parties to fulfill the obligations prescribed by the agreement, contract and articles of association; (3) the inability of the joint venture to continue operations due to heavy losses caused by events of force majeure, such as natural calamities, wars, etc; (4) the inability of the joint venture to obtain its desired

\(^{147}\) People's Daily, Apr. 5, 1990, at 3, col. 3 (overseas Chinese language ed.).
\(^{148}\) Id.
\(^{149}\) Regulations, supra note 22, arts. 11, 101.
\(^{150}\) Id. art. 101. There appears as yet to be no precedent to indicate how the Chinese government will implement such extensions in practice.
objectives, and at the same time the inability to see a future for development; or (5) the occurrence of any other reasons for dissolution prescribed by the contract and articles of association.

In all of the above cases except termination by the complete running of the term of the joint venture, the board of directors is required to make an application for dissolution to the responsible Chinese government examination and approval authority.\(^{151}\) In a situation where the joint venture terminates because one of the joint venture parties has failed to fulfill its obligations, that party shall be liable for the losses thus caused.\(^{152}\)

A joint venture is liable for its debts up to the amount of all of its assets.\(^{153}\) Upon its dissolution, a liquidation committee is appointed by the board of directors\(^{154}\) to work out the liquidation of the joint venture’s assets subject to approval by the board.\(^{155}\)

M. Article 14

1. Dispute Resolution

Historically and culturally, the Chinese, like most other Asian people, prefer to solve their disputes by mediation, arbitration, or some means of dispute resolution other than litigation in court.\(^{156}\) Such means are viewed as not only saving money and time, but also helping to preserve the parties’ business and personal relationships.

The Regulations specifically encourage the settlement of disputes between joint venture parties as to the joint venture agreement, contract, and articles of association “through friendly discussions or mediation.”\(^{157}\) Those disputes that cannot be solved through mediation may be settled through arbitration or in court.\(^{158}\)

The Joint Ventures Law itself requires consultation, conciliation, and arbitration for the resolution of disputes between the parties.\(^{159}\) The joint venture parties may submit their disputes to the Foreign Economic and Trade Arbitration Commission of the China Council for the Promo-

\(^{151}\) Id. art. 102.

\(^{152}\) Joint Ventures Law, supra note 1, art. 13; Regulations, supra note 22, art. 102.

\(^{153}\) Regulations, supra note 22, art. 106.

\(^{154}\) Id. art. 103.

\(^{155}\) Id. art. 107.


\(^{157}\) Regulations, supra note 22, art. 109.

\(^{158}\) Id. The parties may also agree to utilize the services of an international organization, such as the International Chamber of Commerce.

\(^{159}\) Joint Ventures Law, supra note 1, art. 14.
tion of International Trade in accordance with its arbitration rules.\textsuperscript{160} By mutual agreement, however, the parties may also seek settlement through an arbitration agency in the home country of the foreign party or through such an agency in a third country, such as Sweden.\textsuperscript{161} However, as discussed above, Chinese law applies.\textsuperscript{162}

If no written arbitration agreement or clause has ever been concluded between the parties — contrary to the general custom for joint venture contracts — a dispute may be resolved by legal action in court, but then only in China.\textsuperscript{163} In such event, the foreign party should employ a Chinese attorney for representation.\textsuperscript{164} Trial will always be before a single judge or a panel of judges, since there is no common law jury system in China.\textsuperscript{165}

IV. Observations on Certain Problematic Areas of the Joint Ventures Law and Some Possible Solutions

From the preceding discussion it can be fairly concluded that the Joint Ventures Law, particularly as most recently amended, is a reasonably well-structured and equitable framework for achieving the stated purpose of encouraging foreign investment in China.\textsuperscript{166} While it is obvious that in general the Law cannot and will not attain this end if it is not

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\textsuperscript{160} Regulations, \textit{supra} note 22, art. 110.
\textsuperscript{161} \textit{Id.}
\textsuperscript{162} \textit{Id.} arts. 2, 111.
\textsuperscript{163} \textit{Id.} art. 111 (placing jurisdiction in the Chinese people's court). Note, however, that under Article 37 of China's Foreign Contracts Law (which states in Article 2 that the Foreign Contracts Law is applicable to all foreign-related contracts), if the parties are amenable, they still might be able to create an arbitration agreement/clause to govern the resolution of their dispute before having to resort to litigation. See Foreign Contracts Law, \textit{supra} note 2, art. 37. Yet the interrelationship of the Foreign Contracts Law with the Joint Ventures Law on this subject is unclear.
\textsuperscript{164} \textit{Civ. Proc. Law of People's Republic of China} art. 241 (adopted and promulgated on April 9, 1991 at the Fourth Session of the Seventh National People's Congress). China has relatively few lawyers (around 50,000, as opposed to 5,000 in 1981). People's Daily, Oct. 9, 1990, at 4, col. 1 (overseas Chinese language ed.). In most big cities, however, there are law firms which specialize in representing foreign parties and foreign-related businesses locally and throughout China.
\textsuperscript{165} In Tianjin, the third largest city in China (after Shanghai and Beijing), a special economic court has been set up to try cases related to foreign investment. Up to this point, the court has heard more than 30 cases, and awarded foreign investors in the city more than 2,290,000 renminbi in compensation. People's Daily, Sept. 2, 1990, at 1, col. 5 (overseas Chinese language ed.). In Shanghai, a Sino-foreign joint venture, the Shanghai Tonghui-Carrier Air Conditioning Co., Ltd., apparently (as reported in the news media) won a year-long lawsuit in the Chinese court system by prevailing in an appeal of its dismissal of a Chinese employee.
\textsuperscript{166} Some observers are somewhat less impressed with the Law, even as now amended, and its future potential. See Robertson & Chen, \textit{supra} note 47, at 373 ("[T]he law has been
attractive to foreign businesspersons, a few observations pertaining to certain especially problematic areas of the Law concerning foreign investors, as well as some possible solutions for these problems, may profitably be made at this point.

First, there would appear to be a number of ambiguities in the Joint Ventures Law and the Regulations created by their silences on certain matters. Despite what would appear to be the best intentions of the Chinese government, for example in the most recent amendments of the Law in April 1990, these uncertainties can arguably be seen to contribute to the obstruction of foreign investment in China.

The silent exclusion of Chinese individuals from qualifying as joint venture parties may, besides removing a whole category of potentially productive joint venture participants, discourage many small foreign investors, who wish to deal solely with natural persons, from making attempts to invest in China. The silence on whether or not a joint venture not meeting the exact economic requirements of Article 4 of the Regulations can obtain government approval may cause certain foreign investors to hesitate or cancel plans to invest in China in projects that do not seem to fit squarely within the confines of the regulations, but which still might be beneficial to all concerned. 167

Second, and closely related to the first observation, it would appear that the uncertainty concerning the permissible legal form of a joint venture under the Law might also be characterized as a hindrance to foreign investment in China and to certain advantages or benefits which joint venturers might otherwise be able to obtain.

The Joint Ventures Law would appear to permit only one legal entity, a non-stock limited liability company, as the approved joint venture form. But this seemingly presents a restriction on innovation in the arrangement of joint venture ownership interests because it prevents, for example, the introduction of stock ownership, as opposed to the present system of investment certificates. It seems that any concerns regarding the possible unregulated spread of joint venture shares in a nation such as China which does not yet have a capital stock system might be dealt with by requiring close corporation type stock transfer restrictions. The creation of joint venture stocks would also arguably present foreign investors with a more familiar business ownership vehicle. Thus, the introduction of joint venture stock ownership might provide valuable stimulus for fur-

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167. See supra note 24 and accompanying text for a discussion of Article 4 of the Regulations.

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ther foreign investment in China and, if widely accepted in China, such stock ownership might contribute to the development of the Chinese capital stock system.\textsuperscript{168}

Moreover, it seems that the current limitation to a limited liability company form may also prevent certain desired operational and overall managerial flexibility. Although limited liability companies of one type or another (say, corporations or limited partnerships) are perhaps the vehicle of choice in organizing business entities internationally, it is conceivable that some foreign investors (and Chinese) parties might prefer using, \textit{e.g.}, a traditional general partnership form when making their investments. An opening in the Law and Regulations to permit such other internationally recognized forms of business entities — even if infrequently used in practice — would thus seem to present some possible benefit.

