NO.	Name-EN	Name-CN	Address-EN	Address-CN	Business Scope	Link
1	Shanghai Jinkang International Trading Co. Ltd	上海金康国际贸易有限公司	Material Building, Puluo District, Shanghai City	上海普陀区物贸大厦	Aluminum ingots, etc.	http://chufuxiang.cnal.com
2	Dongguan Sheng Wei metal materials Co., Ltd	东莞升伟金属材料有限公司	Dezheng West Road, Xinan, Changan Town, Dongguan City	东莞市长安镇新安德政西路	Aluminum alloy, Aluminium rounds, etc.	http://swjscl.cnal.com
3	Shanghai LiWo industrial Felt Products Co., Ltd	上海立沃金属制品有限公司	N0.16 District A, East of Development Zone, Songjiang District, Shanghai City	上海市松江区东部开发区A区16号	Aluminium alloy, etc.	http://shanghailiwo.cnal.com
4	JiangXi ChangSheng Aluminium Co.,Ltd	江西长胜铝业有限公司	Industrial Park, Yifeng County, Yichun City, Jiangxi Province	江西省宜春市宜丰县工业园区	Aluminum extrusion, etc.	http://jxcs.cnal.com
5	Dongguan Yue Sen metal materials Co., Ltd	东莞粤森金属材料有限公司	No.16 Dezheng West Road, Xinan, Changan Town, Dongguan City	东莞市长安镇新安德政西路16号	Aluminium pipe, etc.	http://dgysjscl.cnal.com
6	Luoyang Dao Metallurgical Materials Co.,Ltd	洛阳达奥冶金材料有限公司	Lianfei Building, Fenghua Road and Spring Cheng Road, HNTZ, Luoyang City	洛阳市高新技术开发区丰华路与春城路连飞大厦	Aluminum balls, etc.	http://www.lydayjclyxgs.cnal.com/
7	TianJin Haosheng Metal materials Co.,Ltd	天津浩圣金属材料有限公司	Material Mall, Beicangdao, Beichen District, Tianjin	天津市北辰区北仓道物资商城	Aluminum ingots, etc.	http://tjhsll2011.cnal.com
8	Hangzhou Aoze aluminium Co., LTD	杭州澳泽铝业有限公司	No.32 District 3, 3th Village, Jiupu Town, Hangzhou City	杭州市九堡镇九堡三村三区32号	Aluminum alloy, Aluminium rounds, etc.	http://zhengqingquan.cnal.com
9	Yanshi Jinpeng Metallurgical Plant	偃师市金鹏冶金材料厂	Industrial Park, Yuetan, Yanshi City	偃师市岳滩工业区	Aluminum ingots, etc.	http://ysjpyjclc.cnal.com
10	Tianjin Dingren sales metal materials Co., LTD	天津鼎仁金属材料销售有限公司	Mingdu Steel trading center, Beichen Street, Beichen District, Tianjin	天津市北辰区北辰道名都钢材交易中心	Aluminum ingots, etc.	http://gangtie09.cnal.com
12	ShangHai JinLi Industrial Co.,Ltd	上海劲励实业有限公司	No.30, Zhongnan Road, Maogang Twon, Songjiang District, Shanghai	上海市松江区泖港镇中南路30弄	Aluminum alloy, Aluminium rounds, etc.	http://shjinli.cnal.com
13	Shanghai Yucheng metal products factory	上海誉诚金属制品厂	Sijing Industrial Park, Songjiang District, Shanghai	上海市松江泗泾工业区	Aluminium rounds, etc.	http://yuchengjs.cnal.com
14	Jinan Yongchang Aluminum Co.,Ltd	济南永昌铝业有限公司	East of Zhenxing Street, Pingyin County, Jinan City, Shandong Province	山东济南平阴县振兴街东首	Aluminium rounds, etc.	http://jnycly.cnal.com
15	Shanghai He Chuan metal materials Co., Ltd	上海沿海金属材料有限公司	No.1688 Factory 1, Sijing High-tech Park, Songjiang District, Shanghai.	上海市松江区泗泾高新科技园区1688号1号厂房	Aluminum alloy, etc.	http://www.shhechuana.cnal.com/

NO.	Exhibit Name-EN	Exhibit Name-CN	Production Covered-EN	Production Covered-CN	Hosted by (EN)	Hosted by (CN)	Link
1	2015 China Transportation Aluminium Expo	2015中国交通用铝展览会	Aluminium for cars, Aluminium for rail transit	汽车用铝、轨道交通用铝等	China Nonferrous Metals Industry Association	中国有色金属工业协会	http://www.chinania.org.cn/html/huiyizhanlan/2014/1028/15911.html
2	The 15th China Metal & Metallurgy Exhibition	第十五届中国金属冶金展	Aluminium for transportation	交通用铝等	China Nonferrous Metals Industry Association	中国有色金属工业协会	http://www.chinania.org.cn/html/huiyizhanlan/2014/1028/15910.html
3	ALUMINIUM CHINA 2014	2014年（第十六届）中国国际铝工业展览会	Aluminium raw materials	铝原材料等	ReedExpo China	励展博览集团大中华区	http://www.chinania.org.cn/html/huiyizhanlan/2014/0523/14688.html
4	CINME 2014	2014第八届中国（上海）国际有色金属工业展览会	Aluminium	铝等	China Nonferrous Metals Industry Association	中国有色金属工业协会	http://www.chinania.org.cn/html/huiyizhanlan/2014/0507/14529.html
5	The 12th Recycling Matal International Forum	第十二届再生金属国际论坛	Aluminium Waste, secondary aluminium	再生铝，铝废料等	China Nonferrous Metals Industry Association	中国有色金属工业协会	http://www.cmra.cn/expo11/eindex.html
6	CINME 2012	中国（北京）国际有色金属工业展览会	aluminium ingots, aluminium sheet	铝锭、铝片等	China Nonferrous Metals Society	中国有色金属学会	http://www.chinania.org.cn/html/huiyizhanlan/2012/0110/4781.html
7	the 6th China International Nonferrous Metals & Technology Exhibition	第六届中国国际有色金属技术装备展览会	Aluminium	铝等	China Nonferrous Metals processing Industry Association	中国有色金属加工工业协会	http://www.chinania.org.cn/html/huiyizhanlan/2011/1024/1580.html
8	2011 pan-beibu gulf (guangxi) and metal and metallurgical industry exposition	2011泛北部湾(广西)中外金属暨冶金工业博览会	secondary aluminium	铝再生与回收系统等	China-ASEAN Business Association	中国东盟企业协会	http://www.chinania.org.cn/html/huiyizhanlan/2011/1024/1578.html
9	Aluminium in Transportation Applications Forum 2011	2011年中国国际交通用铝论坛	Aluminium	铝等	China Nonferrous Metals Industry Association	中国有色金属工业协会	http://al_transport.metalchina.com

Contract Law of the People’s Republic of China

Order [1999] No.15 of the President of the People’s Republic of China

Contract Law of the People’s Republic of China has been adopted at the Second Session of the Ninth National People’s Congress on March 15, 1999, and is hereby promulgated, it will come into force as of October 1, 1999.

President of the People’s Republic of China: Jiang Zemin

March 15, 1999

Contract Law of the People’s Republic of China

General Provisions

Chapter 1 General Provisions

Article 1 This Law is enacted in order to protect the lawful rights and interests of the contracting parties, to maintain social and economic order, and to promote the process of socialist modernization.

Article 2 A contract in this Law refers to an agreement among natural persons, legal persons or other organizations as equal parties for the establishment, modification of a relationship involving the civil rights and obligations of such entities.

Agreements concerning personal relationships such as marriage,adoption, guardianship, etc.shall be governed by the provisions in other laws.

Article 3 Contracting parties shall have equal legal status, and no party may impose its will on the other party.

Article 4 The parties have the right to lawfully enter into a contract of their own free will in accordance with the law, and no unit or individual may illegally interfere therewith.

Article 5 The parties shall adhere to the principle of fairness in deciding their respective rights and obligations.

Article 6 The parties shall observe the principle of honesty and good faith in exercising their rights and performing their obligations.

Article 7 In concluding and performing a contract, the parties shall comply with the laws and administrative regulations, respect social ethics, and shall not disrupt the social and economic order or impair the public interests.

Article 8 A lawfully established contract shall be legally binding on the parties thereto, each of whom shall perform its own obligations in accordance with the terms of the contract, and no party shall unilaterally modify or terminate the contract.

The contract established according to law is protected by law.

Chapter 2 Conclusion of Contracts

Article 9 In entering into a contract, the parties shall have appropriate capacities for civil rights and civil acts.

A party may appoint an agent to enter into a contract on its behalf in accordance with the law.

Article 10 The parties may use written, oral or other forms in entering into a contract.

A contract shall be in written form if the laws or administrative regulations so provide. A contract shall be concluded in written form if the parties so agree.

Article 11 "Written form" refers to a form such as a written contractual agreement, letter, electronic data text(including a telegram, telex, fax, electronic data exchange and e-mail)that can tangibly express the contents contained therein.

Article 12 The contents of a contract shall be agreed upon by the parties, and shall generally contain the following clauses:

(1) titles or names and domiciles of the parties;

(2) subject matter;

(3) quantity;

(4) quality;

(5) price or remuneration;

(6) time limit, place and method of performance;

(7) liability for breach of contract; and

(8) method to settle disputes.

The parties may conclude a contract by reference to a model text of each kind of contract.

Article 13 The parties shall conclude a contract in the form of an offer and an acceptance.

Article 14 An offer is an expression of an intent to enter into a contract with another person. Such expression of intent shall comply with the following:

(1) its contents shall be specific and definite;

(2) it indicates that the offeror will be bound by the expression of intent in case of acceptance by the offeree.

Article 15 An invitation for offer is an expression of an intent to invite other parties to make offers thereto. Mailed price lists, public notices of auction and tender, prospectuses and commercial advertisements, etc. are invitations for offer.

Where the contents of a commercial advertisement meet the requirements for an offer, it shall be regarded as an offer.

Article 16 An offer becomes effective when it reaches the offeree.

If a contract is concluded through data-telex, and a recipient designates a specific system to receive the date-telex, the time when the data-telex enters such specific system shall be the time of arrival; if no specific system is appointed, the time when the data-telex first enters any of the recipient’s systems shall be regarded as the time of arrival.

Article 17 An offer may be withdrawn. The withdrawal notice shall reach the offeree before or at the same time when the offer arrives.

Article 18 An offer may be revoked. The revocation notice shall reach the offeree before it has dispatched a notice of acceptance.

Article 19 An offer may not be revoked, if

(1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or

(2) the offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contact.

Article 20 An offer shall lose efficacy under any of the following circumstances:

(1) the notice of rejection reaches the offeror;

(2) the offeror revokes the offer in accordance with the law;

(3) the offeree fails to dispatch an acceptance before the expiration of the time limit for acceptance;

(4) the offeree makes substantial changes to the contents of the offer.

Article 21 An acceptance is the expression of an intention to by the offeree to assent to the offer.

Article 22 The acceptance shall be made in the form of a notice, except where acceptance may be made by an act on the basis of customary business practice or as expressed in the offer.

Article 23 An acceptance shall reach the offeror within the time limit prescribed in the offer.

Where no time limit is prescribed in the offer, the acceptance shall reach the offeror in accordance with the following provisions:

(1) if the offer is made in dialogues, the acceptance shall be made immediately unless otherwise agreed upon by the parties;

(2) If the offer is made in forms other than a dialogue, the acceptance shall reach the offeror within a reasonable period of time.

Article 24 Where an offer is made by letter or telegram, the time limit for acceptance shall accrue from the date shown in the letter or from the date on which the telegram is handed in for dispatch. If no such date is shown in the letter, it shall accrue from the postmark date on the envelope.

Where an offer is made by means of instantaneous communication, such as telephone or facsimile,etc. the time limit for acceptance shall accrue from the moment that the offer reaches the offeree.

Article 25 A contract is established when the acceptance becomes effective.

Article 26 An acceptance becomes effective when its notice reaches the offeror. If notice of acceptance is not required, the acceptance shall become effective when an act of acceptance is performed in accordance with transaction practices or as required in the offer.

Where a contract is concluded in the form of date-telex, the time of arrival of an acceptance shall be governed by the provisions of Paragraph 2, Article 16 of this Law.

Article 27 An acceptance may be withdrawn, but a notice of withdrawal shall reach the offeror before or at the same time when the notice of acceptance reaches the offeror.

Article 28 Where an offeree makes an acceptance beyond the time limit for acceptance, the acceptance shall be a new offer except that the offeror promptly informs the offeree of the effectiveness of the said acceptance.

Article 29 If the offeree dispatched the acceptance within the time limit specified for acceptance, and under normal circumstances the acceptance would have reached the offeror in due time, but due to other reasons the acceptance reaches the offeror after the time limit for acceptance has expired,such acceptance shall be effective, unless the offeror notifies the offeree in a timely manner that it does not accept the acceptance due to the failure of the acceptance to arrive within the time limit.

Article 30 The contents of an acceptance shall comply with those of the offer. If the offeree substantially modifies the contents of the offer, it shall constitute a new offer. The modification relating to the subject matter, quality, quantity, price or remuneration, time or place or method of performance, liabilities for breach of contract and method of dispute resolution, etc. shall constitute the substantial modification of an offer.

Article 31 If the acceptance does not substantially modifies the contents of the offer, it shall be effective, and the contents of the contract shall be subject to those of the

acceptance, except as rejected promptly by the offeror or indicated in the offer that an acceptance may not modify the offer at all.

Article 32 Where the parties conclude a contract in written form, the contract is established when it is signed or sealed by the parties.

Article 33 Where the parties conclude the contract in the form of letters or data-telex, etc., one party may request to sign a letter of confirmation before the conclusion of the contract. The contract shall be established at the time when the letter of confirmation is signed.

Article 34 The place of effectiveness of an acceptance shall be the place of the establishment of the contract.

If the contract is concluded in the form of data-telex, the main business place of the recipient shall be the place of establishment. If the recipient does not have a main business place, its habitual residence shall be considered to be the place of establishment. Where the parties agree otherwise, such agreement shall apply.

Article 35 Where the parties conclude a contract in written form, the place where both parties sign or affix their seals on the contract shall be the place of establishment.

Article 36 Where a contract is to be concluded in written form as required by relevant laws and administrative regulations or as agreed by the parties, and the parties failed to conclude the contract in written form, but one party has performed the principal obligation and the other party has accepted it, the contract is established.

Article 37 Where a contract is to be concluded in written form, if one party has performed its principal obligation and the other party has accepted it before signing or sealing of the contract, the contract is established.

Article 38 Where the State has issued a mandatory plan or a State purchasing order based on necessity,the relevant legal persons and the other organizations shall conclude a contract between them in accordance with the rights and obligations as stipulated by the relevant laws and administrative regulations.

