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RECENT DEVELOPMENT

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Regulation Concerning the Establishment and Business Activity of Companies with Foreign Participation in the GDR Dated January 25, 1990[†]

The Government of the GDR supports and encourages the establishment and business activities of Companies with foreign participation within the territory of the GDR (hereinafter referred to as Company or Companies). It guarantees these Companies complete legal protection on the basis of the Constitution of the GDR.

Companies are founded on share participation, cooperative management and free utilization of profits from a common economic activity and are governed according to the provisions of this regulation. The Companies' business shall serve the mutual advantage and use of the participants.

In the interest of stability and economic performance capabilities, Companies should be established if such would, as against other normal forms of economic cooperations in international economic transactions, guarantee an effective solution to the task in the fields of research and development, production, market-

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ing, service and maintenance performance as well as environmental protection. Companies in continuation of approved cooperative collaboration are sought to be initiated and established.

For the establishment and business of Companies, the following regulations shall apply:

Establishment of Companies

§ 1

Companies may exercise economic activities in the GDR insofar as such activities do not contravene statutory provisions.

§ 2

(1) Participants in Companies in the GDR can be combinations (*Kombinate*), facilities, cooperatives as well as craftsmen, persons carrying on a trade or industry as well as other citizens.

(2) Foreign participants in Companies may be legal and natural persons as well as partnerships under commercial law.

§ 3

(1) The foreign share in the nominal capital or, as the case may be, capital stock of Companies must be a minimum 20 percent and is allowed up to 49 percent.

(2) The foreign share can be over 49 percent if the Company's purpose justifies an increased foreign participation in the interest of the national economy or the participants are of small or middle-sized enterprises.

§ 4

(1) Companies are legal persons of the GDR. Their establishment, legal status, economic activities, and termination shall be determined by the laws of the GDR.

(2) Companies are legal entities and may transact business in their own names. They can sue and be sued in courts of law. They shall be liable for their obligations with their property. No liability on the part of the State shall exist for obligations of Companies.

(3) The Companies and foreign participation are protected by the Constitution and the laws of the GDR.

§ 5

(1) Companies can be established as

(a) a limited liability Company (*Gesellschaft mit beschränkter Haftung*, GmbH) or

(b) a stock corporation (*Aktiengesellschaft*, AG).

(2) Companies can also be established as a general partnership (*offene Handelsgesellschaft*, OHG) or as a partnership limited by shares (*Kommanditgesellschaft*, KG).

(3) For the establishment and business of a GmbH, the GmbH statute shall apply: for an AG, the Corporation Act; for an OHG and a KG, the Commercial Code insofar as no particular provisions in these regulations for Companies apply. These regulations are applicable for an OHG and a KG while taking into account their particularities as partnerships. For an OHG and a KG, §§ 4(1), sent. 1; 6(3); 7; 20(3); 21(2); 22(2); 26(2) as well as 29 are not applicable.

(4) The text of the Memorandum of Association or, as the case may be, the Articles of Association, pursuant to paragraph 3, may be drafted according to the wishes of the participants.

§ 6

(1) To be included in the Memorandum of Association or the Articles of Incorporation are

- with a GmbH, at least one managing director is a citizen of the GDR with domicile in the GDR;
- with an AG, citizens with domicile in the GDR are members of the Supervisory Board in a ratio with respect to the participant shareholders from the GDR in the nominal capital;
- the transfer of shares (*Geschäftsanteile*) to third parties requires the consent of all participants and the GDR participant has a right of preemption.

(2) Shares (*Aktien*) shall be issued as registered shares (*Namensaktien*).

(3) The Memorandum of Association and the Articles of Association shall require notarial certification.

§ 7

Companies become legal entities after State approval granted through registration in the Register.

Approval and Registration

§ 8

(1) The establishment of Companies requires the approval of the Economic Committee (*Wirtschaftskomitee*). The application is to be filed by all participants jointly.

(2) The decision concerning the application shall be made after consultation in an Expert Committee made up of representatives of responsible State organs, chaired by the Chairman of the Economic Committee.

(3) The authority to give approval can be delegated by legislative provision.

§ 9

The application shall contain:

- details as to the Company's legal form, designation of the participants, Company's principal place of business and foreseen locations of branches;
- purpose of the business;

—amount of the nominal capital or, as the case may be, share capital, the amount of the respective participation and the type of contributions as well as their values.