Third, the Joint Ventures Law and Regulations appears to place too much emphasis on government approval.\textsuperscript{169} Certainly, it is clear that each government in the world has the power to and does regulate the conduct of business, to a greater or lesser extent, within its own country. A huge developing country like China, undergoing rapid and significant (if not radical) changes and modifications to its socialist system of economy and government, can moreover be rightly expected to require a generous amount of governmental supervision and direction. However, a substantial number of foreign investors in China are from the industrialized countries of the West or other nations with generally free market economies. Although they may have to deal with complex webs of legislation and regulation at home, they may not be able to comprehend the interrelationships between the Chinese government and Chinese enterprises that are also largely intended for application to Sino-foreign equity joint ventures.

Many foreign investors may also be unable to accept the all-encompassing role of the Chinese government in joint venture projects, which permeates even to the level of reviewing preliminary market research and business plans and approving feasibility studies. The careful control which the Chinese government seeks may actually create business-stifling conditions. It is clear that such overriding government control already

\textsuperscript{168}\ See \textit{supra} note 71 (relating to one recent example where a joint venture application for a stock-based limited liability company was rejected because of its proposed use of the stock ownership form); note 73 (relating to joint venture investment certificates and the present nascent state of the capital stock system in China) and accompanying text.

\textsuperscript{169}\ See, \textit{e.g.}, Joint Ventures Law, \textit{supra} note 1, art. 3 and Regulations, \textit{supra} note 22, arts. 6, 8, 23, 24, 30, 101 & 104.
leads frequently to the situation where foreign businesspersons seek only Chinese parties which have special relations with government authorities or who are in fact part of such authorities, whether on a national, provincial, or local level. While a foreign investor's understanding and utilization of this situation may presently be the key to successful equity joint venturing in China, it is questionable whether the system as it is now is the most efficient means for encouraging the formation and implementing the operation of Chinese-foreign joint ventures.

Moreover, the currently onerous system of government control and supervision of joint ventures could arguably be modified to better effect by use of other means beyond the numerous mandated application and approval procedures of the Joint Ventures Law and the Regulations. Such means as random government inspections/audits of joint ventures combined with new and clearly articulated legislation or regulations that impose, e.g., economic sanctions, personal liability, or even criminal penalties on the joint venture parties to motivate them to conform to important government policies and to prevent any wrongdoing, would seem advisable and likely to have less negative impact on foreign investors and foreign investment in joint ventures in China.

Fourth, the Joint Ventures Law, the Regulations and Chinese government policy with respect to Sino-foreign equity joint ventures would appear to be in need of consistent maintenance and application.170

In other words, the joint venture related legislation, regulations, and policy of China, which are so significant to the nation's process of modern economic reform, should be reflected properly in government publications — and in uniform translations, at least, perhaps, in English — that are widely and effectively disseminated. Any changes should be coordinated, made promptly and consistently, and published efficiently.171 Such relatively trivial details, if observed, would seem certain to engender further foreign investor confidence in the Chinese equity joint venture system.172

170. See, e.g., supra note 23 and accompanying text (concerning the apparent divergence of government policy as expressed in officials' statements and in Article 3 of the Regulations regarding investments in China which receive most emphasis).

171. One source of difficulty encountered by the authors in preparing this Article would thereby be eliminated: the need to observe and distinguish the inconsistencies between the Joint Ventures Law, as amended in April 1990, supra note 1, and the existing version of the Regulations — which are still being amended, supra note 22.

172. This effort to cover certain details would also, it is hoped, unify and make consistent the interrelationship of other Chinese laws and regulations — e.g., Article 37 of China's Foreign Contracts Law, supra note 2, with the Joint Ventures Law, supra note 1, and Regulations, supra note 22.
Finally, and far beyond the effective scope of discussion in this article, the possibly greatest obstruction to foreign investment in China, foreign exchange control policy, needs to be modified. While the Joint Ventures Law does not specifically address the issue of foreign exchange, the issue must be recognized nevertheless as crucial for the Law.

Despite the lure of a large and inexpensive labor force, the enticement of a billion-plus consumer market, and the pure "romance" of doing business in China, it is still vital for foreign joint venture parties to ensure the bottom-line profitability of their Chinese equity joint venturing activities. They cannot do so without an effective strategy for generating sufficient foreign exchange. Although the Chinese government has attempted to work out various devices to attract and hold foreign investors, such as the profit swapping and domestic sales on a substituted basis systems, nothing has yet seemed to alleviate the problem of foreign exchange. Perhaps the only way to do so will be, as has been suggested, to internationalize the Chinese currency. Yet, however the resolution of the foreign exchange problem is ultimately achieved, that achievement, when it comes, seems certain to encourage more foreign investment in China.

Conclusion

China's process of economic reform has lasted more than a decade. During this period, foreigners, foreign goods, and foreign investment have come to be seen everywhere in China. The foreign investment is no longer regarded as the means for the industrialized countries of the world (formerly called "capitalist" countries) to exploit the Chinese. Instead, it is viewed as necessary for China's modernization.

China has opened up in more and more places and in more and more ways. A number of special economic zones/cities have been created in the provinces and in individual cities. For example, the municipal government of Shanghai, the largest city in the country and the commercial and industrial center of China, has recently opened the city's eastern district (Pudong) to foreign investment. Also, investors from Taiwan have recently begun to cross the Taiwan Strait to invest large amounts of money and do business directly in the mainland. Once

173. See supra note 146 and accompanying text.

174. For example, in Beijing alone, there are now at least 56 enterprises with direct Taiwanese investment of approximately $98 million dollars. People's Daily, July 18, 1990, at 5, col. 1 (overseas Chinese language ed.). In Jiangsu Province (near Shanghai), investors from Taiwan have contributed $60 million dollars to 110 enterprises. Id.
implacable enemies now cooperate busily to bring about mutual prosperity.

With the influx of foreign investment, more often than not in the form of Chinese-foreign equity joint ventures, have come new and innovative ideas that have contributed to increased growth in business and trade between Chinese and foreign parties. In the end, it seems, this is why China's process of economic reform cannot and will not be stopped, as the Chinese government has hastened to guarantee even in the wake of the June 1989 Tiananmen Square incident. It is predicted that by the end of this decade the total amount of foreign investment in China will be more than 40 billion dollars.\footnote{175} China has rejoined the modern business world, it appears this time, for good.

Appendix I

Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment

(Adopted on July 1, 1979 at the Second Session of the Fifth National People's Congress, promulgated on July 8, 1979, and amended at the Third Session of the Seventh National People's Congress on April 4, 1990; as translated by the authors)

Article 1 With a view to expanding international economic cooperation and technological exchange, the People's Republic of China permits foreign companies, enterprises, other economic entities or individuals (hereinafter referred to as "foreign parties") to incorporate themselves, within the territory of the People's Republic of China, into joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as "Chinese parties") on the principle of equality and mutual benefit and subject to authorization by the Chinese Government.

Article 2 The Chinese Government protects, by the legislation in force, the resources invested by a foreign party in a joint venture and the profits due him pursuant to the agreements, contracts and articles of association authorized by the Chinese Government as well as his other lawful rights and interests.

All the activities of a joint venture shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China.

China will not nationalize or condemn joint ventures; [however,] under special circumstances where public interests require, China may condemn joint ventures through legal process and with just compensation.

Article 3 A joint venture shall apply to the departments in charge of foreign economy and trade of [the People's Republic of China] (hereinafter "examination and approval authorities") for examination and authorization of the agreement and contract concluded between the parties to the venture and the articles of association of the venture formulated by them. The examination and approval authorities shall authorize or reject these documents within three months. When authorized, the joint venture shall register with the [pertinent] administrative bureau for industry and commerce of [the People's Republic of China and/or its provinces] and begin operations under the license it receives upon such registration.

Article 4 A joint venture shall take the form of a limited liability company.
In the registered capital of a joint venture, the proportion of the investment contributed by the foreign party (or parties) shall in general not be less than 25 percent.

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

The transfer of one party's share in the registered capital shall be effected only with the consent of the other parties to the venture.