Article 39 Where standard terms are adopted in concluding a contract, the party supplying the standard terms shall define the rights and obligations between the parties abiding by the principle of fairness, and shall inform the other party to note the exclusion or restriction of its liabilities in a reasonable way, and shall explain the standard terms upon request by the other

party.

Standard terms are clauses that are prepared in advance for general and repeated use by one party, and which are not negotiated with the other party when the contract is concluded.

Article 40 When standard terms are under the circumstances stipulated in Articles 52 and 53 of this Law,or the party which supplies the standard terms exempts itself from its liabilities, increases the liabilities of the other party, and deprives the material rights of the other party, the terms shall be invalid.

Article 41 If a dispute over the understanding of the standard terms occurs, it shall be interpreted in accordance with common understanding. Where there are two or more kinds of interpretation, an interpretation unfavorable to the party supplying the standard terms shall prevail. Where the standard terms are inconsistent with non-standard terms, the latter shall prevail.

Article 42 The party shall be liable for damage if it is under one of the following circumstances in concluding a contract and thus causing losses to the other party:

(1) pretending to conclude a contract, and negotiating in bad faith;

(2) deliberately concealing important facts relating to the conclusion of the contract or providing false information;

(3) performing other acts which violate the principle of good faith.

Article 43 A trade secret the parties learn in concluding a contract shall not be disclosed or improperly used, no matter the contract is established or not. If the party discloses or

improperly uses such trade secret and thus causing loss to the other party, it shall be liable for damages.

Chapter 3 Validity of Contracts

Article 44The contract established according to law becomes effective upon its establishment.

With regard to contracts that are subject to approval or registration as stipulated by relevant laws or administrative regulations, the provisions thereof shall be followed.

Article 45 The parties may agree on that the effectiveness of a contract be subject to certain conditions. A contract whose effectiveness is subject to certain conditions shall become effective when such conditions are accomplished. The contract with dissolving conditions shall become invalid when such conditions are satisfied.

If a party improperly prevent the satisfaction of a condition for its own interests, the condition shall be regarded as having been accomplished. If a party improperly facilitates the satisfaction of a condition, such condition shall be regarded as not to have been satisfied.

Article 46 The parties may agree on a conditional time period as to the effectiveness of the contract. A contract subject to an effective time period shall come into force when the period expires. A contract with termination time period shall become invalid when the period expires.

Article 47 A contract concluded by a person with limited civil capacity of conduct shall be effective after being ratified afterwards by the person’s statutory agent, but a pure profit-making contract or a contract concluded which is appropriate to the person’s age, intelligence or mental health conditions need not be ratified by the person’s statutory agent.

The counterpart may urge the statutory agent to ratify the contract within one month. It shall be regarded as a refusal of ratification that the statutory agent does not make any expression. A bona fide counterpart has the right to withdraw it before the contract is ratified.The withdrawal shall be made by means of notice.

Article 48 A contract concluded by an actor who as no power of agency, who oversteps the power of agency, or whose power of agency has expired and yet concludes it on behalf of the principal,shall have no legally binding force on the principal without ratification by the principal, and the actor shall be held liable.

The counterpart may urge the principal to ratify it within one month. It shall be regarded as a refusal of ratification that the principal does not make any expression. A bona fide counterpart has the right to withdraw it before the contract is ratified. The withdrawal shall be made by means of notice.

Article 49 If an actor has no power of agency, oversteps the power of agency, or the power of agency has expired and yet concludes a contract in the principal's name, and the counterpart has reasons to trust that the actor has the power of agency, the act of agency shall be effective.

Article 50 Where a statutory representative or a responsible person of a legal person or other organization oversteps his/her power and concludes a contract, the representative act shall be effective except that the counterpart knows or ought to know that he/she is overstepping his/her powers.

Article 51 Where a person having no right to disposal of property disposes of other persons' properties,and the principal ratifies the act afterwards or the person without power of disposal has obtained the power after concluding a contract, the contract shall be valid.

Article 52 A contract shall be null and void under any of the following circumstances:

(1) a contract is concluded through the use of fraud or coercion by one party to damage the interests of the State;

(2) malicious collusion is conducted to damage the interests of the State, a collective or a third party;

(3) an illegitimate purpose is concealed under the guise of legitimate acts;

(4) damaging the public interests;

(5) violating the compulsory provisions of laws and administrative regulations.

Article 53 The following exception clauses in a contract shall be null and void:

(1) those that cause personal injury to the other party;

(2) those that cause property damages to the other party as result of deliberate intent or gross negligence.

Article 54 A party shall have the right to request the people's court or an arbitration institution to modify or revoke the following contracts:

(1) those concluded as a result of significant misconception;

(2) those that are obviously unfair at the time when concluding the contract.

If a contract is concluded by one party against the other party's true intentions through the use of fraud, coercion, or exploitation of the other party's unfavorable position, the injured party shall have the right to request the people's court or an arbitration institution to modify or revoke it.

Where a party requests for modification, the people's court or the arbitration institution may not revoke the contract.

Article 55 The right to revoke a contract shall extinguish under any of the following circumstances:

(1) a party having the right to revoke the contract fails to exercise the right within one year from the day that it knows or ought to know the revoking causes;

(2) a party having the right to revoke the contract explicitly expresses or conducts an act to waive the right after it knows the revoking causes.

Article 56 A contract that is null and void or revoked shall have no legally binding force ever from the very beginning. If part of a contract is null and void without affecting the validity of the other parts, the other parts shall still be valid.

Article 57 If a contract is null and void, revoked or terminated, it shall not affect the validity of the dispute settlement clause which is independently existing in the contract.

Article 58 The property acquired as a result of a contract shall be returned after the contract is confirmed to be null and void or has been revoked; where the property can not be returned or the return is unnecessary, it shall be reimbursed at its estimated price. The party at fault shall compensate the other party for losses incurred as a result therefrom. If both parties are fault,each party shall respectively be liable.

Article 59 If the parties have maliciously conducted collusion to damage the interests of the State, a collective or a third party, the property thus acquired shall be turned over to the State or returned to the collective or the third party.

Chapter 4 Performance of Contracts

Article 60 Each party shall fully perform its own obligations as agreed upon.

The parties shall abide by the principle of good faith, and perform obligations of notification, assistance, and confidentiality, etc. in accordance with the nature and purpose of the contract and the transaction practice.

Article 61 Where, after the contract becomes effective, there is no agreement in the contract between the parties on such contents as quality, price or remuneration, or place of performance etc., or such agreement is ambiguous, the parties may agree upon supplementary terms through consultation;if a supplementary agreement cannot be reached, such terms shall be determined in accordance with the relevant provisions of the contract or the transaction practices.

Article 62 Where certain contents agreed upon by the parties in the contract are ambiguous and cannot be determined in accordance with the provisions in Article 61 of this Law, the following provisions shall be applied:

(1) if quality requirement is not clear, performance shall be in accordance with the state standard or industry standard; absent any state or industry standard, performance shall be in accordance with the customary standard or any particular standard consistent with the purpose of the contract;

(2) if price or remuneration is not clear, performance shall be in accordance with the prevailing market price at the place of performance at the time the contract was concluded, and if adoption of a price commissioned by the government or based on government issued pricing guidelines is required by law, such requirement applies;

(3) where the place of performance is not clear, if the obligation is payment of money,performance shall be at the place where the payee is located; if the obligation is delivery of immovable property, performance shall be at the place where the immovable property is located;for any other subject matter, performance shall be effected at the place of location of the party fulfilling the obligations.

(4) if the time of performance is not clear, the obligor may perform, and the obligee may require performance, at any time, provided that the other party shall be given the time required for preparation;

(5) if the method of performance is not clear, performance shall be rendered in a manner which is conducive to realizing the purpose of the contract;

(6) if the responsibility for the expenses of performance is not clear, the party fulfilling the obligations shall bear the expenses.

Article 63 Where the government-fixed price or government-directed price is followed in a contract, if the said price is readjusted within the time limit for delivery as stipulated in the contract,the payment shall be calculated according to the price at the time of delivery. Where a party delays in delivering the subject matter, the original price shall be adopted if the price rises;and the new price shall be adopted if the price falls. Where a party delays in taking delivery of the subject matter or making payment, the new price shall be adopted if the price rises, and the original price shall be adopted if the price falls.

Article 64 Where the parties agree that the obligor shall perform the obligations to a third party, and the obligor fails to perform its obligations to such third party or its performance of the obligations is not in conformity with the agreement, the obligor shall be liable to the obligee for breach of contract.

Article 65 Where the parties agree that a third party performs the obligations to the obligee, and the third party fails to perform the obligations or the performance is not in conformity with the agreement, the obligor shall be liable to the obligee for breach of contract.

Article 66 Where both parties have obligations toward one another and there is no order of priority in respect of the performance of obligations, the parties shall perform the obligations simultaneously. Each party has the right to reject any demand by the other party for performance prior to the performance by the other party. If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is perform later has the right to reject the other party's demand for corresponding performance.

Article 67 Where both parties have obligations toward each other and there is an order of priority in respect of the performance, and the party who is to perform first fails to perform, the party who is to perform later has the right to reject the other party's demand for performance. If the performance of the obligations of the party who is to perform first is not in conformity with the

agreement, the party who is to perform later has the right to reject the other party's demand for corresponding performance.

Article 68 The party required to perform first may suspend its performance if it has conclusive evidence showing that the other party is under any of the following circumstances:

(1) its business has seriously deteriorated;

(2) it has engaged in transfer of assets or withdrawal of funds for the purpose of evading debts;

(3) it has lost its business creditworthiness;

(4) it is in any other circumstance which will or may cause it to lose its ability to perform.

Where a party suspends performance without conclusive evidence, it shall be liable for breach of contract.

Article 69 If a party suspends its performance in accordance with the provisions of Article 68 of this Law, it shall timely notify the other party. If the other party provides appropriate assurance for its performance, the party shall resume performance. After performance was suspended, if the

other party fails to regain its ability to perform and fails to provide appropriate assurance within a reasonable time, the suspending party may terminate the contract.

Article 70 Where the obligee fails to notify the obligor of its separation, merger, or change of the domicile, thereby making it difficult for the obligor to perform its obligations, the obligor may suspend its performance or escrow the subject matter.

Article 71 The obligee may reject the obligor’s advance performance of its obligations, except that the advance performance does not harm the obligee’s interests.

Any additional expense incurred by the obligee due to the obligor’ s advance performance of its obligations shall be borne by the obligor.

Article 72 An obligee may reject the obligor’s partial performance, except that the partial performance of its obligations does not harm the obligee’s interests.

Any additional expense incurred by the obligee due to the obligor’ s partial performance of its obligations shall be borne by the obligor.

Article 73 Where the obligor is remiss in exercising its due creditor’s right, thereby harming the obligee’s interests, the obligee may petition the People’s Court for subrogation in its own name,except that the creditor’s right exclusively belongs to the obligor.

The extent to which the subrogation rights can be exercised is limited to the obligee’s rights. The expenses necessary for the obligee to exercise such subrogation rights shall be borne by the obligor.

Article 74 Where the obligor waives its creditor’s right against a third party that is due or assigns its property without reward, thereby harming the obligee’s interests, the obligee may petition the People’s Court for cancellation of the obligor’s act. Where the obligor assigns its property

at a low price which is manifestly unreasonable, thereby harming the obligee’s interests, and the assignee is aware of the situation, the obligee may also petition the People’s Court for cancellation of the obligor’s act.

The extent to which the right to cancel can be exercised is limited to the rights of the obligee. The expenses necessary for the obligee to exercise the right to cancel shall be borne by the obligor.

Article 75 The right to cancel shall be exercised within one year form the date the obligee knows or should have known of the matter for cancellation. Such right to cancel shall lapse if the obligee fails to exercise such rights within five years from the date of the occurrence of such act.

Article 76 Once a contract becomes effective, a party may not refuse to perform its obligations thereunder due to a change in its name, or its legal representative, the person in charge, or the person handling the contract.

Chapter 5 Modification and Assignment of Contracts

Article 77 A contract may be modified if the parties reach a consensus through consultation.

If the laws or administrative regulations so provide, approval and registration procedures for such modification shall be gone through in accordance with such provisions.

Article 78 Where an agreement by the parties on the contents of a modification is ambiguous, the contract shall be presumed as not having been modified.

Article 79 The obligee may assign its rights under a contract, in whole or in part, to a third party,except under the following circumstances:

(1) such rights may not be assigned in light of the nature of the contract;

(2) such rights may not be assigned according to the agreement between the parties;

(3) such rights may not be assigned according to the provisions of the laws.

Article 80 Where the obligee assigns its rights, it shall notify the obligor. Such assignment will have no effect on the obligor without notice thereof.

A notice by the obligee to assign its rights shall not be revoked, unless such revocation is consented to by the assignee.

Article 81 Where the obligee assigns its right, the assignee shall acquire the collateral rights related to the principal rights, except that the collateral rights exclusively belong to the obligee.

Article 82 Upon receipt of the notice of assignment of rights, the obligor may assert against the assignee any defenses it has against the assignor.

Article 83 Upon receipt by the obligor of the notice of assignment of rights, the obligor shall have vested rights against the assignor, and if the rights of the obligor vest prior to or at the same time as the assigned rights, the obligor may claim an offset against the assignee.

Article 84 Where the obligor delegates its obligations under a contract in whole or in part to a third party, such delegation shall be subject to the consent of the obligee.

Article 85 Where the obligor delegates its obligation, the new obligor may exercise any defense that the original obligor had against the obligee.

Article 86 Where the obligor delegates its obligation, the new obligor shall assume the incidental obligations related to the main obligations, except that the obligations exclusively belong to the original obligor.

Article 87 Where the laws or administrative regulations stipulate that the assignment of rights or transfer of obligations shall undergo approval or registration procedures, such provisions shall be followed.

Article 88 Upon the consent of the other party, one party may transfer its rights together with its obligations under contract to a third party.

Article 89 Where the rights and obligations are transferred together, the provisions in Articles 79,Articles 81 to 83, and Articles 85 to 87 of this Law shall be applied.

Article 90 Where a party is merged after the contract has been concluded, the legal person or other organization established after the merger shall exercise the rights and obligations thereunder.Unless otherwise agreed upon by the obligor and obligee, the legal persons or other organizations that exist after the division shall jointly enjoy the rights and jointly assume the obligations

under the contract.

Chapter 6 Termination of Contractual Rights and Obligations

Article 91 The rights and obligations under a contract shall be terminated under any of the following circumstances:

(1) the obligations have been performed as agreed upon;

(2) the contract has been rescinded;

(3) the obligations have been offset against each other;

(4) the obligor has escrowed the subject matter accordance with the law;

(5) the obligee has released the obligor of its obligation;

(6) the rights and obligations have vested in one party;

(7) any other circumstances for termination as stipulated by the laws or agreed upon by the parties.

Article 92 After the termination of the rights and obligations under the contract, the parties shall observe the principal of honesty and good faith and perform the obligations of notification,assistance and confidentiality, etc. in accordance with relevant transaction practices.

Article 93 The parties may terminate a contract if they reach a consensus through consultation.

