

DOCUMENTATION

China's Law on Joint Ventures

The following is an unofficial translation of the full text of the Law of the People's Republic of China on Joint Ventures using Chinese and foreign investment which was adopted on 1 July 1979 at the Second Session of the Fifth National People's Congress and became effective on 8 July on the order of Ye Jianguo, Chairman of the Standing Committee of the National People's Congress:

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 participants) 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 participants) 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 participant 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.

Article 3. A joint venture shall apply to the Foreign Investment Commission of the People's Republic of China for authorization of the agreements and contracts concluded between the parties to the venture and the articles of association of the venture formulated by them, and the commission shall authorize or reject these documents within three months. When authorized, the joint venture shall register with the general administration for industry and commerce of the People's Republic of China and start operations under licence.

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 participant(s) shall in general not be less than 25 per cent.

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 participant 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 the losses.

The investment contributed by a Chinese participant 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 participant, the joint venture shall pay the Chinese Government for its use.

The various contributions referred to in the present article shall be specified in the contracts concerning the joint venture or in its 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 contracts 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 board of directors shall have a chairman appointed by the Chinese participant and one or two vice-chairmen appointed by the foreign participant(s).

In handling an important problem, the board of directors shall reach decision through consultation by the participants on 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 programmes, 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 various parties to the joint venture.

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 regis-

tered capital after the payment of a joint venture income tax on its gross profit 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 reserve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture.

A joint venture equipped with up-to-date technology by world standards may apply for a reduction of or exemption from income tax for the first two to three profit-making years.

A foreign participant who re-invests any part of his share of the net profit within Chinese territory may apply for the restitution of a part of the income taxes paid.

Article 8. A joint venture shall open an account with the Bank of China or a bank approved by the Bank of China.

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 programmes 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 its associated agencies or China's foreign trade establishments. Its products may also be distributed on the Chinese market.

Wherever necessary, a joint venture may set up affiliated agencies outside China.

Article 10. The net profit which a foreign participant 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 through the Bank of China in accordance with the Foreign Exchange Regulations and in the currency or currencies specified in the contracts concerning the joint venture.

A foreign participant shall receive encouragement for depositing 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 through the Bank of China in accordance with the Foreign Exchange Regulations.

Article 12. The contract period of a joint venture may be agreed upon between the parties to the venture according to its particular line of business and circumstances. The period may be extended upon expiration through agreement between the parties, subject to authorization by the Foreign Investment Commission of the People's Republic of China. Any application for such extension shall be made six months before the expiration of the contract.

Article 13. In cases of heavy losses, the failure of any party to a joint venture to execute its obligations under the contracts or the articles of association of the venture, force majeure, etc., prior to the expiration of the contract period of a joint venture, the contract may be terminated before the date of expiration by consultation and agreement between the parties and through authorization by the Foreign Investment Commission of the People's Republic of China and registration with the general administration for industry and commerce. In cases of losses caused by breach of the contract(s) by a party to the venture, the financial responsibility shall be borne by the said party.

Article 14. Disputes arising between the parties to a joint venture which the board of directors fails to settle through consultation may be settled through conciliation or arbitration by an arbitral body of China or through arbitration by an 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.

Source: Xinhua News Agency, Beijing, 8 July 1979.

Speech by Takeo Fukuda

President Marcos, Madam Imelda Romualdez Marcos, Distinguished Guests, Ladies and Gentlemen:

My journey through Southeast Asia, which began in Kuala Lumpur with my meetings with the leaders of ASEAN, is now approaching its end. I am delighted, as a kind of finishing touch to this journey, to be able to share my ideas with you, here in the Republic of the Philippines, our nearest neighbour, in the distinguished presence of one of Asia's most eminent leaders, and my close friend, President Marcos.

Let me begin with one strong impression I gained from my tour.

It was the spectacular and rich diversity of the area I have just visited, the diversity in ethnic composition, language and religion, in the cultural impact of distinct histories, and in economic structures. Southeast Asia is by no means a homogeneous or uniform part of the world. It is no wonder that some have been sceptical of the prospects for intraregional cooperation in this area.

Yet, the Association of Southeast Asian Nations, which has just celebrated its tenth anniversary, is now in the process of firmly establishing itself as a self-reliant organization for regional cooperation in the area. The first summit conference in Bali was a milestone in progress toward solidarity, and the success of the summit conference which has just ended confirms the belief that the determination of the ASEAN members to strengthen their solidarity is now irreversible.