**Article 5** Each party to a joint venture may contribute cash, capital goods, industrial property rights, etc., as its investment in the venture.

The technology or equipment contributed by any foreign party as investment shall be truly advanced and appropriate to China's needs. In cases of losses caused by deception through the intentional provision of outdated equipment or technology, compensation shall be paid for such losses.

The investment contributed by a Chinese party may include the right to the use of a site provided for the joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese party, the joint venture shall pay the Chinese Government for the use of a site.

The various contributions referred to in this Article shall be specified in the contract concerning the joint venture and in the joint venture's articles of association, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.

**Article 6** A joint venture shall have a board of directors with a composition stipulated in the contract and the articles of association after consultation between the parties to the venture, and each director shall be appointed or removed by his own side. The chairman and vice-chairman shall be appointed through agreement by the parties to the joint venture or selected by the board of directors. If one party is appointed as the chairman, then the other is entitled to be appointed vice-chairman. In handling any important problem, the board of directors shall reach a decision through consultation by the parties according to the principle of equality and mutual benefit.

The board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the joint venture, all fundamental issues concerning the venture; namely, expansion projects, production and business programs, the budget, distribution of profits, plans concerning manpower and pay scales, the termination of
business, the appointment or hiring of the president, the vice-president(s), the chief engineer, the treasurer and the auditors as well as their functions and powers and their remuneration, etc.

The president and vice-president(s) (or the general manager and assistant general manager(s) in a factory) shall be chosen from the parties to the joint venture [in the same way as the chairman and vice-chairman of the board of directors are chosen]. Procedures covering the employment and discharge of the workers and staff members of a joint venture shall be stipulated according to law in the agreement or contract concluded between the parties to the venture.

**Article 7** The net profit of a joint venture shall be distributed between the parties to the venture in proportion to their respective shares in the registered capital after the payment by the joint venture of a joint venture income tax on its gross profits, pursuant to the tax laws of the People's Republic of China, and after the deductions therefrom (as stipulated in the articles of association of the venture) for the venture's reserve and expansion funds, and the bonus and welfare funds for the venture's workers and staff members. Under the tax laws and regulations of [the People's Republic of China], joint ventures are entitled to favorable tax treatment [including all permitted] deductions and exemptions.

A foreign party who reinvests any portion of his share of the net profits earned within Chinese territory may apply for the restitution of a portion of the income taxes paid.

**Article 8** A joint venture shall, in accordance with its business license, open an account with banks or other financial institutions that the foreign currency administration of [the People’s Republic of China] permits to conduct foreign currency exchange operations.

A joint venture shall conduct its foreign exchange transactions in accordance with the Foreign Exchange Regulations of the People's Republic of China.

A joint venture may, in its business operations, obtain funds from foreign banks directly. The insurance appropriate to a joint venture shall be furnished by Chinese insurance companies.

**Article 9** The production and business programs of a joint venture shall be filed with the authorities concerned and shall be implemented through business contracts.

In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc., a joint venture should give first priority to Chinese sources, but may also acquire them directly from the world market with its own foreign exchange funds.
A joint venture is encouraged to market its products outside China. It may distribute its export products on foreign markets through direct channels or affiliates, or through China's foreign trade establishments. Its products may also be distributed on the Chinese market.

Whenever necessary, a joint venture may set up affiliates outside China.

**Article 10** The net profit which a foreign party receives as his share after executing his obligations under the pertinent laws and agreements and contracts, the funds he receives at the time when the joint venture terminates or winds up its operations and his other funds may be remitted abroad, in accordance with the foreign exchange regulations and in the currency or currencies specified in the contract concerning the joint venture.

A foreign party is encouraged to deposit in the Bank of China any part of the foreign exchange which he is entitled to remit abroad.

**Article 11** The wages, salaries or other legitimate income earned by a foreign worker or staff member of a joint venture, after payment of the personal income tax under the tax laws of the People's Republic of China, may be remitted abroad in accordance with the foreign exchange regulations.

**Article 12** The contract period of a joint venture shall be determined according to its particular line of business and circumstances. Joint ventures of some types of business should have [definite] contractual terms; joint ventures of certain other types of businesses may or may not have contractual terms. Whenever the parties to a joint venture with a contractual term agree to extend its term, they shall apply to the examination and approval authority for approval of the extension six months before the expiration of the contract. The examination and approval authority shall authorize or reject the application for extension within one month after the date of its receipt of the application.

**Article 13** In cases of heavy losses, the failure of any party to a joint venture to execute its obligations under the contract and the articles of association of the venture, or the occurrence of an event of force majeure, etc., a joint venture contract may be terminated by consultation and agreement between the parties and under authorization of by the examination and approval authority and the administrative bureau for industry and commerce. In cases of losses caused by breach of the contract by a party to the venture, the financial responsibility for such losses shall be borne by the breaching party.
Article 14  Disputes arising between the parties to a joint venture which the board of directors fails to settle through consultation shall be settled through conciliation or arbitration by a Chinese arbitral body or through arbitration by another arbitral body agreed upon by the parties.

Article 15  The present law comes into force on the date of its promulgation. The power of amendment is vested in the National People's Congress.
Appendix II


(Promulgated by the State Council on September 20, 1983. Translated by the Beijing Review Press — with modifications by the authors. These regulations are being revised by the Chinese government to conform with the April 1990 amendments to the Joint Ventures Law)

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Chapter I
General Provisions

Article 1 These Regulations are intended to facilitate the smooth implementation of the “Law of the People’s Republic of China on Joint Ventures Using Chinese and Foreign Investment” (hereinafter referred to as the “Joint Ventures Law”).

Article 2 Joint ventures using Chinese and foreign investment (hereinafter referred to as “joint ventures”) established in China in accordance with the Joint Ventures Law are Chinese legal persons and are subject to the jurisdiction and receive the protection of Chinese law.

Article 3 Joint ventures established in China shall be able to promote the development of China's economy and the raising of scientific and technical levels, to the benefit of socialist modernization. The industries in which joint ventures are principally permitted are:
1. Energy development, building materials, chemicals and metallurgy;

2. Machine manufacturing, instrument/meter manufacturing and offshore oil exploitation equipment manufacturing;

3. Electronics, computers, and communications equipment manufacturing;

4. Light industry, textiles, foodstuffs, medicine and medical apparatus and packaging;

5. Agriculture, animal husbandry and aquaculture; and

6. Tourism and services.

Article 4 Applications for joint ventures shall stress economic results and shall meet one or several of the following requirements:

1. They shall adopt advanced technical equipment and scientific management methods, enabling the proposed joint ventures to increase the variety of products, raise the quality and quantity of products, conserve energy and materials;

2. They shall provide benefits in terms of technical innovation, enabling the achievement of quick results and large returns with small investment;

3. They shall enable expanded exports, increasing foreign exchange income; and

4. They shall enable the training of technical personnel and managerial personnel.

Article 5 Applications for joint ventures shall not be approved if one of the following circumstances is involved:

1. Detriment to China's sovereignty;

2. Violation of Chinese law;

3. Nonconformity with the requirements of the development of China's national economy;

4. Causing of environmental pollution; and

5. The joint venture agreement, contract or articles of association signed are obviously unfair, harming the rights and interests of one party to the joint venture.

Article 6 Unless otherwise stipulated, the government department in charge of the Chinese participant in a joint venture shall be the department in charge of the joint venture (hereinafter referred to as the "department in charge"). When a joint venture has two or more Chinese participants and these are under different departments or regions, the
relevant departments or regions shall have discussions and determine one department in charge.

The department in charge is responsible for guidance of, assistance to and supervision over the joint venture.

**Article 7** Joint ventures have the right to conduct operations and management autonomously within the scope of Chinese laws and regulations and of joint venture agreements, contracts and articles of association. The various government departments concerned shall provide support and assistance.

**Chapter II**

**Establishment and Registration**

**Article 8** The process of establishment of joint ventures in China shall be examined and approved by the Ministry of Foreign Economic Relations and Trade of the People’s Republic of China (hereinafter referred to as “the Ministry of Foreign Economic Relations and Trade”). After approval, the Ministry of Foreign Economic Relations and Trade shall issue a certificate of approval. In any cases where the following conditions exist, the Ministry of Foreign Economic Relations and Trade shall entrust the people's government of the relevant province, autonomous region, or directly administered municipality or the relevant ministry or bureau of the State Council (hereinafter referred to as the “entrusted offices”) with joint venture examination and approval authority:

1. The total amount of investment is within the limit set by the State Council and the source of capital of the Chinese participants has already been ascertained; and
2. The additional allocation of raw materials by the State is not required and the national balance in such areas as fuel, power, transportation and foreign trade export quotas is not affected.