The parties may agree upon conditions under which either party may terminate the contract.Upon satisfaction of the conditions, the party who has the right to terminate may terminate the contract.

Article 94 The parties to a contract may terminate the contract under any of the following circumstances:

(1) it is rendered impossible to achieve the purpose of contract due to an event of force majeure;

(2) prior to the expiration of the period of performance, the other party expressly states, or indicates through its conduct, that it will not perform its main obligation;

(3) the other party delayed performance of its main obligation after such performance has been demand, and fails to perform within a reasonable period;

(4) the other party delays performance of its obligations, or breaches the contract in some other manner, rendering it impossible to achieve the purpose of the contract;

(5) other circumstance as provided by law.

Article 95 Where the laws stipulates or the parties agreed upon the time limit to exercise the right to terminate the contract, and no party exercises it when the time limit expires, the said right shall be extinguished.

Where neither the law stipulates nor the parties make an agreement upon the time limit to exercise the right to terminate the contract, and no party exercise it within a reasonable time period after being urged, the said right shall be extinguished.

Article 96 A party demanding termination of a contract in accordance with the provisions of Paragraph 2 of Article 93 and Article 94 of this Law shall notify the other party. The contract shall be terminated upon the receipt of the notice by the other party. If the other party objects to such termination, it may petition the People's Court or an arbitration institution to adjudicate the

validity of the termination of the contract.

Where the laws and administrative regulations so provide, the approval and registration procedures for the termination of the contract shall be gone through in accordance with such laws and regulations.

Article 97 After the termination of a contract, performance shall cease if the contract has not been performed; if the contract has been performed, a party may, in accordance with the circumstances of performance or the nature of the contract, demand the other party to restore such party to its original state or adopt other remedial measures, and such party shall have the right to demand compensation for damages.

Article 98 The termination of rights and obligations under a contact shall not affect the validity of clauses that related to the final settlement of accounts and winding-up.

Article 99 Where the parties are liable to one another for obligations that are due, and if the type and nature of the subject matter of such obligations are the same, any party may offset its own obligation against the obligation of the other party, except unless such offset is not allowed according to the laws and regulations or cannot be made given the nature of the contract.

The party who claims such offset shall notify the other party. The notice shall become effective when it reaches the other party. The offset shall not be subject to any condition or time limit.

Article 100 Where the parties have obligations towards one another, and the type and nature of such obligations are different, the obligations may also be offset upon consensus between the parties after consultation.

Article 101 The obligor may escrow the subject matter under any of the following circumstances which render performance of the obligations difficult:,

(1) the obligee refuses to accept them without justified reasons;

(2) the whereabouts of the obligee are unknown;

(3) the obligee is deceased and the successor has not been determined, or the obligee has lost civil capacity and a guardian has not been appointed;

(4) other circumstance as provided for in the laws.

Where the subject matter is not fit for escrow, or the cost of escrow is excessively high,the obligor may auction or sell the subject matter according to law, and escrow the proceeds therefrom.

Article 102 Unless the whereabouts of the obligee are unknown, the obligee shall notify the obligee, or the successor or guardian of the obligor immediately after the subject matter has been placed in escrow.

Article 103 Once the subject matter has been placed in escrow, the risk of damage to, destruction or loss of the subject matter shall be borne by the obligee. The obligee shall be

entitled to any fruits of the subject matter during the escrow period. Escrow expenses shall be borne by the obligee.

Article 104 The obligee may claim the subject matter in escrow at any time, except that if the obligee has any due obligations toward the obligor, prior to the obligee's performance of its obligations or the obligee's provision of security for its performance, the escrow institution shall, at the request of the obligor, refuse the obligee's claim of the escrowed subject matter.

The right of the obligee to reclaim the subject matter in escrow shall lapse if it is not exercised within five years form the date the subject matter is placed in escrow, and the escrowed subject matter shall revert to the national treasury after the deduction of the escrow costs.

Article 105 Where an obligee releases the obligor of its own obligations, in whole or in part, the rights and obligations under the contract shall terminate in whole or in part.

Article 106 If the rights and obligations under a contract vest in one party, such rights and obligations thereunder shall terminate, unless they involve the interests of a third party.

Chapter 7 Liabilities for Breach of Contracts

Article 107 If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.

Article 108 Where one party express explicitly or indicates by its conduct that it will not perform its obligations under a contract, the other party may demand it to bear the liability for the breach of contract before the expiry of the performance period.

Article 109 If a party fails to pay the price or remuneration, the other party may request it to make the payment.

Article 110 Where a party fails to perform the non-monetary obligations or its performance of non-monetary obligations fails to satisfy the terms of the contract, the other party may request it to perform it except under any of the following circumstances:

(1) it is unable to be performed in law or in fact;

(2) the subject matter of the obligation is unfit for compulsory performance or the performance expenses are excessively high;

(3) the obligee does not require performance within a reasonable time.

Article 111 Where the quality fails to satisfy the agreement, the breach of contract damages shall be borne in the manner as agreed upon by the parties. Where there is no agreement in the contract on the liability for breach of contract or such agreement is unclear, nor can it be determined in accordance with the provisions of Article 61of this Law, the damaged party may, in light of the nature of the subject matter and the degree of loss, reasonably choose to request the other party to bear the liabilities for the breach of contract such as repairing, substituting, reworking,returning the goods, or reducing the price or remuneration.

Article 112 Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement, and the other party still suffers from other damages after the performance of the obligations or adoption of remedial measures, such party shall compensate the other party for such damages.

Article 113 Where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses

caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract.

The business operator who commits default activities in providing to the consumer any goods or services shall be liable for paying compensation for damages in accordance

with the Law of the People’s Republic of China on Protection of Consumer Rights and Interests.

Article 114 The parties may agree that if one party breaches the contract, it shall pay a certain sum of liquidated damages to the other party in light of the circumstances of the breach, and may also agree on a method for the calculation of the amount of compensation for the damages incurred as a result of the breach.

Where the amount of liquidated damages agreed upon is lower than the damages incurred, a party may petition the People’s Court or an arbitration institution to make an increase; where the amount of liquidated damages agreed upon are significantly higher than the damages incurred,a party may petition the People’s Court or an arbitration institution to make an appropriate reduction.

Where the parties agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the obligations after paying the breach of contract damages.

Article 115 The parties may agree that a party pay a deposit to the other party as a guaranty for the obligation in accordance with the Security Law of the People’s Republic of China. Upon the obligor has performed its obligation, the deposit shall be offset against the price or refunded to the obligor. If the party paying the deposit fails to perform its obligations under the contract, such party has no right to demand for the return of the deposit; where the party accepting the deposit fails to perform its obligations under the contract, such party shall refund twice the value of the deposit.

Article 116 If the parties agree on both liquidated damages and a deposit, and one party is in breach,the other party may choose to apply either the provisions for liquidated damages or that for the deposit.

Article 117 A party who is unable to perform a contract due to force majeure is exempted from liability in part or in whole in light of the impact of the event of force majeure, except otherwise provided by law. Where an event of force majeure occurs after the party’s delay in performance,it is not exempted from such liability.

For purposes of this Law, force majeure means any objective circumstances which are unforeseeable, unavoidable and insurmountable.

Article 118 If a party is unable to perform a contract due to an event of force majeure, it shall timely notify the other party so as to mitigate the losses that may be caused to the other party, and shall provide evidence of such event of force majeure within a reasonable period.

Article 119 Where a party breached the contract, the other party shall take the appropriate measures to prevent the losses from increasing; where the other party's failure to take appropriate measures results in additional losses, it cannot demand compensation for the additional losses.

Any reasonable expense incurred by the other party in preventing additional losses shall be borne by the party in breach.

Article 120 If both parties breach a contract, each party shall bear its own respective liabilities.

Article 121 Where a party's breach is attributable to a third party, it shall nevertheless be liable to the other party for breach. Any dispute between the party and such third party shall be resolved in accordance with the law or the agreement between the parties.

Article 122 Where the breach of contract by one party infringes upon the other party's personal or property rights, the aggrieved party is entitled to choose to claim the assumption by the violating and infringing party of liabilities for breach of contract according to this Law, or to claim the assumption by the violating and infringing party of liabilities for infringement

according to other laws.

Chapter 8 Other Provisions

Article 123 Where other laws provide otherwise in respect of a contract, such provisions shall prevail.

Article 124 Where there are no explicitly provisions in the Specific Provisions of this Law or in any other law concerning a certain contract, the provisions in the General Provisions of this Law shall be applied, and reference may be made to the provisions in the Specific Provisions of this Law or in any other law that most closely relate to such contract.

Article 125 If any disputes arise between the parties over the understanding of any clause of the contract, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions in the contract, the purpose of the contract, the transaction practices and the principle of good faith.

Where a contract is concluded in two or more languages and it is agreed that all versions are equally authentic, the words and sentences in each version are construed to have the same meaning. In case of any discrepancy in the words or sentences used in the different language versions, they shall be interpreted in light of the purpose of the contract.

Article 126 Parties to a foreign-related contract may select the applicable law for resolution of a contractual dispute, except as otherwise provided by law. Where parties to the foreign-related contract fails to select the applicable law, the contract shall be governed by the law of the country with the closest connection thereto.

For a Chinese-foreign equity joint venture contract, Chinese-foreign contractual joint venture contract, or a contract for Chinese-foreign joint exploration and development of natural resources which is performed within the territory of the People’s Republic of China, the law of the People’s Republic of China shall be applied.

Article 127 Within the scope of their respective duties, the administrative department of industry and commerce and other relevant departments shall, in accordance with the relevant laws and administrative regulations, be responsible for monitoring and dealing with any illegal acts which, by taking advantage of contracts, harm the interests of the State or the interests of the

public and society; where such an act constitutes a crime, criminal liability shall be investigated in accordance with the law.

Article 128 The parties may resolve a contractual dispute through settlement or mediation.

Where the parties do not wish to, or are unable to, resolve such dispute through settlement or mediation, the dispute may be submitted to the relevant arbitration institution for arbitration in accordance with the arbitration agreement between the parties. Parties to a foreign-related contract may apply to a Chinese arbitration institution or another arbitration institution for arbitration. Where the parties did not conclude an arbitration agreement, or the

arbitration agreement is invalid, either party may bring a suit to the People's Court. The parties shall perform the judgments, arbitration awards or mediation agreements which have taken legal effect; if a party refuses to perform, the other party may request the People's Court for enforcement.

Article 129 For a dispute arising from a contract for the international sale of goods or a technology import or export contract, the time limit for bringing a suit or applying for arbitration is four years, calculating from the date on which the party knows or ought to know the infringement on its rights. For a dispute arising from any other type of contract, the time limit for bringing a

suit or applying for arbitration shall be governed by the relevant law.

Specific Provisions

Chapter 9 Sales Contracts

Article 130 A sales contract is a contract whereby the seller transfers the ownership of a subject matter to the buyer, and the buyer pays the price for it.

Article 131 In addition to the terms set forth in Article 12 of this Law, a sales contract may also

contain such clauses as package manner, inspection standards and method, method of settlement and clearance, language adopted in the contract and its authenticity.

Article 132 The subject matter to be sold shall be owned by the seller or of that the seller shall have the right to dispose.

Where the transfer of a subject matter is prohibited or restricted by laws or administrative regulation, such provision shall be applied.

Article 133 The ownership of a subject matter shall be transferred upon the delivery of the object,except as otherwise stipulated by law or agreed upon by the parties.

Article 134 The parties to a sales contract may agree that the ownership shall belong to the seller if the buyer fails to pay the price or perform other obligations.

Article 135 The seller shall perform the obligations of delivering to the buyer the subject matter or handing over the documents for the buyer to take possession of the subject matter and of transferring the ownership thereto.

Article 136 In addition to the document for taking possession, the seller shall deliver to the buyer the relevant documents and materials in accordance with the agreement or transaction practices.

Article 137 In a sale of any subject matter which contains intellectual property such as computer software, etc., the intellectual property in the subject matter does not belong to the buyer,except as otherwise provided by law or agreed upon by the parties.

Article 138 The seller shall deliver the subject matter by the time limit agreed upon. Where a time period for delivery is agreed upon, the seller may deliver at any time within the said time period.

Article 139 Where the time limit for delivery of the subject matter is not agreed upon between the parties or the agreement is not clear, the provisions of Article 61 and Item 4 of Article 62 shall be applied.

Article 140 Where a subject matter has been possessed by the buyer prior to the conclusion of the contract, the delivery time shall be the time when the contract becomes effective.

Article 141 The seller shall deliver the subject matter at the agreed place.

Where there is no agreement between the parties as to the place to deliver the subject matter or such agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the following provisions shall be applied:

(1) if the subject matter needs carriage, the seller shall deliver the subject matter to the first carrier so as to hand it over to the buyer;

(2) if the subject matter does not need carriage, and the seller and buyer know the place of the subject matter when concluding the contract, the seller shall deliver the subject matter at such place; if the place is unknown, the subject matter shall be delivered at the business place of the seller when concluding the contract.

Article 142 The risk of damage to or loss of a subject matter shall be borne by the seller prior to the delivery of the subject matter and by the buyer after delivery, except as otherwise stipulated by law or agreed upon by the parties.

Article 143 Where a subject matter cannot be delivered at the agreed time limit due to any reasons attributable to the buyer, the buyer shall bear the risk of damage to or loss of the subject matter as of the date it breaches the agreement.

Article 144 Where the seller sells a subject matter delivered to a carrier for carriage and is in transit, unless otherwise agreed upon by the parties, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the time of establishment of the contract.

Article 145 Where there is no agreement between the parties as to the place of delivery or such agreement is not clearly, and the subject matter needs carriage according to the provisions of Item 1 of Paragraph 2 of Article 141 of this Law, the risk of damage to or missing of the subject matter shall be borne by the buyer after the seller has delivered the subject matter to the first

carrier.

Article 146 Where the seller has placed the subject matter at the place of delivery in accordance with the agreement or in accordance with the provisions of Item 2 of Paragraph 2 of Article 141 of this Law, while the buyer fails to take delivery in breach of the agreement, the risk of damage to or missing of the subject matter shall be borne by the buyer as of the date of breach of the

agreement.

Article 147 The failure of the seller to deliver the documents and materials relating to the subject matter as agreed upon shall not affect the passing of the risk of damage to or missing of the subject matter.

Article 148 Where the quality of the subject matter does not conform to the quality requirements, making it impossible to achieve the purpose of the contract, the buyer may

refuse to accept the subject matter or may terminate the contract. If the buyer refuses to accept the subject matter or terminate the contract, the risk of damage to or missing of the subject matter shall be borne by the seller.

Article 149 Where the risk of damage to or missing of the subject matter is borne by the buyer, the buyer's right to demand the seller to bear liability for breach of contract because the seller's performance of its obligations is not in conformity with the agreement shall not be affected.

Article 150 Unless otherwise provided by law, the seller shall have the obligation to warrant that no third party shall exercise against the buyer any rights with respect to the delivered subject matter.