ASEAN is, indeed, a historic and successful attempt to seek and create a regional identity of this area through the strengthening of solidarity, while affirming the rich diversity of its membership, and respecting the proud nationalism of each member country. I saw, and was impressed by one expression of these creative efforts, the ardent dedication to solidarity of the ASEAN leaders whom I had the pleasure of meeting in Kuala Lumpur.

The solidarity of ASEAN, strengthened by the success of cooperative undertakings, in turn opens up new opportunities for useful collaboration, thus further strengthening solidarity. This dynamic and self-reinforcing process will, I believe, characterize the future course of ASEAN. Progress toward regional solidarity may at times be slow, in comparison with more homogeneous regional groupings, such as Western Europe, and there may be occasional pauses.

But let me here offer a pledge to the leaders and peoples of ASEAN. My pledge is that the Government and people of Japan will never be sceptical bystanders in regard to ASEAN's efforts to achieve increased resilience and greater regional solidarity: but will always be with you as good partners, walking hand in hand with ASEAN.

The ASEAN heads of government, in our recent meetings, called Japan “an especially close friend” of ASEAN. A true friend is one who offers his hand in understanding and cooperation, not only in fair weather but in adverse circumstances as well. I know Japan will be such a friend to ASEAN.

Ladies and Gentlemen,

I should now like to say a few words about the basic position and posture of today’s Japan — the world role we see for ourselves, and, especially, what this means for our relations with our Asian neighbours and friends.

During the thirty-odd years since World War II, the Japanese people have worked hard at building a free and democratic society. In the course of those decades, this open system has made Japan a world economic power of 110 million people, with a Gross National Product of half a trillion dollars and the will — as well as the capacity — to participate constructively in world economic growth and development.

Throughout the world’s history, great economic powers have always been great military powers as well. Japan, however, has set for herself a new ideal, unprecedented in history, of relying for the safety and survival on the justice and good faith of nations. We have chosen not to take the path to great military power. Although we possess the economic and technological capability needed to produce nuclear arms, we have firmly rejected the acquisition of such weapons.

This is a challenging experiment, without parallel in history. I am, however, persuaded there can be no other proper course for Japan. My country, densely populated and with few natural resources, depends for its survival on free intercourse and cooperation with all countries. Moreover, I believe the path Japan has chosen also serves the best interests of Asia and, in the final analysis, of the world as a whole. A Japan which does not pose any threat to its neighbour countries, either in a military way or in any other way whatever, can only be viewed as a stabilizing force in the world, devoting its energies exclusively to peaceful and constructive purposes, at home and abroad. Thus can Japan best contribute to world peace, stability, and development.

I have often said that we live in an age which compels greater cooperation and solidarity among men. No human being can live in isolation. Society exists to serve each individual in the development of his or her potentiality, the fruits of which are shared and complement each other. As society is improved, each individual finds greater opportunities for total fulfilment.

So also in our increasingly interdependent world community, no nation can any longer do it alone. All nations must learn to help and to complement each other, sharing responsibilities in the world community. And as the world community is improved, each nation will find greater opportunities for fulfilling its people’s aspirations.

This principle has special relevance to relations between Japan and the nations of Southeast Asia.

It is not enough for our relationship to be based solely on mutual material and economic benefit. Our material and economic relations should be animated by heartfelt commitments to assisting and complementing each other as fellow Asians.

This is the message I have carried everywhere on this tour, speaking repeatedly of the need to communicate with each other with our hearts as well as our heads, the need in other words for what I call "heart-to-heart" understanding among the peoples of Japan and Southeast Asia.

You, fellow Asians, will understand what I mean. For it is in our Asian tradition, and it is in our Asian hearts, always to seek beyond mere physical satisfaction for the richness of spiritual fulfilment.

There is no need for me to stress the important role cultural exchange plays in deepening mutual understanding and appreciation, heart-to-heart and person-to-person, between the peoples of Southeast Asia and Japan.

Today, between Japan and Southeast Asia, there are active programmes of exchange in scientific, artistic, sports, and other fields. This is no one-way street serving only to introduce Japan's culture to our neighbours. We are also introducing the ancient and glorious cultures of Southeast Asia to the Japanese people.