The entrusted office, after approving the establishment of a joint venture, shall report this to the Ministry of Foreign Economic Relations and Trade for the record, and a certificate of approval is to be issued by the Ministry of Foreign Economic Relations and Trade.

(The Ministry of Foreign Economic Relations and Trade and the entrusted offices are hereinafter collectively referred to as the “examination and approval authorities.”)

**Article 9** The establishment of joint ventures is to be handled in accordance with the following procedures:

1. The Chinese participant in a joint venture is to submit to its department in charge a project proposal on the intended
establishment of a joint venture with (a) foreign participants(s) and a preliminary feasibility study report. After the proposal and preliminary feasibility study report have been examined and agreed to by the department in charge and passed on to the examination and approval authority, the joint venture parties may conduct work relevant to the feasibility study, and, on this basis, negotiate and sign the joint venture agreement, contract and articles of association.

2. When applying for the establishment of a joint venture, the Chinese participant is responsible for the submission of the following official documents to the examination and approval authority:

(i) The application for the establishment of a joint venture;
(ii) The feasibility study report jointly prepared by the joint venture parties;
(iii) The joint venture agreement, contract and articles of association signed by authorized representatives of the joint venture parties;
(iv) The list of persons appointed by the joint venture parties as chairman, vice-chairman and directors of the joint venture; and
(v) The signed opinions of the department in charge of the Chinese participant and the People's government of the province, autonomous region or directly administered municipality where the joint venture is located with regard to the establishment of the joint venture.

The above documents must be written in Chinese. The documents in (ii), (iii) and (iv) above may be written concurrently in a foreign language decided on by the joint venture parties. Documents written in both languages shall have equal validity.

Article 10 The examination and approval authorities shall, within three months from the date of receipt of all the documents stipulated in item 2, Article 9 of these Regulations, decide whether to approve or disapprove them. If the examination and approval authorities discover that there is anything improper in the above documents, it shall demand amendment within a limited time, failing which it shall not grant approval.

Article 11 Applicants shall, within one month after receipt of the certificate of approval, register with the administrative bureau for
industry and commerce of the province, autonomous region or directly administered municipality where the joint venture is located (hereinafter referred to as the "administrative bureau"), in accordance with the provisions of the "Regulations of the People's Republic of China for the Registration and Administration of Joint Ventures Using Chinese and Foreign Investment." The date of issue of the business license of a joint venture is the date of its establishment.

Article 12 Any foreign investor interested in establishing a joint venture in China but having no specific cooperating partner on the Chinese side may submit a preliminary plan for the joint venture project and authorize the China International Trust and Investment Corporation (CITIC) or the trust and investment organ of the relevant province, autonomous region or directly administered municipality and relevant government departments or people's organizations with the introduction of a cooperating Chinese partner.

Article 13 The "joint venture agreement" mentioned in this chapter refers to a document agreed upon and concluded by the joint venture parties on certain main points and principles regarding the establishment of a joint venture.

The "joint venture contract" refers to a document agreed upon and concluded by the joint venture parties on their rights and obligations.

The "articles of association" of the joint venture refer to a document that, in accordance with the principles contained in the joint venture contract and upon full agreement by the joint venture parties, stipulates such items as the purpose, organizational principles and managerial method of the joint venture.

If there is conflict between the joint venture agreement and the joint venture contract, the contract shall prevail.

Upon agreement by the joint venture parties, they may conclude only a joint venture contract and articles of association, and a joint venture agreement may be omitted.

Article 14 Joint venture contracts shall include the following main items:

1. The names, countries of registration, and legal addresses of joint venture parties, and the names, positions and nationalities of their legal representatives;

2. The name of the joint venture, its legal address, purpose, scope and scale of business;

3. The total amount of investment and registered capital of the joint venture, the amounts of capital contribution by the joint
venture parties, the ratio of capital contributions, the forms of capital contribution, the time limit for paying in capital contributions, and stipulations concerning shortfalls in paying in and on assignment of amounts of capital contribution;

4. The ratio of distribution of profits to and bearing of losses by the joint venture parties;

5. The composition of the board of directors of the joint venture, the distribution of the numbers of directors, and the responsibilities, powers and means of employment of the general manager, deputy general managers and other high-level management personnel;

6. The main production equipment and production technology to be adopted and their sources;

7. The means of purchase of raw materials and of sale of finished products, and the ratio of products to be sold inside and outside China;

8. Arrangements for receipt and expenditure of foreign currency;

9. Principles for the handling of finance, accounting and auditing;

10. Stipulations regarding such matters as labor management, wages, welfare and labor insurance;

11. The term of the joint venture, its dissolution and the liquidation procedures;

12. Liabilities for breach of contract;

13. Means and procedures for the resolution of disputes between the joint venture parties; and

14. The language adopted for the contract text and the conditions for bringing the contract into force.

An appendix to a joint venture contract is to have equal validity with the contract itself.

Article 15 The formation, validity, interpretation and implementation of joint venture contracts and the resolution of disputes thereunder shall all be governed by Chinese law.

Article 16 Articles of association of joint ventures shall include the following main items:

1. The name of the joint venture and its legal address;

2. The purpose, business scope and term of the joint venture;

3. The names, countries of registration and legal addresses of the joint venture parties, and the names, positions and nationalities of their legal representatives;
4. The total amount of investment and the registered capital of the joint venture, the amounts of capital contribution by the joint venture parties, the ratio of capital contributions, stipulations concerning the assignment of amounts of capital contribution, the ratio of distribution of profits to and bearing of losses by the joint venture parties;

5. The composition, authority and rules of procedure of the board of directors, the terms of office of the directors, and the responsibilities of the chairman and vice-chairman;

6. The setting up of management organs, administrative rules, the responsibilities and methods of appointment and dismissal of the general manager, deputy general managers and other high-level managerial personnel;

7. Principles governing finance, accounting and auditing;

8. Dissolution and liquidation; and


Article 17 Joint venture agreements, contracts and articles of association are to take effect after being approved by the examination and approval authorities. The same applies in the event of amendments.

Article 18 The examination and approval authorities and the administrative bureaus are responsible for supervising and inspecting the implementation of joint venture contracts and articles of association.

Chapter III
Form of Organization and Registered Capital

Article 19 Joint ventures are limited liability companies.

The liability of joint venture parties to a joint venture is limited to the amounts of capital contribution subscribed by each.

Article 20 The total amount of investment of a joint venture (including loans) refers to the total of the capital construction funds and the circulating funds needed for the scale of production stipulated in the joint venture contract and articles of association.

Article 21 The registered capital of a joint venture refers to the total amount of capital registered at the administrative bureau for the establishment of the joint venture, and shall be the total of the amounts of capital contribution subscribed by the joint venture parties.

The registered capital of joint ventures shall generally be expressed in renminbi. It may also be expressed in a foreign currency agreed upon by the joint venture parties.
Article 22 Joint ventures may not reduce their registered capital during their terms.

Article 23 When one joint venture party intends to assign all or part of its amount of capital contribution to a third party, it shall obtain the consent of the other joint venture party, and approval from the examination and approval organ.

When one joint venture party is to assign all or part of its amount of capital contribution, the other joint venture party has a preemptive right of purchase.

The conditions under which one joint venture party assigns its amount of capital contribution to a third party shall not be more preferential than the conditions for assignment to the other joint venture party.

Assignments in violation of the above stipulations are invalid.

Article 24 The increase, assignment or disposition by other means of the registered capital of joint ventures shall be approved by a meeting of the board of directors and submitted to the original examination and approval authority for approval. Alteration of registration procedures are to be undertaken at the original administrative bureau.