Article 151 Where the buyer knows or ought to know, at the time of conclusion of the contract, that a third party has rights on the subject matter to be sold, the seller does not assume the obligation prescribed in Article 150 of this Law.

Article 152 Where the buyer has conclusive evidence to demonstrate that a third party may claim rights on the subject matter, it may suspend to pay the corresponding price, except where the seller provides a appropriate guaranty.

Article 153 The seller shall deliver the subject matter in compliance with the agreed quality requirements. Where the seller gives the quality specifications for the subject matter, the subject matter delivered shall comply with the quality requirements set forth therein.

Article 154 Where the quality requirements for the subject matter is not agreed between parties or such agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the provisions of Item 1 of Article 62 of this Law shall be applied.

Article 155 If the subject matter delivered by the seller fails to comply with the quality requirements,the buyer may demand the seller to bear liability for breach of contract in accordance with Article 111 of this Law.

Article 156 The seller shall deliver the subject matter packed in the agreed manner. Where there is no agreement on package manner in the contract or the agreement is not clear,

nor can it be determined according to the provisions of Article 61 of this Law, the subject matter shall be packed in a general manner, and if no general manner, a package manner enough to protect the subject matter shall be adopted.

Article 157 Upon receipt of the subject matter, the buyer shall inspect it within the agreed inspection period. Where no inspection period is agreed, the buyer shall timely inspect the subject matter.

Article 158 Where the parties have agreed upon an inspection period, the buyer shall notify the seller of any non-compliance in quantity or quality of the subject matter within such inspection period.Where the buyer delayed in notifying the seller, the quantity or quality of the subject matter is deemed to comply with the contract.

Where no inspection period is agreed, the buyer shall notify the seller within a reasonable period, commencing on the date when the buyer discovered or should have discovered the quantity or quality non-compliance. If the buyer fails to notify within a reasonable period or fails to notify within 2 years, commencing on the date when it received the subject matter, the quantity or quality of the subject matter is deemed to comply with the contract, except that if there is a warranty period in respect of the subject matter, the warranty period applies and supersedes such two year period.

Where the seller knows or ought to know the non-compliance of the subject matter, the buyer is not subject to the time limits for notification prescribed in the preceding two paragraphs.

Article 159 The buyer shall pay the price in the agreed amount. Where the price is not agreed or the agreement is not clear, the provisions of Article 61 and Item 2 of Article 62 shall be applied.

Article 160 The buyer shall pay the price at the agreed place. Where the place of payment is not agreed or the agreement is not clear, nor can it be determined according to the provisions of Article 61 of this Law, the buyer shall make payment at the seller’s place of business, provided that if the

parties agreed that payment shall be conditional upon delivery of the subject matter or the document for taking delivery thereof, payment shall be made at the place where the subject matter, or the document for taking delivery thereof, is delivered.

Article 161 The buyer shall pay the price at the agreed time. Where the time for payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law,the buyer shall make payment at the same time it receives the subject matter or the document for

taking delivery thereof.

Article 162 Where the seller delivers the subject matter in a quantity greater than that agreed in the contract, the buyer may accept or reject the excess quantity. Where the buyer accepts the excess quantity, it shall pay the price based on the contract rate; where the buyer rejects the excess quantity, it shall timely notify the seller.

Article 163 The fruits of the subject matter belong to the seller if accrued before delivery, and to the buyer if accrued after delivery.

Article 164 Where a contract is terminated due to non-compliance of any main component of the subject matter, the effect of termination extends to the ancillary components. Where the contract is terminated due to non-compliance of any ancillary component of the subject matter, the effect of termination does not extend to the main components.

Article 165 Where the subject matter comprises of a number of components, one of which does not comply with the contract, the buyer may terminate the portion of the contract in respect of such component, provided that if severance of such component with the other components will significantly diminish the value of the subject matter, the party may terminate the contract in respect of such number of components.

Article 166 Where the seller is to deliver the subject matter in installments, if the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the said installment cannot realize the contract purpose, the buyer may terminate the portion of the contract in respect thereof.

If the seller fails to deliver one installment of the subject matter or the delivery fails to satisfy the terms of the contract so that the delivery of the subsequent installments of subject matter can not realize the contract purpose, the buyer may terminate the portion of the contract in respect of such installment as well as any subsequent installment.

If the buyer is to terminate the portion of the contract in respect of a particular installment which is interdependent with all other installments, it may terminate the contract in respect of all delivered and undelivered installments.

Article 167 In a sale by installment payment, where the buyer fails to make payments as they became due,if the delinquent amount has reached one fifth of the total price, the seller may require payment of the full price from the buyer or terminate the contract. If the seller terminates the contract, it may require the buyer to pay a fee for its use of the subject matter.

Article 168 In a sale by sample, the parties shall place the sample under seal, and may specify the quality of the sample. The subject matter delivered by the seller shall comply with the sample as well as the quality specifications.

Article 169 In a sale by sample, if the buyer is not aware of a latent defect in the sample, the subject matter delivered by the seller shall nevertheless comply with the normal quality standard for a like item, even though the subject matter delivered complies with the sample.

Article 170 In a sale by trial, the parties may agree the trial period. Where a trial period is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be determined by the seller.

Article 171 In a sale by trial, the buyer may either purchase or reject the subject matter during the trial period. At the end of the trial period, the buyer is deemed to have made the purchase if it fails to demonstrate its intent to purchase or reject the subject matter.

Article 172 In a sale by tender, matters such as the rights and obligations of the parties and the tendering procedure, etc. are governed by the relevant laws and administrative regulations.

Article 173 In a sale by auction, matters such as the rights and obligations of the parties and the auctioning procedure, etc. are governed by the relevant laws and administrative regulations.

Article 174 If there are provisions in the law for other non-gratuitous contracts, such provisions shall apply; in the absence of such provisions, reference shall be made to the relevant provision on sales contract.

Article 175 Where the parties agree on a barter transaction involving transfer of title to the subject matters, such transaction shall be governed by reference to the relevant provisions on sales contracts.

Chapter 10 Contracts for Supply of Power, Water, Gas, Or Heat

Article 176 A power supply contract is a contract whereby the power supplier supplies power to the power customer, and the power consumer pay an electricity fee.

Article 177 The contents of a power supply contract include terms such as the method, quality, and time of power supply, and the capacity, location and nature of power use, and the metering method,electricity rate, the method of settlement of electricity fees, and the responsibility for maintenance of the power supply and use facilities, etc..

Article 178 The place of performance of a power supply contract shall be the place agreed upon by the parties, and if there is no agreement or the agreement is not clear, the place of performance shall be the boundary where ownership of the power supply facilities is divided.

Article 179 The power supplier shall supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract. Where the power supplier fails to supply power in a safe manner in accordance with the standards for power supply stipulated by the State and with the terms of the contract, thereby causing losses to the power

customer, it shall be liable for damages.

Article 180 Where the power supplier needs to suspend the power supply due to reasons such as planned maintenance or provisional inspection and repair of the power supply facilities, legally restriction on power, or illegal use of power by the power customer, etc., it shall notify the power customer in advance in accordance with the relevant provisions of the State. Where the power supplier suspends power supply without notifying the power customer in advance, thereby

causing losses to the power customer, it shall be liable for damages.

Article 181 Where the power supply is suspended due to a natural disaster or other causes, the power supplier shall make prompt repairs in accordance with the relevant provisions of the State. Where the power supplier fails to make prompt repair, thereby causing loss to the power customer, it shall be liable for damages.

Article 182 The power customer shall timely pay the electricity fees in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer delays in paying the electricity fees, it shall pay breach of contract damages in accordance with the contract. Where the power customer fails to pay the electricity fees and breach of contract damages within a reasonable time limit after receiving demand for payment, the power supplier may shut off the power supply in accordance with the procedure prescribed by the state.

Article 183 The power customer shall use power in a safe manner in accordance with the relevant provisions of the State and with the terms of the contract. Where the power customer fails to use power in a safe manner in accordance with the relevant provisions of the State and with the terms of the contract, thereby causing losses to the power supplier, it shall be liable for damages.

Article 184 A contract for the supply of water, gas or heat shall be governed by reference to the relevant provisions on power supply contracts.

Chapter 11 Gift Contracts

Article 185 A gift contract is a contract whereby the donor conveys his property to the donee gratuitously and the donee expresses his acceptance of the gift.

Article 186 Prior to the transfer of rights to the gift property, the donor may revoke the gift.

The provisions of the preceding paragraph does not apply to any gift contract the nature of which serves the public interests or fulfills a moral obligation, such as disaster relief,poverty relief, etc., or any gift contract which has been notarized.

Article 187 Where conveyance of the gifted property is subject to such procedures as registration according to law, the relevant procedures shall be carried out.

Article 188 In the case of a gift contract the nature of which serves the public interests or fulfills a moral obligation, such as disaster relief, poverty relief, etc., or a gift contract which has been notarized, if the donor fails to deliver the gift property, the donee may require delivery.

Article 189 Where the gifted property is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for damages.

Article 190 A gift may be conditioned on an obligation.

Where the gift is conditioned on an obligation, the donee shall perform his obligations in accordance with the contract.

Article 191 The donor is not liable for any defect in the gifted property. Where the gift is conditioned on an obligation, and the gifted property is defective, the donor has the same warranty obligations as a seller to the extent of the prescribed obligations.

Where the donor intentionally omits to inform the donee of the defect or warranted the absence of any defect, thereby causing losses to the donee, he shall be liable for damages.

Article 192 Where the donee is in any of the following circumstances, the donor may revoke the gift:

(1) seriously harming the donor or any immediate family member thereof;

(2) failing to perform support obligations owed to the donor;

(3) failing to perform the obligations under the gift contract.

The donor shall exercise its revocation right within one year after he knows, or ought to know, the cause for revocation.

Article 193 Where the donor is deceased or incapacitated due to the donee's illegal act, his heir or legal agent may revoke the gift.

The heir or legal agent of the donor shall exercise the right of revocation within six months after he knows, or ought to know, the cause for revocation.

Article 194 Upon revocation of the gift, the person with the revocation right may claim restitution of the gifted property from the donee.

Article 195 If the donor's economic situation is deteriorated significantly, thereby seriously impacting on his business operation or family life, he may no longer perform the gift obligations.

Chapter 12 Contracts for Loan of Money

Article 196 A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and repays the borrowed money with interest thereon when it becomes due.

Article 197 A contract for loan of money shall be in writing, except where the loan is between natural persons who have agreed otherwise.

The contents of a contract for loan of money include the terms such as the loan's type,currency, purpose, amount, interest rate, term and method of repayment, etc.

Article 198 In entering into a contract for loan of money, the lender may require the borrower to provide a guaranty. The guaranty shall conform to the provisions of the Security Law of the People's Republic of China.

Article 199 In entering into a contract for loan of money, the borrower shall provide true information concerning its business operation and financial condition in connection with the loan as required by the lender.

Article 200 No interest shall be deducted from the principal in advance. Where any interest amount is deducted from the principal in advance, the repayment of principal and calculation of interest shall be based on the actual amount borrowed.

Article 201 Where the lender fails to make the loan amount available on the agreed date and in the agreed amount, thereby causing losses to the borrower, it shall pay damages.

Where the borrower fails to draw down on the agreed date and in the agreed amount, it shall nevertheless pay the interest on the agreed date and in the agreed amount.

Article 202 The lender may examine and monitor the application of the proceeds in accordance with the contract. The borrower shall periodically provide the lender with materials such as related financial and accounting reports, etc. in accordance with the contract.

Article 203 Where the borrower fails to use the proceeds for the prescribed purpose, the lender may withhold funding, call the loan, or terminate the contract.

Article 204 The interest rate on the loan provided by a financial institution engaged in lending operation shall be determined between the minimum and maximum rates fixed by the People’s Bank of China.

Article 205 The borrower shall pay the interest at the agreed time. Where the time of interest payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, if the loan term is less than one year, the interest shall be paid together with the principal at the time of repayment; if the loan term is one year or longer, the interest shall be paid at the end of each annual period, and where the remaining period is less than one year, the interest shall be paid together with the principal at the time of repayment.

Article 206 The borrower shall repay the principal at the agreed time. Where the time of repayment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the borrower may repay at any time; and the lender may demand repayment from the borrower within a reasonable time limit.

Article 207 Where the borrower fails to repay the loan at the agreed time, it shall pay delayed repayment interest in accordance with the contract or the relevant provisions of the State.

Article 208 Where the borrower prepays the loan, unless otherwise agreed by the parties, the interest shall be calculated based on the actual period of loan.

Article 209 The borrower may apply to the lender for extension of the loan term before its maturity. Upon consent by the lender, the loan term may be extended.

Article 210 A contract for loan of money between natural persons becomes effective at the time the lender makes the loan amount available.

Article 211 Under a contract for loan of money between natural persons, if payment of interest is not agreed or the agreement is not clear, the loan is deemed interest free.

Under a contract for loan of money between natural persons, the interest rate on the loan may not contravene the relevant provisions of the State concerning limit on loan interest rate.

Chapter 13 Leasing Contracts

Article 212 A leasing contract is a contract whereby the lessor delivers to the lessee the lease item for it to use or accrue benefit from, and the lessee pays the rent.

Article 213 The contents of a leasing contract include terms such as the name, quantity and purpose of the lease item, lease term, amount of rent, time and method of rent payment, as well as maintenance and repair of the lease item, etc.

Article 214 The lease term may not exceed twenty years. If the lease term exceeds twenty years, the portion of the lease term beyond the initial twenty year period is invalid.

At the end of the lease term, the parties may renew the lease, provided that the renewed term may not exceed twenty years commencing on the date of renewal.

Article 215 Where the lease term is six months or longer, the lease shall be in writing. If the parties fail to adopt a writing form, the lease is deemed a non-term lease.

Article 216 The lessor shall deliver the lease item to the lessee in accordance with the contract and shall, during the lease term, keep the lease item fit for the agreed purpose.

Article 217 The lessee shall use the lease item in the agreed manner. Where the manner of use of the lease item is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61of this Law, the lease item shall be used in a manner consistent with its nature.

Article 218 Where the lessee uses the lease item in the agreed manner or in a manner consistent with its nature, thereby causing wear and tear to the lease item, it is not liable for damages.

Article 219 Where the lessee fails to use the lease item in the agreed manner or in a manner consistent with its nature, thereby causing damage to it, the lessor may terminate the contract and claim damages.

Article 220 The lessor shall perform the obligations of maintenance and repair of the lease item, except otherwise agreed by the parties.

Article 221 Where the lease item needs maintenance or repair, the lessee may require the lessor to perform maintenance or repair within a reasonable time limit.

If the lessor fails to fulfill its obligations of maintenance or repair, the lessee may maintain or repair the lease item on its own at the lessor’s expense. Where the lessee’s use of the lease item is impaired due to maintenance or repair thereof, the rent shall be reduced or the lease term shall be extended accordingly.