It goes without saying that the promotion of this two-way cultural exchange between Japan and the ASEAN nations should be further intensified. It should also be noted that as the sense of solidarity rises among the countries in the region, the increasing importance is being felt of the need to promote exchanges among the ASEAN nations in the fields of culture, sciences, and, in particular, regional studies. It is from this point of view that I have expressed Japan's readiness to extend our full cooperation in this regard in response to the concrete formulation by ASEAN of a workable scheme for such enhanced intraregional exchanges. This reflects the Japanese people's appreciation of the desire of the peoples of the ASEAN nations to enhance mutual understanding among themselves.

I was gratified that all the leaders of the ASEAN nations expressed their enthusiasm for this proposal of mine as timely in my meeting with them, and I feel certain that we will before long see this idea translated into concrete action.

Furthermore, when I responded positively to the request for cooperation to the value of \$1 billion for ASEAN industrial projects, it was because I believed it important to respond with "heart-to-heart" understanding to the hearts of the peoples of the ASEAN nations, who fervently desire the strengthening of regional solidarity. I expect that Japan's cooperation will expedite the realization of these projects, which are of historical significance

as an experiment in intraregional division of labour, and that it will give momentum to the strengthening and development of various other intraregional cooperation efforts within ASEAN.

Japan has already announced a policy of more than doubling its official development assistance within the next five years. We anticipate that an important part of this assistance will continue to be for industrial projects, or for infrastructure improvement which will facilitate industrialization in Southeast Asia. At the same time, we shall intensify our cooperation in areas close to the people's welfare — agriculture, health, and education.

As may be noted from the fact that half of Japan's official development assistance is now directed toward the ASEAN nations and Burma, our economic relations with all six nations are already close. Following up the results of the summit meeting in Kuala Lumpur, and the meetings with the individual leaders of these countries in their respective capitals, we shall continue to have close consultations with these countries to further explore ways of strengthening our ties. Needless to say, as a world industrial power, Japan has inescapable responsibilities to the world economy as a whole, particularly in the field of trade. A world divided into exclusive economic blocs would be something suicidal for all the nations on earth. Such a world would certainly go against the interests of the ASEAN nations, whose future lies in expanding export markets throughout the world. In seeking specially close trade and economic ties with the ASEAN nations, we should of course act with a full understanding of each other's long-term and wider interests and respective positions in the world economy. This is very important when we aim at the building of an enduring cooperative relationship between Japan and the ASEAN countries.

Finally, we all recognize that the future stability and prosperity of the ASEAN area can only be assured within a framework of peaceful progress throughout Southeast Asia as a whole. Now that decades of war and destruction have finally come to an end, we have a chance to work for enduring peace and stability in the whole region. Let me pay tribute here to the ASEAN countries for having expressed, in the joint communique of the ASEAN summit, their desire to develop peaceful and mutually beneficial relations with the nations of Indochina, enunciating their policy that "further efforts should be made to enlarge the areas of understanding and cooperation with those countries on the basis of mutuality of interests". I believe that these patient efforts will eventually expand the scope of mutual understanding and trust throughout the breadth of Southeast Asia. Towards this same objective, Japan will also seek to place its relations with the nations of Indochina on a solid foundation of mutual understanding.

I have expressed all of these ideas, in my very productive meetings with leaders of the ASEAN nations and Burma during the last fortnight, and have

outlined Japan's position with regard to Southeast Asia. I consider it a great fruit of my journey this time that such a position of Japan as I have explained has been met by full appreciation and concurrence by all the leaders of the nations that I visited. I may summarize this position as follows:

First, Japan, a nation committed to peace, rejects the role of a military power, and on that basis is resolved to contribute to the peace and prosperity of Southeast Asia, and of the world community.

Second, Japan, as a true friend of the countries of Southeast Asia will do its best for consolidating the relationship of mutual confidence and trust based on "heart-to-heart" understanding with these countries, in wide-ranging fields covering not only political and economic areas but also social and cultural areas.

Third, Japan will be an equal partner of ASEAN and its member countries, and cooperate positively with them in their own efforts to strengthen their solidarity and resilience, together with other nations of like mind outside the region, while aiming at fostering a relationship based on mutual understanding with the nations of Indochina, and will thus contribute to the building of peace and prosperity throughout Southeast Asia.

I intend to implement vigorously these three pillars of Japan's policy with regard to Southeast Asia. It is my hope that we may build on such foundations a strong framework of cooperation, animated by mutual understanding, confidence, and trust, throughout Southeast Asia. By joining together in this shared endeavour, we will be making the greatest contribution in our power to peace and prosperity in Asia and to the well-being of all the peoples of the world.

Source: *Japan Times*, 19 Aug. 1977.