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People's Republic of China Foreign Economic Contract Law

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APPENDIX

PEOPLE'S REPUBLIC OF CHINA FOREIGN ECONOMIC CONTRACT LAW

ADOPTED AT THE TENTH SESSION OF THE STANDING COMMITTEE OF
THE SIXTH NATIONAL PEOPLE'S CONGRESS
ON 21 MARCH 1985

CHAPTER 1 GENERAL PROVISIONS

Article 1. This law is enacted to protect the legitimate rights and interests of parties to economic contracts for deals involving foreign businesses, and to promote our country's foreign economic relations.

Article 2. This law applies to economic contracts (hereinafter referred to as contracts) between enterprises, or other economic institutions, of the PRC and their foreign counterparts or individuals. However, international transport contracts shall be excluded.

Article 3. In making contracts, the principles of equality and mutual benefit, and of reaching unanimity through consultation shall be followed.

Article 4. In making contracts, the laws of the PRC shall be observed, and its social and public welfare shall not be harmed.

Article 5. The parties to a contract may seek settlement to disputes, in accordance with laws of their choosing applicable to such disputes. If the parties make no such choice, the law of the country most closely related to the contract shall apply.

Contracts for joint ventures, cooperative management, and cooperative prospecting and development of natural resources, operating with [sic] the boundary of the PRC, are subject to the laws of the PRC.

In the absence of relevant stipulations in the laws of the PRC, international norms shall apply.

Article 6. If the relevant laws of the PRC conflict with international treaties, to which

the PRC is a signatory or a party, the international treaty stipulations shall apply. However, articles, to which the PRC has declared reservations, shall be excluded.

CHAPTER 2 THE MAKING OF CONTRACTS

Article 7. A contract will be established when the parties reach agreement on the articles in writing, and sign their names. If an agreement is reached through letters, cables, or telex, the contract will be established, [sic] only when a letter of affirmation is signed, provided a party to the contract requests the signing of such a letter.

A contract will be established, only when it is approved by the government of the PRC, if such an approval is required by the laws or administrative decrees of the PRC.

Article 8. The appendix to a contract is a component of the contract.

Article 9. A contract, which contradicts the laws of the PRC or its social or public welfare, is invalid.

The validity of a contract will not be affected if the articles of the contract, contradicting the laws of the PRC or its social and public welfare, are removed or corrected through consultation by the parties.

Article 10. A contract is invalid if it is established by means of deception or coercion.

Article 11. A party to a contract, responsible for the invalidation of the contract, has the obligation to compensate the other party for the losses resulting from the invalidation of the contract.

Article 12. In general, a contract shall contain the following provisions: 1) Titles or names, nationalities, and addresses of main offices or residences of the parties involved; 2) date and place the contract was signed; 3) type of contract and category and scope of the contract objectives; 4) technical terms, quality, standards, specifications, and number of contract objectives; 5) time limit, place, and method for fulfilling the contract; 6) price conditions, sum of payment, payment method, and various additional expenses; 7) transferability of the contract and conditions for transfer; 8) compensation and other responsibilities for violating the contract; 9) ways for solving contract disputes; and 10) the language used in the contract and its effectiveness.

Article 13. The parties to a contract must agree on a limit to the risks that are involved in fulfilling the contract objectives. When necessary, they should agree on the scope of insurance for the contract objectives.

Article 14. When a contract requires continuous fulfillment over a long period, the parties involved should agree on the term of validity. They may also agree on conditions for prolonging or terminating the period of validity.

Article 15. The contracting parties may agree on a guarantor. The guarantor shall be responsible for fulfillment of responsibilities that have been agreed on.

CHAPTER 3 FULFILLMENT OF CONTRACTS AND RESPONSIBILITY FOR VIOLATING CONTRACTS

Article 16. When a contract is established in accordance with the law, it shall be legally binding. The parties involved should fulfill the obligations of the contract. Neither side shall make unauthorized changes to or terminate the contract.

Article 17. When one party has concrete proof that the other party has failed to fulfill a contract, the former may temporarily suspend fulfilling the contract but must promptly inform the other party of its action. But when the other party provides full guarantee that it will fulfill the contract,

the former should fulfill the contract. Without concrete proof that the other party has failed to fulfill the contract, the party that suspends fulfilling a contract should be held responsible for violating responsibility of the contract.

Article 18. When one party fails to fulfill a contract or fails to meet the conditions agreed on for fulfilling a contract, it will have violated the contract, and the other party will have the right to ask the former to compensate for the loss suffered or to take other remedial measures. If the remedial measures are not sufficient to compensate for the loss suffered by the other party, the other party may ask for a further compensation for its loss.

Article 19. The compensation made by the party that violates a contract should equal the loss suffered by the other party, but should not exceed the possible loss anticipated at the time the contract was signed should one party violate the contract.

Article 20. The contracting parties may agree in the contract on the amount of compensation one party should pay the other if the former should violate the contract; or they may agree on a method for calculating the amount of compensation for the loss caused by one party which violates the contract.