Article 222 The lessee shall keep the lease item with due care and shall be liable for damages if the lease item is damaged or lost due to improper care.

Article 223 Subject to consent of the lessor, the lessee may make improvement on or addition to the lease item.

If the lessee makes improvement on or addition to the lease item without consent of the lessor, the lessor may require the lessee to restore the lease item to its original condition or claim compensation for the losses.

Article 224 Subject to consent of the lessor, the lessee may sublease the lease item to a third party.Where the lessee subleases the lease item, the leasing contract between the lessee and the lessor remains valid, and if the third party causes damage to the lease item, the lessee shall compensate for the losses.

Where the lessee subleases the lease item without the consent of the lessor, the lessor may terminate the contract.

Article 225 During the lease term, any benefit accrued from the possession or use of the lease item belongs to the lessee, except otherwise agreed by the parties.

Article 226 The lessee shall pay the rent at the agreed time. Where the time of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law,the rent shall be paid at the end of the lease term if it is less than one year; if the lease term is one year or longer, the rent shall be paid at the end of each annual period, and where the remaining period is less than one year, the rent shall be paid at the end of the lease term.

Article 227 Where the lessee fails to pay or delays in paying the rent without any reason, the lessor may require the lessee to pay the rent within a reasonable time limit. If the lessee fails to pay the rent at the end of such time limit, the lessor may terminate the contract.

Article 228 If due to any claim by a third party, the lessee is unable to use or accrue benefit from the lease item, the lessee may require reduction in rent or refuse to pay rent.

In case of any claim by a third party, the lessee shall timely notify the lessor.

Article 229 Any change of ownership to the lease item does not affect the validity of the leasing contract.

Article 230 Where the lessor is to sell a dwelling unit under a lease, it shall give the lessee a notice within a reasonable time limit before the sale, and the lessee has the right of first refusal under the same conditions.

Article 231 Where the lease item is damaged or lost in part or in whole due to any reason not attributable to the lessee, the lessee may require reduction in rent or refuse to pay rent; where the purpose of the contract can not be achieved due to damage to or loss of the lease item in part or in whole, the lessee may terminate the contract.

Article 232 Where the term of a lease is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, such lease is deemed a non-term lease.Either party may terminate the contract at any time, provided that the lessor shall give the lessee a reasonable advance notice before it terminates the contract.

Article 233 Where the lease item endangers the safety or health of the lessee, the lessee may terminate the contract at any time even if the lessee knows the lease item does not meet the quality requirements when concluding the contract.

Article 234 Where the lessee is deceased during the term of a dwelling unit lease, the person jointly living in the unit with the lessee while the lessee is alive may continue leasing it on the terms of the original leasing contract.

Article 235 The lessee shall return the lease item at the end of the lease term. The returned lease item shall be in a condition resulting from its use in the agreed manner or in a manner consistent with its nature.

Article 236 Upon expiration of the lease term, if the lessee continues to use the lease item without objection by the lessor, the original leasing contract remains effective, provided that it becomes a non-term lease.

Chapter 14 Financial Leasing Contracts

Article 237 A financial leasing contract is a contract whereby the lessor, upon purchase of the lessee-selected lease item from a lessee-selected seller, provides the lease item to the lessee for its use, and the lessee pays the rent.

Article 238 The contents of a financial leasing contract include terms such as the name, quantity,specifications, technical performance, and method of inspection of the lease item, the lease term, the rental components and the time, method and currency of payment, as well as the ownership of the lease item at the end of the lease term, etc.

A financial leasing contract shall be concluded in writing.

Article 239 Under the sales contract concluded by the lessor according to the lessee's selection of the seller and the lease item, the seller shall deliver the subject matter to the lessee in accordance with the contract, and the lessee enjoys the rights of the buyer in respect of taking delivery of the subject matter.

Article 240 The lessor, the seller and the lessee may agree that any claim arising from the seller's failure in the performance of its obligations under the sales contract will be made by the lessee. Where the lessee makes such a claim, the lessor shall provide assistance.

Article 241 Without the consent of the lessee, the lessor may not amend any lessee-related term in the sales contract concluded by it according to the lessee's selection of the seller and the lease item.

Article 242 The lessor shall be entitled to the ownership of the lease item. In case the lessee goes bankruptcy, the lease item is not part of its bankruptcy assets.

Article 243 Unless otherwise agreed by the parties, the rent under a financial leasing contract shall be determined based on the major portion of or full costs of purchasing the lease item and the lessor's reasonable profit.

Article 244 Where the lease item does not comply with the contract or is not fit for the intended purpose, the lessor is not liable, except where the lessee relies on the skills of the lessor in selecting the lease item or the lessor interferes with the selection thereof.

Article 245 The lessor shall give warranty in respect of the lessee's possession and use of the lease item.

Article 246 If in the possession of the lessee, the lease item causes personal injury or property damage to a third party, the lessor is not liable.

Article 247 The lessee shall keep and use the lease item with due care. While in possession of the lease item, the lessee shall perform the obligations of maintenance and repair thereof.

Article 248 The lessee shall pay the rent in accordance with the contract. Where the lessee fails to pay the rent within a reasonable time limit after receiving the demand for payment from the lessor,the lessor may require payment of the full rent; or it may terminate the contract and take back the lease item.

Article 249 Where the parties agree that the lease item shall belong to the lessee at the expiry of the lease term, the lessee has paid the majority of the rent but is unable to pay the remaining rent,and the lessor terminates the contract for this reason and takes back the lease item, if the value of the lease item taken back exceeds the rent and other expenses which the lessee owes to the lessor, the lessee may request the lessor to return a certain part.

Article 250 The lessor and the lessee may agree on the ownership of the lease item at the expiry of the lease term. Where ownership of the lease item is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the ownership of the lease item shall belong to the lessor.

Chapter 15 Contracts for Work

Article 251 A contract for work is a contract whereby the contractor shall, in light of the requirements of the ordering party, complete certain work and deliver the results therefrom, and the ordering party pays the remuneration therefor.

Work includes processing, ordering, repairing, duplicating, testing, inspecting, etc..

Article 252 The contents of a contract for work shall contain such clauses as the subject matter,quantity, quality, remuneration, method of the work, supply of materials, term of performance,standards and method of inspection.

Article 253 The contractor shall use its own equipment, skills and labor to complete the main part of the work, except as otherwise agreed upon by the parties.

Where the contractor assigns the contracted work to a third party for completion, the contractor shall be responsible to the ordering party in respect of the work results completed by the ordering party. Where the assignment is not approved by the ordering party, the ordering party may terminate the contract.

Article 254 The contractor may assign some ancillary work contracted to a third party for completion.

Where the contractor assigns some ancillary work to a third party for completion, the contractor hall be responsible to the ordering party for the work result completed by a third party.

Article 255 Where the contractor is to supply the materials, the contractor shall select the materials in accordance with the contract and shall make such materials available for inspection by the ordering party.

Article 256 Where the ordering party is to supply the materials, it shall supply the materials in accordance with the contract. The contractor shall timely inspect the materials supplied by the ordering party, and if it discovers that they do not conform to the agreement in the contract, it shall timely notify the ordering party to replace them or supply what is lacking or take other remedial measures.

The contractor may not replace the materials supplied by the ordering party without authorization, and may not replace any components which do not need to be repaired.

Article 257 Where the contractor discovers that the drawings or technical requirements provided by the ordering party are unreasonable, it shall timely notify the ordering party. Where any losses are caused to the contractor due to the indolent reply of the ordering party and other reasons, the ordering party shall be liable for making compensation.

Article 258 Where the ordering party changes its requirements for the contracted work while the work is under way, thereby causing losses to the contractor, the ordering party shall be liable for making compensation.

Article 259 Where the performance of the contracted work requires assistance of the ordering party, the ordering party shall have the obligation to provide assistance. Where the contracted work is unable to be completed due to the ordering party's failure in fulfilling its obligation of assistance, the contractor may urge the ordering party to perform its obligation within a

reasonable time limit and may extend the term of its performance; where the ordering party fails to perform such obligation within the time limit, the contractor may terminate the contract.

Article 260 In the period of working, the contractor shall accept the necessary supervision over and inspection of the work by the ordering party. The ordering party may not obstruct the normal work of the contractor with the supervision and inspection.

Article 261 Upon the completion of the contracted work, the contractor shall deliver the work results to the ordering party and shall submit necessary technical materials and the relevant quality certificate. The ordering party shall conduct acceptance inspection of the work results.

Article 262 Where the work results delivered by the contractor fail to meet the quality requirements, the ordering party may request the contractor to bear the liabilities for the breach of contract by way of repairing, remaking, reducing remuneration, or making compensation.

Article 263 The ordering party shall pay the remuneration at the agreed time limit. Where the time limit of payment is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the ordering party shall pay it at the time when the contractor delivers the work results; where the work results are partially delivered, the ordering party

shall make payment accordingly.

Article 264 Where the ordering party fails to pay the remuneration or cost for the materials, etc. to the contractor, the contractor is entitled to lien upon the work results, except as otherwise agreed upon by the parties.

Article 265 The contractor shall keep the materials supplied by the ordering party and the completed work results with due care, and shall be liable for damages in case of any damage or losses due to improper care.

Article 266 The contractor shall keep the relevant information confidential as required by the ordering party, and may not retain any replica or technical material without permission of the ordering party.

Article 267 Joint contractors are jointly and severally liable to the ordering party, except as otherwise agreed upon by the parties.

Article 268 The ordering party may terminate the contract at any time, but it shall bear the liability for making compensation for losses, if the contractor suffers losses therefrom.

Chapter 16 Contracts for Construction Projects

Article 269 A contract for construction project is a contract whereby the contractor performs project construction, and the developer pays the price.

Contracts for construction projects include contracts for survey, design, and construction.

Article 270 A contract for construction project shall be in written form.

Article 271 Tendering for a construction project shall be conducted in an open, fair and impartial manner in accordance with the relevant laws.

Article 272 The developer may enter into a contract for construction project with a prime contractor, or enter into contracts for survey, design, and construction with the surveyor, designer, and constructor respectively.

The developer may not divide a construction project which should be completed by one contractor into several parts and contract them out to several contractors.

Subject to consent by the developer, the prime contractor or the contractor for survey,design, or construction may delegate part of the contracted work to a third party. The third party and the prime contractor or the contractor for survey, design, or construction shall be jointly and severally liable to the developer in respect of the work product completed by such third party. The contractor may not assign in whole to any third party the contracted construction project, or divide the whole contracted construction project into several parts and separately assign each part to a third party under the guise of sub-contracting.

The contractor is prohibited from sub-contracting any part of the project to an entity not appropriately qualified. A sub-contractor is prohibited from further sub-contracting its contracted work. The main structure of the construction project must be constructed by the contractor itself.

Article 273 A contract for a major state construction project shall be concluded in accordance with the procedure prescribed by the state and in compliance with the state-approved documents such as the investment plan and feasibility studies report, etc.

Article 274 A contract for survey or design includes terms such as the time limit for submission of the relevant basic information and documents (including budget estimate), the quality requirements,fees, and other conditions of cooperation, etc.

Article 275 A construction contract includes terms such as the scope of the project, the construction period, the time for commencement and completion of any work to be commissioned in the interim,the quality of the project, the cost of the project, the time for delivery of technical materials, the responsibilities for the supply of materials and equipment, the appropriation of

funds and settlement of account, inspection upon completion of the project, the scope and period of quality warranty, and cooperation between the parties, etc.

Article 276 Where the construction project is subject to supervision, the developer shall enter into an agency appointment contract for project supervision with a project supervisor in writing. The rights, obligations and associated legal liabilities of the developer and supervisor shall be prescribed in accordance with the provisions hereof concerning agency appointment contracts and the provisions of other relevant laws and administrative regulations.

Article 277 Provided that the developer does not interfere with the normal operation of the contractor,it may inspect the progress and quality of the work at any time.

Article 278 In the case of concealed work, the contractor shall give the developer notice for inspection prior to concealment. Where the developer fails to timely conduct inspection, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or work slowdown, etc.

Article 279 Upon completion of the construction project, the developer shall conduct acceptance inspection according to the construction drawings and specifications, and in accordance with the rules of construction inspection and quality inspection standard prescribed by the state. Once the construction project has passed the acceptance inspection, the developer shall pay the

prescribed price and accept the construction project.

The completed construction project may be put into use only after it has passed the acceptance inspection; if the construction project has not been inspected or has failed the inspection, it may not be put into use.

Article 280 Where the developer sustains any loss from construction delay due to non-compliance of the survey or design or due to delayed delivery of the survey or design documents, the surveyor or the designer shall continue to improve the survey or design, reduce or forgo the survey fee or design fee, and pay damages.

Article 281 Where the construction project fails to meet the prescribed quality requirements due to any reason attributable to the constructor, the developer is entitled to require the constructor to repair, re-construct or make alteration free of charge within a reasonable time. Where delivery

of the project is delayed due to such repair, re-construction or alteration, the constructor shall be liable for breach of contract.

Article 282 Where the construction project caused personal injury and property damage during its reasonable usage period due to any reason attributable to the contractor, the contractor shall be liable for damages.

Article 283 Where the developer fails to provide raw materials, equipment, site, funds, or technical information at the prescribed time and in accordance with the contractual requirements, the contractor may extend the relevant project milestones, and is entitled to claim damages for work stoppage or slowdown, etc.

Article 284 If an ongoing project is stopped or delayed due to any reason attributable to the developer,the developer shall take the appropriate measures to make up or mitigate the loss, and shall indemnify the contractor for its loss and out-of-pocket expenses arising from resulting work stoppage, slowdown, reshipment, re-dispatch of mechanical equipment, and excess inventory of materials and assemblies, etc.

Article 285 Where in the course of survey or design, any repeating work, work stoppage or change of design occurs due to the developer’s change of plan, the incorrect information provided by it, or its failure to provide the working conditions necessary for the survey or design at the prescribed time, the developer shall increase the fees in light of the actual amount of work done

by the surveyor or designer.

Article 286 If the developer failed to pay the price in accordance with the contract, the contractor may demand payment from the developer within a reasonable period. Where the developer fails to pay the price at the end of such period, the contractor may enter into an agreement with the developer to liquidate the project, and may also petition the People’s Court to auction the

project in accordance with the law, unless such project is not fit for liquidation or auction in light of its nature.

The construction project price shall be paid in priority out of proceeds from the liquidation or auction of the project.

Article 287 A matter not provided for in this Chapter shall be governed by the relevant provision governing contracts of hired works.

Chapter 17 Transportation Contracts

Section One General Provisions

Article 288 A transportation contract is a contract whereby the carrier carries passengers or cargoes from the starting place of carriage to the agreed destination, and the passenger, consignor or consignee pays for the ticket-fare or freight.

Article 289 A carrier engaged in public transportation may not refuse the normal and reasonable carriage request of a passenger or consignor.

Article 290 The carrier shall safely carry the passengers or cargoes to the agreed destination within the agreed time or within a reasonable time.