Chapter IV
Means of Contributing Investment

Article 25 The participants in a joint venture may use cash for capital contributions and may also use such items as buildings, factory premises, machinery, equipment or other materials, industrial/intellectual property rights, proprietary technology/know-how, and rights to the use of sites, the value of which shall be ascertained, for capital contributions. In cases where buildings, factories, machinery, equipment or other materials, industrial/intellectual property rights or proprietary technology/know-how are used as capital contributions, their valuation is to be discussed and determined by the joint venture parties in accordance with the principles of fairness and reasonableness, or a third party agreed upon by the joint venture parties is to be retained to make an assessment.

Article 26 Foreign currency contributed by foreign participants in a joint venture as capital contribution shall be converted into renminbi in accordance with the posted exchange rate announced by the State Administration of Foreign Exchange Control of the People’s Republic of China (hereinafter referred to as the “State Foreign Exchange Control”) on the day of its submission or cross-converted into a pre-determined foreign currency.
If the renminbi cash contributed by Chinese participants in a joint venture as a capital contribution is to be converted into foreign currency, it is to be converted in accordance with the posted exchange rate announced by the State Foreign Exchange Control on the day of its submission.

**Article 27** The machinery, equipment or other materials contributed by foreign participants in a joint venture as capital contributions shall meet all of the following conditions:

1. They must be indispensable to the joint venture's production;
2. They must be items that China cannot produce or, although China can produce them, their prices are overly high or they cannot guarantee the satisfaction of requirements with respect to technical performance and time of availability; and
3. Their prices must not be higher than the current international market prices for similar machinery, equipment or other materials.

**Article 28** The industrial/intellectual property or proprietary technology/know-how contributed by foreign participants in a joint venture as capital contributions must meet one of the following conditions:

1. They must enable the production of new products that China urgently needs or products suitable for export;
2. They must enable the making of marked improvements in the performance quality of existing products and the raising of productivity; and
3. They must enable conspicuous conservation of raw materials, fuel or power.

**Article 29** Foreign participants in a joint venture who contribute industrial/intellectual property or proprietary technology/know-how as capital contributions shall present relevant documentation on the industrial/intellectual property or proprietary technology/know-how, including photocopies of patent certificates or trademark registration certificates, any documents indicating the validity, technical characteristics, practical value, basis for calculating price of the industrial/intellectual property or proprietary technology/know-how and the price agreement signed with the Chinese participants in the joint venture, with these documents to serve as appendices to the joint venture contract.

**Article 30** Machinery, equipment or other materials, industrial/intellectual property or proprietary technology/know-how contributed
by foreign participants in a joint venture as capital contributions shall be examined and agreed to by the department in charge of the Chinese participants in the joint venture and then submitted to the examination and approval authority for approval.

Article 31 Joint venture parties shall pay in the amounts of their respective capital contributions in full according to the time limit stipulated in the contract. In cases of overdue payment or incomplete payment, interest for the delay or compensation for losses shall be paid in accordance with the stipulations of the contract.

Article 32 After the joint venture parties have paid in the amounts of their capital contributions, these shall be verified by a Chinese registered accountant, who is to issue a report of verification of capital, on the basis of which the joint venture is afterwards to issue certificates of capital contribution. Certificates of capital contribution are to state the following items: the name of the joint venture, the day, month and year of the establishment of the joint venture, the names of the joint venture participants, the amounts of their capital contributions and the day, month and year of the capital contributions, and the day, month and year of issuance of the certificates of capital contribution.

Chapter V

Board of Directors and Management

Article 33 The board of directors is the highest authority of a joint venture. It decides all major issues concerning the joint venture.

Article 34 The board of directors shall consist no fewer than three members. The distribution of the numbers of directors shall be determined by discussion between the joint venture parties with reference to the ratio of capital contributions.

The directors shall be appointed by the joint venture parties. The chairman of the board of directors shall be appointed by the Chinese participant in the joint venture and the vice-chairman shall be appointed by the foreign participant in the joint venture.

The term of office for the directors is four years; they may have their terms consecutively renewed through reappointment by the joint venture parties.

Article 35 A board of directors' meeting shall be convened at least once each year. The chairman of the board of directors is responsible for calling and presiding over the meeting. When the chairman of the board of directors is unable to call the meeting, he shall authorize the vice-chairman of the board of directors or another director to call and preside over the board of directors' meeting. The chairman of the board of
directors may convene an interim board of directors’ meeting based on a proposal made by more than one-third of the directors.

A board of directors’ meeting shall only be held if over two-thirds of the directors are in attendance. When a director is unable to attend, he may issue a proxy entrusting another to represent him in attendance and vote for him.

Board of directors’ meetings shall generally be held at the location of the joint venture’s legal address.

Article 36 Resolutions on the following items may be made only after being unanimously passed by the directors in attendance at a board meeting:

1. Amendment of the joint venture articles of association;
2. Termination and dissolution of the joint venture;
3. Increase or assignment of the registered capital of the joint venture; and
4. Merger of the joint venture with another economic organization.

Resolutions on other items may be made and decided upon according to the rules of procedure stated in the joint venture articles of association.

Article 37 The chairman of the board of directors is the legal representative of a joint venture. When the chairman of the board of directors is unable to perform his responsibilities, he shall authorize the vice-chairman of the board of directors or another director to represent the joint venture.

Article 38 Joint ventures shall establish management offices which shall be responsible for the daily operational and managerial work of the joint venture. Management offices shall have a general manager and several deputy general managers. The deputy managers shall assist the general manager in his work.

Article 39 The general manager carries out the various resolutions of the board of directors’ meetings and organizes and leads the daily operational and managerial work of a joint venture. The general manager, within the scope of authorization of the board of directors, shall represent the joint venture in external affairs and, internally, shall appoint and dismiss subordinate personnel and exercise other responsibilities as authorized by the board of directors.
Article 40  The general manager and deputy general managers shall be engaged by the board of directors of a joint venture. These positions may be held by either Chinese citizens or foreign citizens.

The chairman of the board of directors, the vice-chairman of the board of directors and the directors may be engaged by the board of directors to act concurrently as general manager, deputy general managers or other high-level managerial positions of a joint venture.

In handling major issues concerning the joint venture, the general manager shall consult with the deputy general managers.

The general manager or deputy general managers shall not act concurrently as general manager or deputy general managers of other economic organizations, and shall not participate in commercial competition by other economic organizations with their own joint venture.

Article 41  In the event of graft or serious dereliction of duty on the part of the general manager, deputy general managers or other high-level managerial personnel, they may be dismissed at any time by resolution of the board of directors.

Article 42  Should joint ventures need to establish branch offices (including sales offices) abroad or in Hong Kong and Macao, they shall apply to the Ministry of Foreign Economic Relations and Trade for approval.

Chapter VI

Acquisition of Technology

Article 43  The importation of technology mentioned in this chapter refers to a joint venture's acquisition of needed technology by means of technology transfer from a third party or a participant in the joint venture.

Article 44  Technology imported by joint ventures shall be appropriate and advanced, enabling the resulting products to display marked social and economic results domestically or to be competitive in the international market.

Article 45  In concluding technology transfer agreements, the right of joint ventures to conduct operations and management independently shall be maintained, and the technology exporter shall provide relevant documents in accordance with Article 29 of these Regulations.

Article 46  Technology transfer agreements concluded by joint ventures shall be examined and agreed to by the department in charge and reported to the examination and approval authority for approval.
Technology transfer agreements must comply with the following stipulations:

1. Fees charged for the use of technology shall be fair and reasonable. Royalties shall generally be adopted as the form of payment. When royalties are adopted as the form of payment of fees for the use of technology, the royalty rate shall not be higher than the standard international rate. Royalty rates shall be calculated on the basis of the net sales of the products produced with the technology in question or on the basis of other reasonable means agreed upon by the parties;

2. Unless otherwise agreed upon by both parties, the technology exporter shall not restrict the regions, quantities and prices of sale of the resulting products that are to be exported by the technology importer;

3. The term of technology transfer agreements shall generally not exceed ten years;

4. After the expiration of technology transfer agreements, the technology importer shall have the right to continue to use the technology in question;

5. The conditions for mutual exchange of information on the improvement of the technology shall be reciprocal for the parties concluding technology transfer agreements;

6. The technology importer shall have the right to purchase needed equipment, parts and raw materials from sources it considers suitable; and

7. No unreasonably restrictive clauses which are prohibited by Chinese law and regulations may be included.

Chapter VII
Right to the Use of Sites and Fees

Article 47 Joint ventures shall practice economy in the use of land for their premises. Joint ventures requiring use of sites shall submit applications for the sites to the municipal (county) level department in charge of land in the location of the joint venture and, after approval, obtain the right to use of a site by signing a contract. The contract shall state such items as the area, location, and use to be made of the site (hereinafter referred to as the “site use fees”), the rights and obligations of the parties, and penalty provisions for violation of the contract.