The amount of payment for violation agreed upon in the contract should be regarded as the compensation for the loss caused by the party violating the contract. However, when the amount of payment for violation is too high or too low for the loss caused by the violator of the contract, either party may appeal to an arbitration agency or a court of law for an appropriate reduction or increase of the amount.

Article 21. When both parties violate a contract, they should both share the responsibility.

Article 22. When one party suffers a loss because the other party fails to fulfill a contract, the former should promptly take proper measures to prevent the loss from increasing. When the former fails to do so, it has no right to ask for compensation for the increased portion of the loss.

Article 23. When one party fails to make payments or pay other additional expenses on time as agreed upon in a contract, the other party has the right to ask the former to pay interest on the delayed payments. The methods for calculating interest payment may be agreed upon in the contract.

Article 24. The parties concerned shall be exempted from all or part of the responsibilities for failure to fulfill all or part of the contract obligations if the failure is caused by a force majeure.

If one party fails to fulfill the contract within the prescribed time due to a force majeure, it shall be exempted from the responsibilities for the delay during the period when the effects of the aftermath of the force majeure continue.

A force majeure is an event that cannot be anticipated at the time of the signing of the contract by the parties concerned, an event of which the occurrence and aftermath are neither avoidable nor surmountable.

The limits of force majeure may be defined in the contract.

Article 25. If one party cannot fulfill all or part of the contract obligations due to a force majeure, it shall inform the other party in good time to reduce any possible loss to the latter, and it shall produce, within a reasonable time, proof supplied by the proper authorities.

CHAPTER 4 TRANSFER OF CONTRACT

Article 26. If one party wants to transfer all or part of the contract rights and obligations to a third party, it must obtain the consent of the other party.

Article 27. If a contract was signed with the approval of a state organ as required by the law or administrative regulations of the PRC, the transfer of its rights and obligations shall be approved by the organ that approved its signing. An exception is a contract signed with state approval that contains an otherwise [sic] clause or clauses.

CHAPTER 5 CHANGES, DISCONTINUANCE AND TERMINATION OF CONTRACT

Article 28. Contract terms may be changed after the parties concerned, through consultation, agree to the changes.

Article 29. One party has the right to inform the other party to discontinue the contract if any of the following situations exist: 1) The other party's violation of the contract has seriously affected the economic interests anticipated at the time of the signing of the contract; 2) the other party has failed to fulfill the contract within the original prescribed time, and fails to fulfill the contract again within a reasonably extended period allowed; 3) none of the contract obligations can be fulfilled due to a force majeure; or 4) the conditions set in the contract for its discontinuance have appeared.

Article 30. The stipulations set in Article 29 may be applied to discontinue a part or parts of a contract if the contract contains several parts which are independent of each other.

Article 31. The contract is terminated if any of the following situations exist: 1) The contract has been fulfilled according to prescribed terms; 2) an arbitration body or court has ruled for termination of the contract; or 3) both parties have agreed, through consultation, to terminate the contract.

Article 32. The notice or agreement on changes in or discontinuance of a contract shall be in writing.

Article 33. If a contract was signed with the approval of a state organ as required by the law or administrative regulations of the PRC, any major changes in it shall be approved by the organ that approved its signing, and the discontinuance of it shall be reported to the organ that approved its signing for record purposes.

Article 34. The change, discontinuance, or termination of a contract does not affect the right of one party to demand compensation for loss from the other party.

Article 35. The terms set for settling disputes in the contract shall remain valid af-

ter the discontinuance or termination of the contract.

Article 36. The terms for settling accounts and checking up on assets set in the contract shall remain valid after the discontinuance or termination of the contract.

CHAPTER 6 SETTLEMENT OF DISPUTES

Article 37. In the case of a dispute over the contract, the parties concerned shall do everything possible to settle it through consultation, or through mediation by a third party.

If the parties do not want to settle their dispute through consultation or third-party mediation, or the consultation or mediation fails, they may submit the case to Chinese or other arbitration bodies according to related terms in the contract or according to a written agreement on arbitration reached after the dispute happens.

Article 38. The parties concerned may bring their dispute case to the people's court if no arbitration clauses are included in the contract and they fail to reach a written agreement on arbitration after the dispute arises.

CHAPTER 7

SUPPLEMENTARY ARTICLES

Article 39. The deadline for submitting a case of dispute over a commodity purchase or sales contract to a court or arbitration body shall be 4 years, beginning on the day when the party concerned knows, or should know, that its rights and interests are violated. The deadline for submitting cases of dispute over other contracts to a court or arbitration body shall be prescribed by law.

Article 40. The contracts for Chinese-foreign joint ventures, Chinese-foreign cooperative enterprises, or Chinese-foreign cooperation in exploration and development of natural resources, which are executed in the PRC and approved by state organs, may continue to be fulfilled according to the contract terms in spite of new legal provisions.

Article 41. This law may be applied to contracts signed before it is put in force, if the parties concerned reach mutual consent through consultation.

Article 42. Based on this law, the State Council shall formulate rules for the implementation of this law.

Article 43. This law comes into force on 1 July 1985.

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