Article 291 The carrier shall carry the passengers or cargoes to the agreed destination via the agreed route or the customary carriage route.

Article 292 A passenger, a consignor or a consignee shall pay the ticket-fare or freight. Where the carrier fails to carry the passengers or the cargoes via the agreed or customary carriage route,thereby increasing the ticket-fare or freight, the passenger, consignor or consignee may refuse to pay any increased portion thereof.

Section Two Passenger Transportation contracts

Article 293 A passenger transportation contract is established upon the carrier’s delivery of the passenger ticket to the passenger, except as otherwise agreed upon by the parties or there are other transaction practices.

Article 294 The passenger shall board the means of transportation with a valid passenger ticket. If the passenger boards without a ticket, exceeds the distance paid for, takes a higher class or higher berth than booked, or boards with an invalid ticket, he shall make up the payment for an appropriate ticket, and the carrier may charge an additional payment in accordance with the relevant provisions. Where the passenger fails to pay the ticket-fare, the carrier may refuse to carry.

Article 295 Where the passenger is unable to board the means of transportation at the time stated on the passenger ticket due to any reason attributable to himself, he shall undergo the formalities for ticket cancellation and refund or for ticket modification within the agreed period. Where the passenger fails to do so within the time period, the carrier may refuse to refund the ticket-fare, and no longer bear the obligation of carriage.

Article 296 In the course of carriage, the passenger’s carry-on luggage shall be within the agreed limit of quantity. Where the luggage exceeds the agreed limit of quantity, the additional luggage shall be checked in.

Article 297 The passenger may not bring with him or pack in the luggage such dangerous articles as are flammable, explosive, toxic, corrosive, or radioactive as well as those that might endanger the safety of life and property on board the means of transportation or other contraband articles.

Where the passenger violates the provisions of the preceding paragraph, the carrier may unload, destroy or turn over to the relevant authority the contraband articles. Where the passenger insists on carrying in person or placing in his luggage the contraband articles, the carrier shall refuse to carry.

Article 298 The carrier shall timely inform the passenger of any major causes hindering the normal carriage and the matters which shall be noted for purpose of safety carriage.

Article 299 The carrier shall carry the passenger according to the time and the carriage schedule stated on the passenger ticket. Where the carrier delays in carriage, it shall, upon request by the passenger, either arrange the passenger to take other flights or numbers or refund the ticket-fare.

Article 300 Where the carrier unilaterally changes the means of transportation, thereby lowering the standards of service, it shall, upon request by the passenger, refund the ticket-fare or lower the price of the ticket; where the service standards are enhanced, no additional ticket-fare

shall be charged.

Article 301 In the course of carriage, the carrier shall gives its best efforts to assist the passenger who is seriously ill, or who is giving birth to a child or whose life is at risk.

Article 302 The carrier shall be liable for damages in case of injury or death of the passenger in the course of carriage, except where such injury or death is attributable to the passenger’s own health, or the carrier proves that such injury or death is caused by the passenger’s intentional misconduct or gross negligence.

The provisions in the preceding paragraph apply to a passenger who is exempted from buying a ticket or holds a preferential ticket pursuant to the relevant provisions, or who is permitted by the carrier to be on board without a ticket.

Article 303 Where an article that the passenger takes with him on board is damaged or destroyed during the period of carriage, the carrier shall be liable for the damage if it has committed faults.

Where the passenger’s check-in luggage is damaged or lost, the relevant provisions on the carriage of cargoes shall be applied.

Section Three Cargo Transportation contracts

Article 304 In undergoing the formalities for cargoes, the consignor shall precisely indicate to carrier the name of the consignee or the consignee by order, the name, nature weight, amount and the place for taking delivery of the cargoes, and other information necessary for cargo carriage.

Where the carrier suffers from damage due to untrue declaration or omission of important information by the consignor, the consignor shall be liable for damages.

Article 305 Where carriage of the cargo is subject to such procedures as examination and approval or inspection, the consignor shall submit to the carrier the documents of fulfillment of the relevant procedure.

Article 306 The consignor shall pack the cargo in the agreed manner. Where the packing manner is not agreed or the agreement is not clear, the provisions of Article 156 of this Law shall be applied.

Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry.

Article 307 In consigning any dangerous articles which are inflammable, explosive, toxic, corrosive, or radioactive, the consignor shall, in accordance with the provisions of the

State on the carriage of dangerous articles, properly pack the dangerous articles and affix thereon signs and labels

for dangerous articles, and shall submit the written papers relating to the number and measures of precaution to the carrier

If the consignor violates the provisions of the preceding paragraph, the carrier may refuse to carry, and may also take corresponding measures to avoid losses, expenses thus caused shall be borne by the consignor .

Article 308 Prior to carrier's delivery of the cargoes to the consignee, the consignor may request the carrier to suspend the carriage, return the cargoes, change the destination or deliver the cargoes to another consignee, but it shall compensate the carrier for any losses thus caused.

Article 309 Upon arrival of the cargoes, if the carrier has the knowledge of the consignee, it shall timely notify the consignee and the consignee shall timely take delivery. Where the consignee takes delivery exceeding the time limit, it shall pay such expenses as storage of the goods, etc.

Article 310 Upon taking delivery of the cargoes, the consignee shall inspect the cargoes at the agreed time. Where the time for inspection is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the consignee shall inspect the cargo within a reasonable time limit. The consignee's failure to raise any objection on the quantity of, or any damage to, the cargoes within the agreed time limit or within a reasonable time limit is deemed prima facie evidence of delivery by the carrier in compliance with the description in the transportation documents.

Article 311 The carrier is liable for damages in case of damage to or loss of the cargoes in the course of carriage, provided that it is not liable for damages if it proves that such damage to or loss of the cargoes is caused by force majeure, the intrinsic characteristics of the cargoes,reasonable depletion, or the fault of the consignor or consignee.

Article 312 Where the parties agree on the amount of damages in case of damage to or loss of the cargoes,the damages payable is the agreed amount; if the amount of damages is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, it shall be calculated on the basis of the prevailing market price at the destination when the cargoes are or ought to be delivered. Where a law or administrative regulation provides otherwise in respect of the measures for the calculation

of damages and of the ceiling of the amount of damages, these provisions shall be applied.

Article 313 Where two or more carriers jointly carry the cargoes using the same means of transportation,the carrier contracting with the consignor shall be responsible for the whole course of carriage.Where the losses occurred at a particular segment, the carrier contracting with the consignor and the carrier for such segment are jointly and severally liable.

Article 314 Where the cargoes are lost in the course of carriage due to force majeure, if the freight has not been collected, the carrier may not request the payment thereof; if the freight has been collected, the consignor may request the refund of the freight.

Article 315 Where the consignor or consignee fails to pay the freight, storage fees and other carriage expenses, the carrier is entitled to lien on the relevant carried cargoes, except as otherwise agreed upon by the parties.

Article 316 Where the consignee is not clear or refuses to take delivery of the cargoes without justified reasons, the carrier may place the cargo in escrow according to the provisions of Article 101 of this Law.

Section Four Multi-modal Transportation contract

Article 317 A multi-modal carriage operator is responsible for performing, or arranging for performance of, the multi-modal transportation contract, and it enjoys the rights and assumes the obligations of a carrier throughout the course of carriage.

Article 318 The multi-modal carriage operator and the segment carriers may enter into agreements on their respective duties concerning each segment, provided that the obligations of the multi-modal carriage operator with respect to the entire course of carriage are not affected by any such agreement.

Article 319 Upon receipt of the cargo delivered by the consignor, the multi-modal carriage operator shall issue thereto a multi-modal carriage document. The multi-modal carriage document may either be assignable or non-assignable as required by the consignor.

Article 320 Where the multi-modal carriage operator sustains any loss due to the fault of the consignor in the course of consigning the cargo, the consignor shall be liable for damages notwithstanding its subsequent assignment of the multi-modal carriage document.

Article 321 Where damage to or loss of the cargo occurred within a particular segment of the course of a multi-modal carriage, the multi-modal carriage operator’s liability for damages and any limitation thereon are governed by the applicable transportation law of the jurisdiction which such segment is under. Where the segment in which the cargo is damaged or lost cannot be determined, the liability for damages shall be borne in accordance with the provisions of this Chapter.

Chapter 18 Technology Contracts

Section One General Provisions

Article 322 A technology contract is a contract the parties conclude for establishing their rights and obligations in respect of the development or transfer of technology, or in respect of technical consulting or service.

Article 323 The conclusion of a technology contract shall be conducive to the advancement of science and technology, and expedite the conversion, application and dissemination of scientific and technological achievements.

Article 324 The contents of a technology contract shall be agreed upon by the parties, and shall contain the following clauses in general:

(1) project name;

(2) contents, scope and requirement of the subject matter;

(3) the plan, schedule, period, place, territory and method of performance;

(4) confidentiality of technical information and materials;

(5) allocation of responsibilities for risks;

(6) ownership of the technology and allocation of benefits accrued therefrom;

(7) standard applicable to and method of acceptance test;

(8) price, remuneration or licensing fee and the method of payment;

(9) liquidated damages or method for calculation of damages;

(10) method of dispute resolution;

(11) definition of terms and phrases.

The parties may agree to include the following materials relating to the performance of the contract as an integral part thereof: technical background information, feasibility studies and technical evaluation report, project task matrix and project plan, technical standard, technical specifications, original design and technique documents, as well as other technical documentation.

Where the technology contract involves any patent, it shall set forth the name of the invention or innovation, the patent applicant and the patentee, the date of application, the application number, patent number and the term of the patent.

Article 325 The method for payment of the price, remuneration or licensing fee under a technology contract shall be agreed upon by the parties, who may agree upon lump-sum payment based on one-time calculation or installment payment based on one-time calculation, and may also agree upon royalty payment or royalty payment plus advance payment of initial fee.

Where a royalty payment method is agreed upon, the royalty may be calculated as a percentage of the product price, any increase in product value resulting from exploitation of the patent or use of the technical secret, profit, or product sales, and may also be calculated by any other method agreed upon by the parties. The royalty rate may be fixed or subject to annual increase or decrease.

Where a royalty payment is agreed, the parties shall agree in the contract a method for inspection of the relevant accounting books.

Article 326 Where the right to use and the right to transfer job-related technology belong to a legal person or an organization of any other nature, the legal person or organization may enter into a technology contract in respect of such job-related technology. The legal person or organization shall reward or remunerate the individual(s) who developed the technology with a percentage of

the benefits accrued from the use and transfer of the job-related technology. Where the legal person or organization is to enter into a technology contract for the transfer of the job-related technology, the individual who accomplished this technological achievement shall have the priority to be the transferee under the same conditions.

A job-related technology is a technology developed in the course of completing a task assigned by a legal person or an organization of any other nature, or developed by primarily utilizing the material and technical resources thereof.

Article 327 The right to use and the right to transfer non-job-related technology belong to the individual developer, who may enter into a technology contract in respect thereof.

Article 328 The individual who developed the technology is entitled to identify himself as the developer in the documentation related thereto, and to receive honor certificate and reward.

Article 329 A technology contract which illegally monopolizes technology, impairs technological advancement or infringes on the technology of a third party is invalid.

Section Two Technology Development Contract

Article 330 A technology development contract is a contract concluded in respect of the development of a new technology, product, technique or material and the associated system.

Technology development contracts include commissioned development contracts and cooperative development contracts.

A technology development contract shall be in written form.

A contract on the conversion of a scientific achievement with potential for industrial application is governed by reference to the provisions on technology development contracts.

Article 331 The commissioning party under a commissioned development contract shall, in accordance with the contract, provide development funds and pay remuneration; supply technical materials and original data; complete its tasks of cooperation; and accept the developed technology.

Article 332 The developer under a commissioned development contract shall, in accordance with the contract, prepare and implement the development plan; use development funds in a reasonable manner; timely complete the development and deliver the developed technology, as well as provide the relevant technical materials and necessary technical guidance so as to help the commissioning party master the technology developed.

Article 333 Where the commissioning party breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 334 Where the developer breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 335 Parties to a cooperative development contract shall, in accordance with the contract, make investment, including investment in the form of technology; participate in the development by performing their respective tasks; and cooperate with each other in the development.

Article 336 Where a party to a cooperative development contract breaches the contract, thereby causing stoppage, delay or failure of the development, it shall be liable for the breach of contract.

Article 337 Where the technology which is the subject matter of a technology development contract is made public by a third party, thereby making the performance of the technology development contract meaningless, the parties may terminate the contract.

Article 338 If, in the course of implementing a technology development contract, the development is failed in whole or in part due to any insurmountable technical difficulty, allocation of the responsibility for such risk shall be agreed upon by the parties. Where the

allocation of responsibility for such risk is not agreed upon or the agreement is not clear, nor can it be determined in accordance with Article 61of this Law, it shall be shared by the parties in a reasonable manner.

Where a party discovers any circumstance which may lead to the failure of the development in whole or in part as described in the preceding paragraph, it shall timely notify the other party and take the appropriate measures to mitigate loss; where the party fails to timely notify the other party and take the appropriate measures, thereby enlarging the losses, it shall be liable

for the enlarged losses.

Article 339 Unless otherwise agreed upon by the parties, the right to apply for patent on the invention or innovation resulting from a commissioned development belongs to the developer. Where the developer is granted a patent, the commissioning party may exploit such patent free of charge.

Where the developer is to assign the right to apply for patent on the Invention or innovation resulting from the commissioned development, the commissioning party shall have the right to priority in acquiring such right under the same conditions.

Article 340 Unless otherwise agreed upon by the parties, the right to apply for patent on the invention or innovation resulting from a cooperative development belongs to the parties therein jointly.Where a party is to assign its joint patent application right, the other parties shall have the right to priority in acquiring such right under the same conditions.

Where a party in the cooperative development s a waiver of its joint patent

application right, the other party may apply by itself, or the other parties may jointly apply,as the case may be. Where a patent is granted on the invention or innovation, the party waiving its patent application right may exploit such patent free of charge.

If a party in the cooperative development does not consent to the application for patent, the other party or parties may not apply for patent.

Article 341 The right to use and transfer the technical secret resulting from a commissioned or cooperative development, and the method for allocation of benefits accrued therefrom shall be agreed upon by the parties. Where such matters are not

agreed or the agreement is not clear, nor can they be determined in accordance Article 61 of this Law, all of the parties are entitled to use and transfer the technology, provided that the developer in a commissioned development may not transfer the technology to a third party before it delivers the technology to the commissioning party.

Section Three Technology Transfer Contracts

Article 342 Technology transfer contracts include contracts for the assignment of patent, assignment of patent application right, transfer of technical secrets, and patent licensing.

A technology transfer contract shall be in written form.

Article 343 A technology transfer contract may set forth the scope of exploitation of the patent or the use of the technical secret by the transferor and the transferee, provided that it may not restrict technological competition and technological development.

Article 344 A patent licensing contract is only valid during the term of the patent. Where the term of the patent expires or the patent is invalidated, the patentee may not enter into a patent licensing contract with any other person in respect thereof.

