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People's Republic of China Foreign Economic Contract Law

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 principle 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 venures, 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 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 after 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.

(Translation by the United States Government, Foreign Broadcast Information Service (FBIS), 1 Daily Report: China, March 25, 1985, at K 12.)

1985年3月22日 星期五 第二版

中华人民共和国涉外经济合同法

1985年3月21日第六届全国人民代表大会常务委员会第十次会议通过

中华人民共和国主席令

第二十二号

《中华人民共和国涉外经济合同法》已由中华人民共和国第六届全国人民代表大会常务委员会第十次会议于一九八五年三月二十一日通过，现予公布，自一九八五年七月一日起施行。

中华人民共和国主席 李先念

一九八五年三月二十一日

第一章 总 则

第一条 为了保障涉外经济合同当事人的合法权益，促进我国对外经济关系的发展，特制定本法。

第二条 本法的适用范围是中华人民共和国的企业或者其他经济组织同外国的企业和其他经济组织或者个人之间订立的经济合同（以下简称合同）。但是，国际运输合同除外。

第三条 订立合同，应当依据平等互利、协商一致的原则。

第四条 订立合同，必须遵守中华人民共和国法律，并不得损害中华人民共和国的社会公共利益。

第五条 合同当事人可以选择处理合同争议所适用的法律。当事人没有选择的，适用与合同有最密切联系的国家的法律。

在中华人民共和国境内履行的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同，适用中华人民共和国法律。

中华人民共和国法律未作规定的，可以适用国际惯例。

第六条 中华人民共和国缔结或者参加的与合同有关的国际条约同中华人民共和国法律有不同规定的，适用该国际条约的规定。但是，中华人民共和国声明保留的条款除外。

第二章 合同的订立

第七条 当事人就合同条款以书面形式达成协议并签字，即为合同成立。通过信件、电报、电传达成协议，一方当事人要求签订确认书的，签订确认书时，方为合同成立。

中华人民共和国法律、行政法规规定应当由国家批准的合同，获得批准时，方为合同成立。

第八条 合同订明的附件是合同的组成部分。

第九条 违反中华人民共和国法律或者社会公共利益的合同无效。

合同中的条款违反中华人民共和国法律或者社会公共利益的，经当事人协商同意予以取消或者改正后，不影响合同的效力。

第十条 采取欺诈或者胁迫手段订立的合同无效。

第十一条 当事人一方对合同无效负有责任的，应当对另一方因合同无效而遭受的损失负赔偿责任。

第十二条 合同一般应当具备以下条款：

一、合同当事人的名称或者姓名、国籍、主营业所或者住所；

二、合同签订的日期、地点；

三、合同的类型和合同标的的种类、范围；

四、合同标的的技术条件、质量、标准、规格、数量；

五、履行的期限、地点和方式；

六、价格条件、支付金额、支付方式和各种附带的费用；

七、合同能否转让或者合同转让的条件；

八、违反合同的赔偿和其他责任；

九、合同发生争议时的解决方法；

十、合同使用的文字及其效力。

第十三条 合同应当视需要约定当事人对履行标的承担风险的界限，必要时应当约定对标的的保险范围。

第十四条 对于需要较长期间连续履行的合同，当事人应当约定合同的有效期限，并可以约定延长合同期限和提前终止合同的条件。

第十五条 当事人可以在合同中约定担保。担保人在约定的担保范围内承担责任。

第三章 合同的履行和违反合同的责任

第十六条 合同依法成立，即具有法律约束力。当事人应当履行合同约定的义务，任何一方不得擅自变更或者解除合同。

第十七条 当事人一方有另一方不能履行合同的确切证据时，可以暂时中止履行合同，但是应当立即通知另一方；当另一方对履行合同提供了充分的保证时，应当履行合同。当事人一方没有另一方不能履行合同的确切证据，中止履行合同的，应当负违反合同的责任。

第十八条 当事人一方不履行合同或者履行合同义务不符合约定条件，即违反合同的，另一方有权要求赔偿损失或者采取其他合理的补救措施。采取其他补救措施后，尚不能完全弥补另一方受到的损失的，另一方仍然有权要求赔偿损失。

第十九条 当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失，但是不得超过违反合同一方订立合同时应当预见到的因违反合同可能造成的损失。

第二十条 当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金，也可以约定对于违反合同而产生的损失赔偿额的计算方法。