Article 48 If a Chinese participant in a joint venture already possesses the right to the use of the site required by the joint venture, the Chinese participant may use it as a capital contribution to the joint venture. The
valuation of this investment shall be equivalent to the site use fee to be paid for obtaining the right to the use of a similar site.

Article 49 The standards for site use fees shall be stipulated by the People's governments for the province, autonomous region or directly administered municipality where a site is located according to such factors as the use to be made of the site in question, geographic and environmental conditions, expenses for requisitioning the site, demolishing structures and resettlement arrangements, and the joint venture's requirements with regard to infrastructure, and shall be filed for the record with the Ministry of Foreign Economic Relations and Trade and the state department in charge of land.

Article 50 A joint venture engaged in agriculture and animal husbandry may, with the agreement of the People's government of the province, autonomous region or directly administered municipality where it is located, pay site use fees to the department in charge of land in its locality based on a percentage of the joint venture's business income.

In the case of projects of a development nature in economically undeveloped regions, special preferences may be granted in respect of site use fees with the consent of the local People's government.

Article 51 Site use fees are not to be adjusted within five years from the start of use of a site. Afterwards, when adjustments are needed in line with changes in economic development, the circumstances of supply and demand, and changes in geographic and environmental conditions, the interval between adjustments shall not be less than three years.

Site use fees used as capital contributions by Chinese participants shall not be adjusted during the term of the contract in question.

Article 52 The site use fees for the right to the use of sites obtained by joint ventures in accordance with Article 47 of these Regulations shall be paid annually over the period of use of the site stipulated in the contract, starting from the beginning of the period. If the period of use of the site in the first calendar year exceeds six months, the fee is to be calculated on the basis of a half-year; if it is less than six months, there is to be an exemption from fees. During the contract period, if there are adjustments in the site use fees, joint ventures shall pay fees in accordance with the new fee standards starting from the year of adjustment.

Article 53 Joint ventures possessing the right of use of sites are permitted only the right to use, and do not have any ownership rights. Assignment of the right to the use of sites is forbidden.
Chapter VIII
Planning, Purchasing, and Selling

Article 54  The capital construction plan of a joint venture (including such items as construction force, building materials, water, power and gas) shall be prepared according to the approved feasibility study report, and included in the capital construction plan of the department in charge. The department in charge shall give it priority in making arrangements and guarantee its implementation.

Article 55  The capital construction funds of joint ventures are to be under the unified control of the bank where the joint venture opens an account.

Article 56  The production and operating plan formulated by a joint venture in accordance with the scope of operations and scale of production stipulated in the contract are to be implemented upon approval of the board of directors and reported to the department in charge for the record.

Departments in charge, and planning and administration departments at various levels, shall not issue mandatory directives on production and operating plans to joint ventures.

Article 57  In their purchases of such items as required machinery, equipment, raw materials, fuel, parts, means of transport and articles for office use (hereinafter referred to as "materials"), joint ventures have the right to decide on their own whether to purchase them in China or abroad. However, under equal conditions, they shall give priority to purchasing materials in China.

Article 58  The supply channels for joint ventures' purchase of materials in China are as follows:

1. Materials under planned distribution shall be entered into the supply plan of the department in charge and the supply guaranteed in accordance with contracts by the materials and commercial departments or production enterprises;

2. Materials handled by the materials and commercial departments shall be purchased from these departments;

3. Materials freely circulating on the market shall be purchased from production enterprises or their sales offices or commission agencies; and

4. Export materials handled by foreign trade corporations shall be purchased from the appropriate foreign trade corporations.
Article 59 The materials for office and personal use which joint ventures need to purchase in China shall be purchased in accordance with the amounts needed and shall not be subject to restriction.

Article 60 The Chinese Government encourages joint ventures to sell their products on the international market.

Article 61 Products produced by joint ventures that China urgently needs or that China imports may be sold principally on the Chinese domestic market.

Article 62 Joint ventures have the right to export their products themselves or to entrust the sales offices of the foreign participant(s) in a joint venture or Chinese foreign trade corporations with distribution or sales on commission.

Article 63 With respect to any machinery, equipment, parts, raw materials and fuel needed for production that joint ventures import within the scope of operations provided for by the joint venture contract and that fall within those items for which the State stipulates that import licenses must be obtained, joint ventures shall prepare plans each year and apply to obtain the licenses every six months. For machines, equipment and other materials that foreign participants in a joint venture contribute as capital contributions, import licenses may be handled directly and the items imported on the strength of the approval documents of the examination and approval authority. With respect to materials to be imported that go beyond the scope provided for in the joint venture contract and for which the State stipulates that import licenses must be obtained, applications shall be made separately, according to applicable regulations.

Joint ventures have the right to export their products by themselves. With respect to those items for which the State stipulates that export licenses must be obtained, joint ventures shall apply to obtain the license every six months in accordance with the enterprise's export plan for the year.

Article 64 Joint ventures may handle the sale of their products in China in the following ways:

1. Materials under planned distribution shall be entered by the department in charge into the distribution plans of the materials control departments, to be sold to designated customers in accordance with the plans;

2. Materials handled by materials and commercial departments shall be ordered by the materials and commercial departments from joint ventures, pursuant to purchase contracts;
3. With respect to excess portions of materials in the above two categories outside of the planned purchases, and materials not falling under the above two categories, joint ventures have the right to sell them themselves or to authorize the relevant organizations to sell them on commission; and

4. Export products of joint ventures that are materials which Chinese foreign trade corporations desire to import may be sold by joint ventures to Chinese foreign trade corporations for foreign exchange.

**Article 65** Pricing for materials and needed services purchased in China by joint ventures shall be implemented in accordance with the following stipulations:

1. The six raw materials gold, silver, platinum, petroleum, coal and timber — that are used directly in the production of export products are to be priced in accordance with the international market prices provided by the State Foreign Exchange Control or the foreign trade departments, and paid for in foreign currency or renminbi;

2. For purchases of export commodities or import commodities handled by Chinese foreign trade corporations, the supplier and buyer shall negotiate and fix the price by reference to international market prices, with payment made in foreign currency; and

3. As regards the prices for purchases of coal for fuel and oil for vehicles which are needed for use in the production of products to be sold domestically in China, as well as other materials other than those listed in items 1 and 2 of this Article, and the fees charged for such items as water, electricity, gas, heat, transport of goods, labor services, engineering design, consultation services and advertising provided to joint ventures, the treatment of joint ventures shall be equal to that of state enterprises, with payment in renminbi.

**Article 66** With respect to products of joint ventures sold domestically in China, except for those items for which the price control departments approve the fixing of prices by reference to international market prices, the State-stipulated prices shall be implemented, with prices determined in accordance with quality, and renminbi shall be used for payment. Joint ventures shall file the product sales prices they formulate to the department in charge and the price control departments for the record.
Prices of export products of joint ventures are to be formulated by the joint ventures themselves, and filed with the department in charge and the price control departments for the record.

Article 67 In economic contracts between joint ventures and other Chinese economic organizations, the parties are to undertake economic responsibilities and resolve contractual disputes in accordance with relevant law and contract terms.

Article 68 Joint ventures shall file statistical forms on production, supply and sales in accordance with relevant regulations, and report them to the department in charge, the statistics departments and other relevant departments for the record.

Chapter IX

Taxes

Article 69 Joint ventures shall pay taxes in accordance with the stipulations of the relevant laws of the People's Republic of China.

Article 70 Staff and workers of joint ventures shall pay individual income tax according to the "Individual Income Tax Law of the People's Republic of China."