Article 345 The transferor under a patent licensing contract shall, in accordance with the contract,license the patent to the transferee, deliver the technical materials related to the exploitation of the patent, and provide the necessary technical guidance.

Article 346 The transferee under a patent licensing contract shall exploit the patent in accordance with the contract and may not license the patent to any third party except as provided for in the contract; and shall pay the licensing fee in accordance with the contract.

Article 347 The transferor under a contract for transfer of technical secret shall, in accordance with the contract, supply the technical materials, provide technical guidance, and warrant the practical applicability and reliability of the technology, and shall abide by its confidentiality obligations.

Article 348 The transferee under a contract for transfer of technical secret shall, in accordance with the contract, use the technology, pay the licensing fee and abide by its confidentiality obligations.

Article 349 The transferor under a technology transfer contract shall warrant that it is the lawful owner of the technology provided, and shall warrant that the technology provided is complete, free from error, effective, and capable of achieving the prescribed goals.

Article 350 The transferee under a technology transfer contract shall, in conformity with the scope and the time period as agreed upon in the contract, abide by its confidentiality obligations in respect of the non-public and secret portion of the technology provided by the transferor.

Article 351 Where the transferor fails to transfer technology in accordance with the contract, it shall refund the licensing fee in part or in whole, and shall be liable for the breach of contract;where the transferor exploits the patent or uses the technical secret beyond the agreed scope, or unilaterally allows the patent to be exploited or the technical secret to be used by a third

party in breach of the contract, it shall cease the breach and be liable for the breach of contract; where the transferor breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

Article 352 Where the transferee fails to pay the agreed licensing fee, it shall pay the overdue licensing fee and pay breach of contract damages in accordance with the contract; where it fails to pay the overdue licensing fee and breach of contract damages, it shall cease exploitation of the patent or use of the technical secret, return the technical materials, and be liable for the breach of contract; where the transferee exploits the patent or uses the technical secret beyond the agreed scope, or allows the patent to be exploited or the technical secret to be used by a third party without consent of the transferor in breach of the contract, it shall cease the breach and be liable for the breach of contract; where the transferee breaches any agreed confidentiality obligation, it shall be liable for the breach of contract.

Article 353 Where the exploitation of the patent or the use of the technical secret by the transferee in accordance with the contract infringes on the lawful interests of any other person, the liability shall be borne by the transferor, except as otherwise agreed upon by the parties.

Article 354 The parties may, on the basis of mutual benefit, provide in the technology transfer contract for the method of sharing any subsequent improvement resulting from

the exploitation of the patent or use of the technical secret. If such method is not agreed or the agreement is not

clear, nor can it be determined in accordance with Article 61 of this Law, neither party is entitled to share any subsequent improvement made by the other party.

Article 355 Where the relevant laws or administrative regulations provide otherwise in respect of technology import or export contracts or in respect of patent contracts or contracts for patent application, such provisions shall prevail.

Section Four Technical Consulting Contracts and Technical Service Contracts

Article 356 Technical consulting contracts include contracts for provision of feasibility studies,technical forecast, specialized technical investigation, and analysis and evaluation report, etc.in respect of a particular technical project.

A technical service contract means a contract whereby one party solves a particular technical problem for the other party by utilizing its technical knowledge, excluding a contract for construction project or a contract of hired work.

Article 357 The client under a technical consulting contract shall, in accordance with the contract,describe the problem on which consultancy is sought, provide the technical background information as well as related technical materials and data; and accept the work product from, and pay the

remuneration to, the consultant.

Article 358 The consultant under a technical consulting contract shall complete the consulting report or answer the question within the agreed period; the consulting report submitted shall comply with the requirements set forth in the contract.

Article 359 Where the client under a technical consulting contract fails to provide the necessary materials and data in accordance with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work result, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

Where the consultant under the technical consulting contract fails to provide the consulting report within the agreed period or the consulting report submitted does not comply with the contract, it shall be liable for the breach of contract by way of reducing or foregoing the remuneration, etc.

The client under a technical consulting contract shall compensate the loss resulting from any decision made by it based on the complying consulting report and opinion provided by the consultant, except as otherwise agreed upon by the parties.

Article 360 The client under a technical service contract shall, in accordance with the contract, provide the working conditions and complete its tasks of cooperation; accept the work results and pay the remuneration.

Article 361 The service provider under a technical service contract shall, in accordance with the contract, complete the services, solve the technical problem, warrant the quality of its work,and communicate the knowledge for solving the technical problem.

Article 362 Where the client under a technical service contract fails to perform its contractual obligations, or the performance is not in conformity with the contract, thereby impairing the progress and quality of the work, or fails to accept or delays in accepting the work results, it may not claim refund of the remuneration paid, and shall pay any unpaid remuneration.

Where the service provider under a technical service contract fails to complete services in accordance with the contract, it shall be liable for the breach of contract by way of forgoing the remuneration, etc.

Article 363 In the course of performing a technical consulting contract or a technical service contract,any new technology developed by the consultant or service provider utilizing the technical materials and working conditions provided by the client belongs to the consultant or service provider. Any new technology developed by the client utilizing the work results provided by the

consultant or service provider belongs to the client. However, if the parties agree otherwise in the contract, such provisions shall prevail.

Article 364 Where a relevant law or administrative regulation provides otherwise in respect of technology intermediary service contracts or technical training contracts, such provisions shall prevail.

Chapter 19 Storage Contracts

Article 365 A storage contract is a contract whereby the depository keeps the deposit delivered by the depositor, and eventually returns it thereto.

Article 366 The depositor shall pay the storage fee to the depository in accordance with the contract.

Where the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the storage shall be for free.

Article 367 A storage contract is established upon delivery of the deposit, except as otherwise agreed upon by the parties.

Article 368 Upon the depositor’s delivery of the deposit to the depository, the depository shall issue a deposit voucher thereto, except as otherwise practised in transaction.

Article 369 The depository shall keep the deposit with due care.

The parties may agree the place and manner of storage. The place and manner of storage may not be changed without authorization, except in an emergency situation or for the purpose of protecting the depositor’s interests.

Article 370 Where the deposit delivered by the depositor has defects or requires special storage measures in light of its nature, the depositor shall inform the depository of the relevant situation.Where the depositor fails to inform, thereby causing damage to the deposit, the depository is not liable for damages; where the depository sustains any loss as a result, the depositor shall be liable for damages, except where the depository is, or ought to be, aware of the situation and fails to take remedial measures.

Article 371 The depository may not delegate storage of the deposit to a third party, except as otherwise agreed upon by the parties.

Where the depository delegated storage of the deposit to a third party in violation of the provisions of the preceding paragraph, thereby causing damage to the deposit, the depository shall be liable for damages.

Article 372 The depository may not use, or allow the use of, the deposit, except as otherwise agreed upon by the parties.

Article 373 Where a third party makes a claim on the deposit, the depository shall perform its obligation of returning the deposit to the depositor, except where an order of preservation or enforcement is carried out in respect of the deposit in accordance with the law.

Where a third party brings a lawsuit against the depository or applies for attachment of the deposit, the depository shall timely notify the depositor.

Article 374 If the deposit is damaged or lost due to improper storage by the depository during the deposit period, the depository shall be liable for damages, provided that if the storage is provided for free, and the depository proves that it has no gross negligence, it shall be not liable for damages.

Article 375 Where the depositor is to deposit money, securities, or any other valuable item for storage,it shall make a declaration to the depository on such item, which shall be inspected or sealed by the depository. Where the depositor fails to make such declaration and the article is damaged,destroyed or lost afterwards, the depository may compensate for it as it is an ordinary article.

Article 376 The depositor may retrieve the deposit at any time.

Where a deposit period is not agreed or the agreement is not clear, the depository may require the depositor to retrieve the deposit at any time; where a deposit period is agreed,without special reason, the depository may not require the depositor to retrieve the deposit before the expiry of the deposit period.

Article 377 At the expiry of the deposit period, or if the depositor retrieves the deposit before the expiry of the deposit period, the depository shall return the original item together with any fruit thereof to the depositor.

Article 378 Where the depository keeps money deposit, it may return money of the same type and quantity.Where the depository keeps any other fungible item, it may return any item of the same type,quality and quantity in accordance with the contract.

Article 379 Under a storage contract for value, the depositor shall pay to the depository the storage fee at the agreed time.

Where the time of payment of the storage fee is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61 of this Law, the storage fee shall be paid at the same time the deposit is retrieved.

Article 380 Where the depositor fails to pay the storage fee and other expenses, the depository is entitled to lien on the deposit, unless as otherwise agreed upon by the parties.

Chapter 20 Warehousing Contracts

Article 381A warehousing contract is a contract whereby the safekeeping party stores the goods delivered by the depositor, and the depositor pays the warehousing fee.

Article 382 A warehousing contract becomes effective upon its formation.

Article 383 Where the depositor intends to store any dangerous article which is inflammable, explosive,toxic, corrosive, or radioactive, etc., or any material susceptible to deterioration, it shall indicate the nature of the goods and provide the relevant information.

Where the depositor violates the provisions of the preceding paragraph, the safekeeping party may reject the goods and may also take the appropriate measures to avoid losses, the cost consequently incurred shall be borne by the depositor.

Where the safekeeping party is to store any dangerous article that is inflammable, explosive,toxic, corrosive, or radioactive, etc., it shall be equipped with the appropriate safekeeping conditions.

Article 384 The safekeeping party shall, in accordance with the contract, conduct warehouse-in inspection of the goods. Where in the course of such inspection, the safekeeping party discovers that the goods are not in conformity with the terms of the contract, it shall timely notify the depositor.

After inspection and acceptance by the safekeeping party, if it is discovered that the category,quantity or quality of the warehousing goods are not in conformity with the terms of the contract, the safekeeping party shall be liable for damages.

Article 385 Upon the depositor’s delivery of the goods, the safekeeping party shall issue a warehouse receipt.

Article 386 The safekeeping party shall sign or affix a seal on the warehouse receipt. The warehouse receipt shall contain the following items:

(1) name and domicile of the depositor;

(2) category, quantity, quality, and package, number of pieces and marks of the warehousing goods;

(3) standards of spoilage of the warehousing goods;

(4) place of storage;

(5) time period of storage;

(6) warehousing fee;

(7) if the goods have been insured, the insured amount, term of insurance and the name of the insurer;

(8) name of the person issuing the warehouse receipt, the place and the date of issuance.

Article 387 The warehouse receipt is the voucher for retrieving the goods. Where the depositor or holder of the warehouse receipt has endorsed the warehouse receipt and the safekeeping party has signed or sealed thereon, the right to retrieve the goods may be assigned.

Article 388 Upon request of the depositor or the holder of the warehouse receipt, the safekeeping party shall allow the person to inspect the goods or take samples therefrom.

Article 389 Where the safekeeping party discovers that the warehoused goods are deteriorating or are otherwise damaged, it shall timely notify the depositor or holder of the warehouse receipt.

Article 390 Where the safekeeping party discovers that the warehoused goods are deteriorating or are otherwise damaged, thereby endangering the safety and normal safekeeping of other warehoused goods, it shall demand disposal of the goods by the depositor or the holder of the warehouse receipt as necessary. In an emergency situation, the safekeeping party may dispose of the goods as necessary, but shall timely notify the depositor or holder of the warehouse receipt of the situation.

Article 391 Where the warehousing period is not agreed or the agreement is not clear, the depositor or holder of the warehouse receipt may retrieve the goods at any time, and the safekeeping party may require the depositor or holder of the warehouse receipt to retrieve the goods at any time,provided that the other party shall be given the time required for preparation.

Article 392 At the expiry of the warehousing period, the depositor or holder of the warehouse receipt shall retrieve the goods by presenting the warehouse receipt to the safekeeping party. Where the depositor or holder of the warehouse receipt fails to claim the goods, additional warehousing fee

shall be charged; where the goods are retrieved before the expiry the warehousing period, the warehousing fee shall not be reduced.

Article 393 At the expiry of the warehousing period, if the depositor or holder of the warehouse receipt fails to retrieve the goods, the safekeeping party may demand retrieval within a reasonable period, and if the goods are not retrieved at the expiry of such period, the safekeeping party may place the goods in escrow.

Article 394 Where the goods are damaged or lost during the warehousing period due to improper safekeeping by the safekeeping party, it shall be liable for damages. If the goods are deteriorated or damaged due to unconformity of the nature of the warehoused goods or of the packing with the terms of the contract, or the fact that the goods exceed the valid storage period, the

safekeeping party is not liable for damages.

Article 395 Matters not provided for in this Chapter shall be governed by the relevant provision on storage contracts.

Chapter 21 Commission Contracts

Article 396 A commission contract is a contract whereby the principal and the agent agree that the agent will handle the principal’s affairs.

Article 397 The principal may specifically appoint the agent to handle one or more of its affairs, or generally appoint the agent to handle all of its affairs.

Article 398 The principal shall prepay the expenses for handling the commissioned affair. Any expense necessary for handling the commissioned affair advanced by the agent shall be repaid with interest by the principal.

Article 399 The agent shall handle the commissioned affair in accordance with the instruction of the principal. Any required deviation from the principal’s instruction is subject to consent by the principal; in an emergency where the agent has difficulty in contacting the principal, the agent shall properly handle the commissioned affair, provided that thereafter the agent shall timely

notify the principal of the situation.

Article 400 The agent shall personally handle the commissioned affair. Subject to consent by the principal, the agent may delegate the agency to a third party. If the delegation is approved, the principal may issue instructions concerning the commissioned affair directly to the delegate, and

the agent is only responsible for its selection of the delegate or its own instruction thereto.Where the agency is delegated without consent, the agent shall be liable for any act of the delegate, except in an emergency where the agent needs to delegate the agency in order to safeguard the interests of the principal.

Article 401 Upon request by the principal, the agent shall report on the progress of the commissioned affair. Upon discharge of the commission contract, the agent shall render an account of the commissioned affair.

Article 402 Where the agent, acting within the scope of authority granted by the principal, enter into a contract in its own name with a third party who is aware of the agency relationship between the principal and agent, the contract is directly binding upon the principal and such third party,except where there is conclusive evidence establishing that the contract is only binding upon the

agent and such third party.

Article 403 Where the agent enter into a contract in its own name with a third party who is not aware of the agency relationship between the agent and the principal, if the agent fails to perform its obligation toward the principal due to any reason attributable to such third party, the agent

shall disclose the third party to the principal, allowing it to exercise the agent’s rights against such third party, except where the third party will not enter into the contract with the agent if he knows the identity of the principal at the time of entering into the contract.

Where the agent fails to perform its obligation toward the third party due to any reason attributable to the principal, the agent shall disclose the principal to the third party,allowing the third party to select in alternative either the principal or the agent as the other contract party against whom to make a claim, provided that the third party may not subsequently change its selection of the contract party.

Where the principal exercises the rights of the agent against the third party, the third party may avail itself of any defense it has against the agent. Where the third party selects

the principal as the other party to the contract, the principal may avail itself of any defense it has against the agent as well as any defense the agent has against the third party.