合同中约定的违约金，视为违反合同的损失赔偿。但是，约定的违约金过分高于或者低于违反合同所造成的损失的，当事人可以请求仲裁机构或者法院予以适当减少或者增加。

第二十一条 当事人双方都违反合同的，应当各自承担相应的责任。

第二十二条 当事人一方因另一方违反合同而受到损失的，应当及时采取适当措施防止损失的扩大；没有及时采取适当措施致使损失扩大的，无权就扩大的损失要求赔偿。

人民日报

第二十三条 当事人一方未按期支付合同规定的应付金额或者与合同有关的其他应付金额的，另一方有权收取迟延支付金额的利息。计算利息的方法，可以在合同中约定。

第二十四条 当事人因不可抗力事件不能履行合同的全部或者部分义务的，免除其全部或者部分责任。

当事人一方因不可抗力事件不能按合同约定的期限履行的，在事件的后果影响持续的期间内，免除其迟延履行的责任。

不可抗力事件是指当事人在订立合同时不能预见、对其发生和后果不能避免并不能克服的事件。

不可抗力事件的范围，可以在合同中约定。

第二十五条 当事人一方因不可抗力事件不能履行合同的全部或者部分义务的，应当及时通知另一方，以减轻可能给另一方造成的损失，并应在合理期间内提供有关机构出具的证明。

第四章 合同的转让

第二十六条 当事人一方将合同权利和义务的全部或者部分转让给第三者的，应当取得另一方的同意。

第二十七条 中华人民共和国法律、行政法规规定应当由国家批准成立的合同，其权利和义务的转让，应当经原批准机关批准。但是，已批准的合同中另有约定的除外。

第五章 合同的变更、解除和终止

第二十八条 经当事人协商同意后，合同可以变更。

第二十九条 有下列情形之一的，当事人一方有权通知另一方解除合同：

一、另一方违反合同，以致严重影响订立合同所期望的经济利益；

二、另一方在合同约定的期限内没有履行合同，在被允许推迟履行的合理期限内仍未履行；

三、发生不可抗力事件，致使合同的全部义务不能履行；

四、合同约定的解除合同的条件已经出现。

第三十条 对于包含几个相互独立部分的合同，可以依据前条的规定，解除其中的一部分而保留其余部分的效力。

第三十一条 有下列情形之一的，合同即告终止：

一、合同已按约定条件得到履行；

二、仲裁机构裁决或者法院判决终止合同；

三、双方协商同意终止合同。

第三十二条 变更或者解除合同的通知或者协议，应当采用书面形式。

第三十三条 中华人民共和国法律、行政法规规定应当由国家批准成立的合同，其重大变更应当经原批准机关批准，其解除应当报原批准机关备案。

第三十四条 合同的变更、解除或者终止，不影响当事人要求赔偿损失的权利。

第三十五条 合同约定的解决争议的条款，不因合同的解除或者终止而失去效力。

第三十六条 合同约定的结算和清理条款，不因合同的解除或者终止而失去效力。

第六章 争议的解决

第三十七条 发生合同争议时，当事人应当尽可能通过协商或者通过第三者调解解决。

当事人不愿协商、调解的，或者协商、调解不成的，可以依据合同中的仲裁条款或者事后达成的书面仲裁协议，提交中国仲裁机构或者其他仲裁机构仲裁。

第三十八条 当事人没有在合同中订立仲裁条款，事后又没有达成书面仲裁协议的，可以向人民法院起诉。

第七章 附 则

第三十九条 货物买卖合同争议提起诉讼或者仲裁的期限为四年，自当事人知道或者应当知道其权利受到侵犯之日起计算。其他合同争议提起诉讼或者仲裁的期限由法律另行规定。

第四十条 在中华人民共和国境内履行、经国家批准成立的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同，在法律有新的规定时，可以仍然按照合同的规定执行。

第四十一条 本法施行之日前成立的合同，经当事人协商同意，可以适用本法。

第四十二条 国务院依据本法制定实施细则。

第四十三条 本法自1985年7月1日起施行。

发展对外经济关系的重要法律

本报评论员

第六届全国人大常委会第十次会议通过的《中华人民共和国涉外经济合同法》，是发展我国对外经济关系的一部重要法律。

几年来，随着我国对外经济联系日趋频繁，涉外经济合同的种类和数量越来越多，迫切需要制定法律，做到有法可依。《涉外经济合同法》，正是适应这种需要，参照国内《经济合同法》的原则和国际惯例制定的，旨在保障合同当事人的合法权益，促进我国对外经济关系的发展。

实行对外开放，进行对外经济合作和技术交流活动，主要是通过合同的形式进行的。订立合同，确定当事人的权利和义务，原则上是合同当事人决定的事情，但订立合同必须有法可依，世界各国都有这方面的法律规定。《涉外经济合同法》规定，订立合同必须遵守我国的法律，不得损害我国的社会公共利益。否则，合同即使签订也无效。比如，应由国家批准的合同，不经批准不能成立，越权批准的也不算数。又如，超越法律允许的范围订立的合同，是无效的。我国任何企业进行对外经济活动，谈判、签订合同，都要牢固树立遵守法律的观念。

关于合同争议的处理，《涉外经济合同法》按照国际上普遍接受的由当事人自由选择合同准据法的原则，规定合同当事人可以选择处理合同争议所适用的法律。当事人没有选择的，适用与合同有最密切联系的国家的法律。但是，在我国境内履行的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同，必须适用我国法律。这种对某些种类的合同作出特别的规定，也是国际上的通例。

近几年来，随着对外开放政策的实行，中外合资、合作企业越来越多，外商对在华投资的信心越来越大。但是，也有人在一些问题上存在一些疑虑。其实，这些疑虑没有根据。对外开放是我们的基本国策，开放之门只会越开越大。因此，我国法律即使有新的规定，也是对外国投资者提供更加有力、更加有利的保证。《涉外经济合同法》明确规定，凡是在我国履行、经国家批准成立的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同，在法律有新的规定时，可以仍然按照合同的规定执行。这就表明，我们的法律对合同当事人的合法权益的保障是切实的、有效的。

《涉外经济合同法》将于今年7月1日起施行。有关部门和单位，应当抓紧时间，广泛宣传这部法律，要使广大对外经济贸易工作者和有关人员熟悉它、掌握它，提高运用法律手段处理对外经济关系的本领。

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