Article 71 Joint ventures shall be exempt from customs duty and industrial and commercial consolidated tax on the import of the following materials:

1. Machinery, equipment, parts and other materials ("other materials" as used here and hereinafter refers to materials required for a joint venture's construction of the factory (site) and for installation and reinforcement of machinery) which serve as capital contributions of a foreign participant in a joint venture in accordance with the provisions of the contract;

2. Machinery, equipment, parts and other materials imported with funds which are within the total amount of investment of a joint venture;

3. Machinery, equipment, parts and other materials of which the production and supply cannot be guaranteed in China which, with the approval of the examination and approval authority, are imported by a joint venture with additional capital; and

4. Raw materials, auxiliary materials, components, parts and packaging materials imported by a joint venture from abroad for the production of export products.
Taxes shall be paid or made up according to regulations when the above-mentioned duty-free materials are approved for sale domestically in China or diverted for use in products for sale domestically in China.

Article 72 Except for items of which the State restricts export, export products produced by joint ventures shall, with the approval of the Ministry of Finance of the People's Republic of China, be exempt from consolidated industrial and commercial tax.

Joint ventures that have difficulty in their early operations paying taxes on products produced for domestic sale may apply for reduction of or exemption from consolidated industrial and commercial tax for a fixed period.

Chapter X
Foreign Exchange Controls

Article 73 All matters concerning the foreign exchange of a joint venture shall be handled in accordance with the provisions of the "Interim Regulations on Foreign Exchange Control of the People's Republic of China" and other relevant control measures.

Article 74 Joint ventures may, on the basis of the business license issued by the State Administration for Industry and Commerce of the People's Republic of China, open foreign exchange deposit accounts and renminbi deposit accounts with the Bank of China, or other designated banks, with the bank where the account is opened to supervise receipts and expenditures.

All foreign exchange income of a joint venture must be deposited in the foreign exchange deposit account in the bank where an account has been opened; all foreign exchange disbursements are to be made from the foreign exchange deposit account. The interest rates on deposits shall be set in accordance with the interest rates announced by the Bank of China.

Article 75 Joint ventures shall in general maintain a balance between their foreign exchange income and expenditure. In cases where, according to the approved feasibility study report and contract of the joint venture, the joint venture's products are sold principally on the domestic market and foreign exchange cannot be balanced, the matter is to be resolved by adjustment from the retained foreign exchange of the People's government of the relevant province, autonomous region or directly administered municipality or the State Council department in charge. If the matter cannot be resolved in this way, it shall be resolved by including the matter in central planning, after examination and approval by the Ministry of Foreign Economic Relations and Trade
together with the State Planning Commission of the People's Republic of China.

**Article 76** Joint ventures shall obtain the approval of the State Foreign Exchange Control or one of its branches to open foreign exchange deposit accounts in banks abroad or in Hong Kong and Macao, and shall report to the State Foreign Exchange Control or one of its branches foreign exchange receipts and expenditures and provide account statements.

**Article 77** Branch offices established by joint ventures abroad or in Hong Kong or Macao shall open accounts with the Bank of China whenever there is a Bank of China in the locality of the branch offices. They shall submit their annual statements of assets and liabilities and annual profit reports to the State Foreign Exchange Control or one of its branches through the joint venture.

**Article 78** Joint ventures may, according to their business needs, apply to the Bank of China for foreign exchange loans and renminbi loans in accordance with the “Interim Regulations for Providing Loans to Joint Ventures Using Chinese and Foreign Investment by the Bank of China.” Interest rates on loans to joint ventures are to be set in accordance with the interest rates announced by the Bank of China. Joint ventures may also borrow foreign exchange funds from banks abroad or in Hong Kong or Macao, but shall be required to file a report of the matter with the State Foreign Exchange Control or one of its branches for the record.

**Article 79** Foreign staff and workers and Hong Kong and Macao staff and workers of joint ventures, after paying income tax according to law, and after providing for expenses in China, may apply to the Bank of China for permission to remit outside China all the remaining portion of their wages and other legitimate income.

**Chapter XI**

**Financial Affairs and Accounting**

**Article 80** The financial and accounting systems of joint ventures are to be formulated according to the stipulations of the relevant laws and procedures of China on financial and accounting systems, and in consideration of the circumstances of the joint venture, and are to be reported to the finance departments and tax offices of the joint venture localities for the record.

**Article 81** Joint ventures shall employ an accountant to assist the general manager in his responsibility for presiding over the financial and accounting work. When necessary, there may be a deputy accountant.
Article 82 Joint ventures shall appoint an auditor (small enterprises may elect not to have one) to be responsible for examining and checking financial receipts and disbursements and accounts of the joint venture, and for submitting reports to the board of directors and the general manager.

Article 83 The calendar year is to be adopted as the fiscal year of joint ventures, a fiscal year being from January 1 to December 31 in the Gregorian calendar.

Article 84 In their accounting, joint ventures are to adopt the internationally used accrual system and debit and credit method for the keeping of accounts. All vouchers, account books, and statements prepared by joint ventures shall be written in Chinese. They may be written concurrently in a foreign language decided upon by the joint venture parties.

Article 85 Joint ventures shall, in principle, adopt renminbi as the standard currency for the keeping of accounts. Upon the decision of the joint venture parties, a given foreign currency may be adopted as the standard currency.

Article 86 In joint venture accounts, in addition to making records in the standard currency used in the keeping of accounts, cash, bank deposits, amounts in other currencies, and such items as creditors' rights, debts, receipts, and expenses which are in different currencies from the standard currency shall also be recorded in the accounts in the currencies actually used for receipts or disbursements.

Joint ventures using a foreign currency in the keeping of accounts, in addition to preparing accounting statements in the foreign currency, shall separately prepare accounting statements converted into renminbi. Actual amounts of exchange losses and gains caused by differences in exchange rates shall be recorded in the accounts as that year's losses and gains. Adjustments are not to be made for changes in exchange rates used for the keeping of accounts or for remaining amounts on the books of the various relevant foreign currency accounts.

Article 87 The principles of profit distribution, after payment of income tax by joint ventures in accordance with the "Income Tax Law of the People's Republic of China concerning Joint Ventures with Chinese and Foreign Investment," are as follows:

1. Withdrawals are to be made for the reserve fund, staff and workers bonus/incentive and welfare funds and enterprise expansion fund of the joint venture, the ratios of withdrawal to be decided by the board of directors;
2. The reserve fund, in addition to being used to make up the losses of the joint venture, may also, with the approval of the examination and approval authority, be used to increase the capital of the enterprise for the expansion of production; and

3. The profits available for distribution after withdrawals for the three funds in accordance with the stipulations of item 1 of this Article shall, if the board directors decides to distribute them, be distributed in accordance with the ratio of capital contributions of the joint venture parties.

Article 88 Profits shall not be distributed until the losses of previous years have been made up. Undistributed profits from previous years may be distributed together with the profits of the current year.

Article 89 Joint ventures shall deliver quarterly and annual accounting statements to the joint venture parties, the local tax offices in their localities, the departments in charge and the financial departments at the same level.

A copy of the annual accounting statements shall be delivered to the original examination and approval authority.

Article 90 The following joint venture documents, certificates and statements can be considered valid only after being verified by a Chinese registered accountant:

1. The certificates of capital contribution of the joint venture parties (where materials, rights to the use of sites, industrial/intellectual property rights or proprietary technology/know-how are used as capital contributions, the list of estimated property values signed and agreed to by the joint venture parties and the agreement documents thereon shall be included);

2. Annual accounting statements of joint ventures; and

3. Accounting statements on liquidation of joint ventures.

Chapter XII

Staff and Workers

Article 91 Matters relating to the staff and workers of joint ventures, such as their recruitment, employment, dismissal, resignation, wages, welfare benefits, labor insurance, labor protection, labor discipline, etc. are to be handled in accordance with the "Regulations of the People's Republic of China on Labor Management in Joint Ventures Using Chinese and Foreign Investment."

Article 92 Joint ventures shall make efforts to strengthen the professional and technical training of staff and workers and shall
establish strict examination systems enabling staff and workers to meet the requirements of a modern enterprise for production and managerial skills.

**Article 93**  The wage and bonus/incentive systems of joint ventures shall comply with the principle of distribution to each according to his work, and more pay for more work.