§ 10

The application shall also contain

- the Company's technical/economic concept for the business;
- the draft of the Memorandum of Association or, as the case may be, the Articles of Incorporation;
- the opinion of the Company's union organizations of the GDR participants concerning the Company's establishment.

§ 11

(1) The approval shall be based on the information filed pursuant to § 9. The modification thereof requires the consent of the Economic Committee.

(2) With the approval, promotion of economic business of the Companies can be assured, and, insofar as performance of this regulation allows, impositions may be assessed.

(3) The decision concerning the application shall be made within three months, calculated from the date of receipt of the application. The denial of approval shall include the reasons therefor.

§ 12

Promoting conditions of the economic business of the Companies can be maintained if its economic purpose particularly is aimed at

- the development and introduction of procedures and products on a high scientific-technical level;
- the improvement of the status of the population with modern products and services of a higher quality;
- delivery and services for export;
- a more effective protection of the environment.

§ 13

(1) The approval shall be denied if national economical or regional economical reasons run counter to the establishment of the Company including requirements for protection of the environment. The approval shall also be denied if a danger of a disproportionate economic majority of the Company by foreign participation, to the detriment of the participant in the GDR and the respective economic areas, exists.

(2) The approval can be revoked if information pursuant to § 9 does not or no longer reflects the facts or if, during the activity of the Companies, conditions occur which would have led to a denial of the approval pursuant to paragraph 1.

§ 14

(1) Companies shall be registered in a registry. The Registry Office shall examine the existence of the legal prerequisites for registration as well as con-

formity with the Memorandum of Association or, as the case may be, the Articles of Association. The Registry shall determine the statutorily required matters in connection with the registration.

(2) The Registry shall be conducted by the State Contract Court (*Staatliches Vertragsgericht*). Registration shall be made at the State Contract Court in the District where the Company has its seat (*Sitz*). Filing shall be accompanied by a filing fee.

(3) The performance of the provisions of paragraphs 1 and 2 shall be regulated by the Chairman of the State Contract Court by directives.

Property of the Companies

§ 15

Companies shall have all rights and obligations of owners. They have all rights and duties of possession, use and disposition pursuant to the provisions of the Memorandum of Association or, as the case may be, the Articles of Association in conformity with the legal order of the GDR.

§ 16

The nominal capital or, as the case may be, capital stock shall be established by contributions of the participants. The nominal capital of a GmbH shall be at least 150,000 GDR Marks; the share capital of an AG shall be at least 750,000 GDR Marks. The value of the contribution of each participant shall be at least the nominal amount of its participation in the nominal capital or, as the case may be, capital stock.

§ 17

(1) Contributions to the nominal capital or, as the case may be, capital stock may be made in cash or contributions in kind. Movable and immovable goods, rights of use, intangible and other property values shall be considered contributions in kind.

(2) Land can be contributed by participants of the GDR only for use. The right of use to land is to be capitalized at the market value.

(3) Should buildings and building installations be contributed as contributions in kind by GDR participants, an ownership to the buildings and installation shall exist independent from the ownership of the land. The same shall apply if, on land contributed by Companies, buildings and installations are constructed.

(4) Contributions in kind of foreign participants shall be exempt from import customs.

§ 18

GDR participants can make cash contributions in GDR Marks or, as the case may be, in foreign currency; foreign participants may make cash contributions only in foreign currency.

§ 19

The value of the contribution in kind shall be determined by the Memorandum of Association or, as the case may be, the Articles of Association. The provisions

of the Company Law shall apply respectively for the examination of the value of contributions in kind with a GmbH.

Economic Activity

§ 20

(1) Companies can conduct their business in conformity with the Memorandum of Association or, as the case may be, the Articles of Association and the granted approval in their own capacity. Companies shall receive no state plan direction (*Planaufgabe*).

(2) Companies shall independently develop the necessary economic relations within the GDR for their economic business. The law dated March 25, 1982, concerning the contract system in the socialist economy (*Gesetz vom 25. März 1982 über das Vertragssystem in der Sozialistischen Wirtschaft—Vertragsgesetz* (GB1.I, No. 14, at 293)) shall apply to the legal relationships between Companies and domestic economic subjects, with consideration of the provisions of this regulation. As between the contractual partners, the applicability of the law dated February 5, 1976 concerning international economic contracts—GIW (GB1.I, No. 5, at 61) can be agreed upon.