**Article 94**  The wage treatment of such high-level managerial personnel as the general manager, deputy general managers, chief and deputy engineers, chief and deputy accountants and auditors is to be decided upon by the board of directors.

*Chapter XIII*

**Trade Unions**

**Article 95**  Staff and workers of a joint venture have the right to establish grass roots labor unions and carry on labor union activities in accordance with the "Trade Union Law of the People's Republic of China" (hereinafter referred to as the "Trade Union Law of China") and the "Articles of Association of Chinese Trade Unions."

**Article 96**  The trade union of a joint venture is the representative of the interests of the staff and workers. It has the right to represent the staff and workers in signing labor contracts with the joint venture and to supervise the implementation of such contracts.

**Article 97**  The basic tasks of the trade unions in joint ventures are to protect the democratic rights and material interests of the staff and workers according to law; to assist the joint venture with the arrangement and reasonable use of welfare and bonus/incentive funds; to organize the staff and workers in the study of political, professional, scientific and technical and professional knowledge, and develop literary, artistic and athletic activities; and to educate staff and workers to observe labor discipline and to exert their efforts to fulfill the various economic tasks of the enterprises.

**Article 98**  Trade union representatives have the right to attend as nonvoting delegates, making known the opinions and demands of staff and workers, meetings of the board of directors at which such major matters as development plans and production and operational activities of the joint venture to be discussed.

Trade union representatives have the right to attend, as nonvoting delegates, meetings of the board of directors at which such questions as those relating to staff and worker rewards and penalties, wage systems, welfare benefits, labor protection and labor insurance are considered and
decided. The board of directors shall heed the opinions of the trade union and obtain the trade union’s co-operation.

**Article 99** Joint ventures shall actively support the work of the trade unions in the enterprise. Joint ventures shall, in accordance with the stipulations of the “Trade Union Law of China,” provide necessary housing and facilities to the trade union organizations for office work and meetings, and for conducting collective welfare, cultural and athletic activities. Joint ventures are each month to allot two percent of the total amount of the real wages of the staff and workers for payment into trade union funds, for the trade unions’ use in accordance with the relevant control measures for trade union funds formulated by the All China Federation of Trade Unions.

**Chapter XIV**

**Duration, Dissolution, and Liquidation**

**Article 100** The term of a joint venture is to be negotiated and set by the joint venture parties according to the specific circumstances of different industries and projects. Joint venture terms for average projects shall, in principle, be from ten to thirty years. Joint venture terms for projects with large investments, long construction periods and low rates of return on capital may be for more than thirty years.

**Article 101** The term of joint ventures shall be stipulated by all the joint venture parties in the joint venture agreement, contract and articles of association. The joint venture term shall be counted from the day when the joint venture business license is issued.

If the joint venture parties agree to extend the joint venture term, an application for extension of the joint venture term signed by authorized representatives of the joint venture parties shall be delivered to the examination and approval authority six months before the date of expiration of the joint venture term. The examination and approval authority shall give a reply within one month of receiving the application.

After approval of the extension of a joint venture’s term, the joint venture shall undertake alteration of registration procedures in accordance with the “Regulations of the People’s Republic of China on the Registration and Administration of Joint Ventures Using Chinese and Foreign Investment.”

**Article 102** A joint venture shall be dissolved in the following situations:

1. Expiration of its term;
2. The incidence of severe losses to the enterprise, making it unable to continue operations;

3. The failure of one of the joint venture parties to perform the obligations stipulated in the joint venture agreement, contract and articles of association, making the enterprise unable to continue operations;

4. The suffering of severe losses because of such incidents of force majeure as natural disasters and wars;

5. The inability of the joint venture to attain its business goals and, at the same time, lack of a future for development; and

6. The occurrence of other reasons for dissolution stipulated in the joint venture contract and articles of association.

When the circumstances in items 2, 3, 4, 5 and 6 of this Article arise, the board of directors of a joint venture shall submit an application for dissolution to the examination and approval authority for approval.

Under the circumstances in item 3 of this Article, the party that has failed to perform the obligations stipulated in the joint venture agreement, contract or articles of association shall be liable to compensate the joint venture for the losses caused thereby.

**Article 103** When joint ventures announce dissolution, the board of directors shall nominate members of the liquidation committee and submit the procedures and principles for liquidation to the department in charge for examination, verification and supervision of the liquidation.

**Article 104** The members of the liquidation committee generally shall be appointed from among the directors of the joint venture. When the directors cannot serve or are unsuitable to serve as members of the liquidation committee, the joint venture may invite Chinese registered accountants or lawyers to serve. When the examination and approval authority considers it necessary, it may send personnel to supervise the liquidation process.

The liquidation expenses, and remuneration of members of the liquidation committee, shall be paid from the existing property of the joint venture and shall be given priority.

**Article 105** The tasks of the liquidation committee are: to conduct a complete check of the joint venture's property and its creditors' rights and debts; to prepare a statement of assets and liabilities and a list of property; to submit a valuation of the property and the basis on which the value was calculated; to formulate a liquidation plan; and to submit these to a meeting of the board of directors and implement them after adoption.
During the process of liquidation, the liquidation committee shall represent the joint venture in question in suing and being sued.  

**Article 106** Joint ventures bear liability for their debts in respect of all of their assets. The property remaining after the clearance of debts of joint ventures shall be distributed in accordance with the ratio of capital contributions of the joint venture parties, with the exception of cases in which the joint venture agreement, contract and articles of association otherwise stipulate.

When the net amount of assets or remaining property of a dissolving joint venture exceeds the registered capital, the portion of excess value shall be regarded as profit and income tax shall be paid according to law. Income tax shall be paid according to law on the remittance abroad by a foreign participant in a joint venture of the portion of the net amount of assets or remaining property distributed to it that exceeds its capital contribution.

**Article 107** On completion of the liquidation of a joint venture, the liquidation committee shall submit a report on the completion of liquidation to a meeting of the board of directors, which after adoption shall be reported to the original examination and approval authority. Cancellation of registration procedures are to be undertaken at the original administrative bureau and the business license handed in for cancellation.

**Article 108** After dissolution of a joint venture, its various account books and documents shall be left in the care of the Chinese participant in the joint venture.

*Chapter XV*

**Settlement of Disputes**

**Article 109** If disputes arise over the interpretation or performance of the joint venture agreement, contract or articles of association, the joint venture parties shall exert their greatest efforts to resolve them through friendly discussions/consultation or mediation. If friendly discussions or mediation are ineffective, disputes may be settled by arbitration or submitted to the judiciary for resolution.

**Article 110** Joint venture parties shall apply for arbitration according to any relevant written arbitration agreements. Arbitration may be conducted before the Foreign Economic and Trade Arbitration Commission of the China Council for the Promotion of International Trade, in accordance with the procedural rules for arbitration of that Commission. If both parties agree, arbitration may also be conducted before an arbitration agency in the country of the defendant or in a third
country, in accordance with the procedural rules for arbitration of such agency.

**Article 111** If there is no written arbitration agreement between the joint venture parties, either party to a dispute that arises may file a law suit in the people' courts of China, according to law.

**Article 112** During ongoing dispute resolution periods, with the exception of matters in dispute, the joint venture parties shall continue to perform all other provisions stipulated in the joint venture agreement, contract and articles of association.

*Chapter XVI*

**Supplementary Articles**

**Article 113** The Chinese offices in charge of visas may simplify procedures for the convenience of the foreign staff and workers and Hong Kong and Macao staff and workers of joint ventures (including their family members) who need to cross Chinese borders frequently.

**Article 114** The department in charge shall be responsible for applying for and handling exit procedures for Chinese staff and workers of joint ventures, who, because of the requirements of work, go abroad for observation, business negotiations, study or training.

**Article 115** Foreign staff and workers and Hong Kong and Macao staff and workers of joint ventures may bring in any necessary means of transport and articles for office use, paying any required customs duty and industrial and commercial consolidated tax.

**Article 116** Joint ventures established in the Special Economic Zones of China shall follow any separate stipulations of laws and regulations passed by the National People's Congress, its Standing Committee of the National People's Congress or the State Council.

**Article 117** The power of interpretation of these Regulations is vested in the Ministry of the Foreign Economic Relations and Trade.

**Article 118** These regulations shall come into force on the date of their promulgation.