(3) Companies shall decide concerning the form of their business relationship with partners from other countries. They can conclude foreign trade contracts for approved economic activity independently within the framework of the import and export provisions of the GDR or can appoint an export trade enterprise of the GDR to perform their exports and imports.

§ 21

(1) Prices for goods and services which will be bought or sold by Companies within the internal market shall be agreed upon by the contractual parties. Prices must promote a market and competitive economic development. Insofar as State fixed and maximum prices are prescribed, these shall apply.

(2) The agreement of export and import prices shall be incumbent on the Companies.

(3) Insofar as the prices contain fixed product duties on the basis of particular State determinations, the Companies shall transfer these to the State budget.

§ 22

(1) Companies shall decide in their own capacity on the basis of legal provisions concerning the utilization of their material and financial resources.

(2) Companies shall, corresponding to the provisions of the Company Law, build a statutory reserve. This shall amount to at least 10 percent of the nominal capital or, as the case may be, capital stock and can be either entirely or partially formed in foreign currency.

(3) As security for the social and cultural rights of employees, cultural and social funds as well as bonus funds shall be established in Companies according

to statute. The funds for the cultural and social funds as well as a basic amount for the bonus funds shall be a part of the Companies' costs.

§ 23

(1) Bookkeeping and statistical compilation of reports of the Companies must be made pursuant to statutory provisions.

(2) The statutory provisions of the State Central Administration for Statistics (*Staatliche Zentralverwaltung für Statistik*) shall be applicable for the preparation of the annual financial statement (balance sheet, profit and loss calculation) of the statement of accounts as well as the accounting plan. A simplified statement of accounts may be made for smaller Companies.

(3) The annual financial statements are to be compiled in GDR Marks. Proof of income and expenses as well as claims and liabilities in foreign currency shall be included in the annual statements.

(4) The provisions of the Company Law shall apply for the annual examination of the annual statements of accounts. The Minister of Finance and Prices can make particular determinations pursuant to §§ 47 and 142 of the Company Law.

§ 24

After payment of taxes and duties and the transfer of statutory reserves, the remaining profits shall be distributed according to the provisions of the Memorandum of Association or, as the case may be, the Articles of Association and, on the basis of the resolutions made, to the participants or to form additional funds (free reserves).

Foreign Currency

§ 25

(1) The principle of individual procurement and individual financing of foreign currency applies to Companies. The Companies' proceeds in foreign currency derived from export and other business are to be offered in part for sale to the State. This portion shall be determined in the approval proceeding while taking into consideration the economic conditions of the respective Company as a percentage of the profits in foreign currency.

(2) Payment obligations in foreign currency, in particular, as a result of contracts, the repayment and payment of interest from foreign currency loans as well as the transfer of service compensation to foreign employees are to be financed out of the foreign currency profits of the Companies.

(3) The foreign participant can transfer its portion in profit freely from the GDR from the remaining foreign currency profits.

(4) Companies which are mostly active in the internal market and, therefore, have either no or not enough profits in foreign currency at their disposal can, upon application in the cases of § 12, purchase foreign currency for transfer profits, transfer of service compensation, loan repayments, payments of interest

as well as for import of goods and services by approval of the Chairman of the Economic Committee.

(5) In case of dissolution, the foreign participant shall be authorized to transfer its portion of the liquidation proceeds completely from the GDR to the extent to which the liquidation has procured foreign currency.

§ 26

(1) Companies may have bank accounts in foreign currency in GDR banks. The authorization to have such accounts with foreign banks can be granted upon application to the president of the State Bank of the GDR (*Staatsbank der DDR*).

(2) Companies can take loans in foreign currencies at GDR banks and with foreign banks.

§ 27

For the calculation and the exchange of foreign currencies to GDR Marks or GDR Marks into foreign currencies, the exchange rate for commercial relations for the publicly owned economy shall be applicable.

Taxation

§ 28

(1) Companies shall pay taxes pursuant to the Tax Law of the GDR.

(2) The Income Tax Law (EStG) dated September 18, 1970 (special printing No. 670 of the Law) and the Tax Valuation Law dated September 18, 1970 (special printing No. 674 of the Law) shall be applicable for the tax valuation of assets. The Directive dated October 3, 1984, concerning the depreciation of basic assets in the version of the Ordonnance No. 2 dated April 10, 1986, and the Ordonnance No. 3 dated February 4, 1987 (special printing No. 1124, 1124/1 and 1124/2 of the Law) shall be applicable for depreciations. The Minister of Finance and Prices can allow, in the cases of § 12 of this regulation, special depreciations.

§ 29

(1) Annual reserves may be deducted, in the determination of income, from such income up to the total reserve of 10 percent of the nominal capital or, as the case may be, capital stock.

(2) Losses in one year can be deducted from income in the following five years in the determination of income.

Labor Relationships

§ 30

The labor and social insurance law of the GDR, including the framework collective contracts or, as the case may be, tariff contracts of the respective economic branch shall be applicable for all employment relationships and the social

insurance of all employees of Companies. Companies' employee compensation and payment of social insurance shall be made in GDR Marks.

§ 31

(1) The activities of unions for the protection of the interests of employees on the basis of pertinent statutory provisions is to be guaranteed within Companies.

(2) Employees shall have, in all matters which affect them, a right of co-determination in the management of the Companies on the basis of the Constitution of the GDR and the respective statutory provisions. The Memorandum of Association or, as the case may be, the Articles of Association shall be written accordingly. The foreseen rights of co-determination in the statutory provisions may not be excluded.

(3) Social measures are to be determined according to statutory provisions by management of Companies when undertaking rationalization measures, modifications of structure, dissolution of the Companies and other activities which would radically change the employment relationship of employees.

§ 32

(1) Employment contracts can be concluded with foreign managing directors and members of the Supervisory Board. Compensation can be transferred outside the GDR in conformity with § 25.

(2) Foreign participants in Companies can transfer specialists to the Companies. An employment relationship would, hereby, not be established with the Companies.

§ 33

An amount for social funds corresponding to statutory provisions shall be made on the total amount of the employment salaries of the employees of the Companies.

Legal Disputes

§ 34

(1) The local district court (*Kreisgericht*) at the principal place of business (*Sitz*) of the Companies shall have jurisdiction for the hearing and decision of legal disputes arising from corporate relationships. The jurisdiction of an arbitral tribunal can be agreed to for property law disputes arising from the corporate relationship.

(2) The State Contract Court (*Staatliches Vertragsgericht*) shall have jurisdiction for the hearing and decision of legal disputes arising from contracts of Companies with other economic subjects of the GDR.

(3) Otherwise, jurisdiction for the hearing and decisions of legal disputes and other legal matters with the participation of Companies shall be determined by the laws and other statutory provisions of the GDR.

Dissolution of Companies

§ 35

(1) For the dissolution of Companies, the respective provisions of the GmbH Law, the Company Law or, as the case may be, the Commercial Code shall be applicable.

(2) With dissolution of Companies, a complete take-over of the Companies shall have priority in the interest of retention of jobs.

(3) With overindebtedness or insolvency, the Ordonnance dated December 18, 1975, concerning the Complete Enforcement (*Gesamtvollstreckung*) (GB1.I 1976, No. 1, p. 5) shall be applicable.

Complaint Procedure

§ 36

(1) An appeal may be filed against the failure or the revocation pursuant to § 13 as well as against assessment pursuant to § 11(2). The complaint shall be filed by the parties together within four weeks after receipt of the decision with reasons therefor to the Economic Committee.

(2) A decision concerning the complaint shall be made within four weeks after its receipt. Should the complaint not be, or not be completely, allowed, such shall be submitted to the Chairman of the Economic Committee within this time period. The complainant shall be informed thereof. The Chairman of the Economic Committee shall make a final decision within an additional three weeks.

Final Provisions

§ 37

Provisions in public international contracts to which the GDR is a participant shall take precedence over this regulation.

§ 38

Provisions for the performance of this regulation shall be ordered by the respective Minister and Leader of Other Central State Organs in agreement with the Chairman of the Economic Committee.

§ 39

This regulation shall become law upon its publication.
Berlin, January 25, 1990.

**The Council of Ministers
of the German Democratic Republic**
Hans Modrow
Chairman
Christa Luft
Representative of the Chairman
of the Council of Ministers for Economy