Article 404 Any property acquired by the agent in the course of handling the commissioned affair shall be turned over to the principal.

Article 405 Upon completion of the commissioned affair by the agent, the principal shall pay the remuneration thereto. Where the agency appointment contract is terminated or the commissioned affair is not capable of being completed due to any reason not attributable to the agent, the principal shall pay to the agent an appropriate amount of remuneration. If the parties agrees

otherwise, such agreement shall prevail.

Article 406 Under a commission contract for value, if the principal sustains any loss due to the fault of the agent, the principal may claim damages. Under a gratuitous agency appointment contract, if the principal sustains any loss due to the agent's intentional misconduct or gross negligence,the principal may claim damages.

Where the agent acts beyond the scope of authorization, thereby causing loss to the principal, it shall pay damages.

Article 407 In the course of handling the commissioned affair, if the agent sustains any loss due to a reason not attributable to itself, the agent may seek indemnification from the principal.

Article 408 Subject to consent by the agent, the principal may, in addition to appointing the agent, also appoint a third party to handle the commissioned affair. If such appointment results in loss to the agent, it may seek indemnification from the principal.

Article 409 Where two or more agents jointly handle the commissioned affair, they are jointly and severally liable to the principal.

Article 410 Either the principal or the agent may terminate the agency appointment contract at any time.Where the other party sustains any loss due to termination of the contract, the terminating party shall indemnify the other party, unless such loss is due to a reason not attributable to the terminating party.

Article 411 A commission contract is discharged when either the principal or the agent is deceased or incapacitated or enters into bankruptcy, except where the parties agree otherwise, or where discharge is inappropriate in light of the nature of the commissioned affair.

Article 412 Where discharge of the commission contract due to the death, incapacitation or bankruptcy of the principal will harm the principal's interests, the agent shall continue to handle the commissioned affair before an heir, legal agent or liquidation team thereof takes over the commissioned affair.

Article 413 If the commission contract is discharged as a result of the death, incapacitation or bankruptcy of the agent, the heir, legal agent or liquidation team thereof shall timely notify the principal. Where discharge of the agency contract will harm the principal's interests, before the principal makes any care-taking arrangement, the heir, legal agent or liquidation team of the agent shall take the necessary measures.

Chapter 22 Contracts of Commission Agency

Article 414 A contract of commission agency is a contract whereby the commission agent conducts trading activities in its own name for the principal, and the principal pays the remuneration.

Article 415 The expenses incurred by the commission agent in the course of handling the commissioned affair shall be borne by the commission agent, except as otherwise agreed upon by the parties.

Article 416 Where the commission agent is in possession of the entrusted item, it shall keep the entrusted item with due care.

Article 417 If an entrusted item is defective, perishable or susceptible to deterioration at the time it was delivered to the commission agent, upon consent by the principal, the commission agent may dispose of the item; where the trustee-trader is unable to contact the principal in time, it may dispose of the entrusted item in a reasonable manner.

Article 418 Where the commission agent is to sell the entrusted item below, or buy the entrusted item above, the price designated by the principal, it shall obtain consent from

the principal. If such sale is effected without consent by the principal, and the commission agent makes up the deficiency on its own, it is binding on the principal.

Where the commission agent sells the entrusted item above, or purchases the entrusted item below, the price designated by the principal, the remuneration may be increased in accordance with the contract. Where such matter is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61of this Law, the benefit belongs to the principal.

Where the principal gives special pricing instruction, the commission agent may not make any sale or purchase in contravention thereof.

Article 419 Where the commission agent is to sell or purchase a commodity the price of which is fixed by the market, the commission agent may act as the purchaser or seller itself, unless the principal expresses otherwise.

Where the commission agent is under the situation prescribed in the preceding paragraph, it may still require payment of remuneration from the principal.

Article 420 Once the commission agent purchases the entrusted item in accordance with the contract, the principal shall timely take delivery. Where after receiving demand from the commission agent, the principal refuses to take delivery without cause, the commission agent may place the entrusted item in escrow in accordance with Article 101 of this Law.

Where the entrusted item fails to be sold or the principal withdraws it from sale, the commission agent may place the entrusted item in escrow in accordance with Article 101 of this Law if the principal fails to retrieve or dispose of it after receiving such demand from commission agent.

Article 421 Where the commission agent enters into a contract with a third party, it directly enjoys the rights and assumes the obligations thereunder.

Where the third party fails to perform its obligations, thereby causing damage to the principal, the commission agent shall be liable for damages, except as otherwise agreed upon by the commission agent and the principal.

Article 422 Where the commission agent has completed the entrusted matter or has partially completed the entrusted matter, the principal shall pay the appropriate remuneration thereto. Where the principal fails to pay the remuneration within the prescribed period, the commission agent is entitled to lien on the entrusted item, except as otherwise agreed upon by the parties.

Article 423 Matters not prescribed in this Chapter shall be governed by the relevant provision on commission contracts.

Chapter 23 Intermediation contracts

Article 424 A intermediation contract is a contract whereby the broker presents to the client an opportunity for entering into a contract or provides the client with intermediary services in connection with the conclusion thereof, and the client pays the remuneration.

Article 425 The broker shall provide true information concerning matters relevant to the conclusion of the proposed contract.

Where the broker intentionally conceals any material fact or provided false information in connection with the conclusion of the proposed contract, thereby harming the client’s interests,it may not require payment of any remuneration and shall be liable for damages.

Article 426 Once the broker facilitates the formation of the proposed contract, the client shall pay the remuneration in accordance with the intermediation contract. Where remuneration to the broker is not agreed or the agreement is not clear, nor can it be determined in accordance with Article 61

of this Law, it shall be reasonably fixed in light of the amount of labor expended by the broker.Where the broker facilitates the formation of the proposed contract by providing intermediary services in connection therewith, the remuneration paid to the broker shall be equally borne by parties thereto.

Where the broker facilitates the formation of the proposed contract, the brokerage expenses shall be borne by itself.

Article 427 Where the broker fails to facilitate the formation of the proposed contract, it may not require payment of remuneration, provided that it may require the client to reimburse the necessary brokerage expenses incurred.

Supplementary Provisions

Article 428 This Law shall take effect as of October 1, 1999, and the Economic Contract Law of the People’s Republic of China, the Foreign-related Economic Contract Law of the People’s Republic of China, and the Technology Contract Law of the People’s Republic of China shall be repealed simultaneously.

中华人民共和国主席令

（第十五号）

《中华人民共和国合同法》已由中华人民共和国第九届全国人民代表大会第二次会议于１９９９年3月１５日通过，现予公布，自１９９９年１０月1日起施行。

中华人民共和国主席　江泽民

１９９９年3月１５日

中华人民共和国合同法

（１９９９年3月１５日第九届全国人民代表大会第二次会议通过）

第一条　【立法目的】为了保护合同当事人的合法权益，维护社会经济秩序，促进社会主义现代化建设，制定本法。

第二条　【合同定义】本法所称合同是平等主体的自然人、法人、其他组织之间设立、变更、终止民事权利义务关系的协议。

婚姻、收养、监护等有关身份关系的协议，适用其他法律的规定。

第三条　【平等原则】合同当事人的法律地位平等，一方不得将自己的意志强加给另一方。

第四条　【合同自由原则】当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预。

第五条　【公平原则】当事人应当遵循公平原则确定各方的权利和义务。

第六条　【诚实信用原则】当事人行使权利、履行义务应当遵循诚实信用原则。

第七条　【遵纪守法原则】当事人订立、履行合同，应当遵守法律、行政法规，尊重社会公德，不得扰乱社会经济秩序，损害社会公共利益。

第八条　【依合同履行义务原则】依法成立的合同，对当事人具有法律约束力。当事人应当按照约定履行自己的义务，不得擅自变更或者解除合同。

依法成立的合同，受法律保护。

第二章　合同的订立

第九条　【订立合同的能力】当事人订立合同，应当具有相应的民事权利能力和民事行为能力。

当事人依法可以委托代理人订立合同。

第十条　【合同的形式】当事人订立合同，有书面形式、口头形式和其他形式。

法律、行政法规规定采用书面形式的，应当采用书面形式。当事人约定采用书面形式的，应当采用书面形式。

第十一条　【书面形式】书面形式是指合同书、信件和数据电文（包括电报、电传、传真、电子数据交换和电子邮件）等可以有形地表现所载内容的形式。

第十二条　【合同内容】合同的内容由当事人约定，一般包括以下条款：

（一）当事人的名称或者姓名和住所；

（二）标的；

（三）数量；

（四）质量；

（五）价款或者报酬；

（六）履行期限、地点和方式；

（七）违约责任；

（八）解决争议的方法。

当事人可以参照各类合同的示范文本订立合同。

第十三条　【订立合同方式】当事人订立合同，采取要约、承诺方式。

第十四条　【要约】要约是希望和他人订立合同的意思表示，该意思表示应当符合下列规定：

（一）内容具体确定；

（二）表明经受要约人承诺，要约人即受该意思表示约束。

第十五条　【要约邀请】要约邀请是希望他人向自己发出要约的意思表示。寄送的价目表、拍卖公告、招标公告、招股说明书、商业广告等为要约邀请。

商业广告的内容符合要约规定的，视为要约。

第十六条　【要约的生效】要约到达受要约人时生效。

采用数据电文形式订立合同，收件人指定特定系统接收数据电文的，该数据电文进入该特定系统的时间，视为到达时间；未指定特定系统的，该数据电文进入收件人的任何系统的首次时间，视为到达时间。

第十七条　【要约的撤回】要约可以撤回。撤回要约的通知应当在要约到达受要约人之前或者与要约同时到达受要约人。

第十八条　【要约的撤销】要约可以撤销。撤销要约的通知应当在受要约人发出承诺通知之前到达受要约人。

第十九条　【要约不得撤销的情形】有下列情形之一的，要约不得撤销：

（一）要约人确定了承诺期限或者以其他形式明示要约不可撤销；

（二）受要约人有理由认为要约是不可撤销的，并已经为履行合同作了准备工作。

第二十条　【要约的失效】有下列情形之一的，要约失效：

（一）拒绝要约的通知到达要约人；

（二）要约人依法撤销要约；

（三）承诺期限届满，受要约人未作出承诺；

（四）受要约人对要约的内容作出实质性变更。

第二十一条　【承诺的定义】承诺是受要约人同意要约的意思表示。

第二十二条　【承诺的方式】承诺应当以通知的方式作出，但根据交易习惯或者要约表明可以通过行为作出承诺的除外。

第二十三条　【承诺的期限】承诺应当在要约确定的期限内到达要约人。

要约没有确定承诺期限的，承诺应当依照下列规定到达：

（一）要约以对话方式作出的，应当即时作出承诺，但当事人另有约定的除外；

（二）要约以非对话方式作出的，承诺应当在合理期限内到达。

第二十四条　【承诺期限的起点】要约以信件或者电报作出的，承诺期限自信件载明的日期或者电报交发之日开始计算。信件未载明日期的，自投寄该信件的邮戳日期开始计算。要约以电话、传真等快速通讯方式作出的，承诺期限自要约到达受要约人时开始计算。

第二十五条　【合同成立时间】承诺生效时合同成立。

第二十六条　【承诺的生效】承诺通知到达要约人时生效。承诺不需要通知的，根据交易习惯或者要约的要求作出承诺的行为时生效。

采用数据电文形式订立合同的，承诺到达的时间适用本法第十六条第二款的规定。

第二十七条　【承诺的撤回】承诺可以撤回。撤回承诺的通知应当在承诺通知到达要约人之前或者与承诺通知同时到达要约人。

第二十八条　【新要约】受要约人超过承诺期限发出承诺的，除要约人及时通知受要约人该承诺有效的以外，为新要约。

第二十九条　【迟到的承诺】受要约人在承诺期限内发出承诺，按照通常情形能够及时到达要约人，但因其他原因承诺到达要约人时超过承诺期限的，除要约人及时通知受要约人因承诺超过期限不接受该承诺的以外，该承诺有效。

第三十条　【承诺的变更】承诺的内容应当与要约的内容一致。受要约人对要约的内容作出实质性变更的，为新要约。有关合同标的、数量、质量、价款或者报酬、履行期限、履行地点和方式、违约责任和解决争议方法等的变更，是对要约内容的实质性变更。

第三十一条　【承诺的内容】承诺对要约的内容作出非实质性变更的，除要约人及时表示反对或者要约表明承诺不得对要约的内容作出任何变更的以外，该承诺有效，合同的内容以承诺的内容为准。

第三十二条　【合同成立时间】当事人采用合同书形式订立合同的，自双方当事人签字或者盖章时合同成立。

第三十三条　【确认书与合同成立】当事人采用信件、数据电文等形式订立合同的，可以在合同成立之前要求签订确认书。签订确认书时合同成立。

第三十四条　【合同成立地点】承诺生效的地点为合同成立的地点。

采用数据电文形式订立合同的，收件人的主营业地为合同成立的地点；没有主营业地的，其经常居住地为合同成立的地点。当事人另有约定的，按照其约定。

第三十五条　【书面合同成立地点】当事人采用合同书形式订立合同的，双方当事人签字或者盖章的地点为合同成立的地点。

第三十六条　【书面合同与合同成立】法律、行政法规规定或者当事人约定采用书面形式订立合同，当事人未采用书面形式但一方已经履行主要义务，对方接受的，该合同成立。

第三十七条　【合同书与合同成立】采用合同书形式订立合同，在签字或者盖章之前，当事人一方已经履行主要义务，对方接受的，该合同成立。

第三十八条　【依国家计划订立合同】国家根据需要下达指令性任务或者国家订货任务的，有关法人、其他组织之间应当依照有关法律、行政法规规定的权利和义务订立合同。

第三十九条　【格式合同条款定义及使用人义务】采用格式条款订立合同的，提供格式条款的一方应当遵循公平原则确定当事人之间的权利和义务，并采取合理的方式提请对方注意免除或者限制其责任的条款，按照对方的要求，对该条款予以说明。

格式条款是当事人为了重复使用而预先拟定，并在订立合同时未与对方协商的条款。

第四十条　【格式合同条款的无效】格式条款具有本法第五十二条和第五十三条规定情形的，或者提供格式条款一方免除其责任、加重对方责任、排除对方主要权利的，该条款无效。

第四十一条　【格式合同的解释】对格式条款的理解发生争议的，应当按照通常理解予以解释。对格式条款有两种以上解释的，应当作出不利于提供格式条款一方的解释。格式条款和非格式条款不一致的，应当采用非格式条款。

第四十二条　【缔约过失】当事人在订立合同过程中有下列情形之一，给对方造成损失的，应当承担损害赔偿责任：

（一）假借订立合同，恶意进行磋商；

（二）故意隐瞒与订立合同有关的重要事实或者提供虚假情况；

（三）有其他违背诚实信用原则的行为。

第四十三条　【保密义务】当事人在订立合同过程中知悉的商业秘密，无论合同是否成立，不得泄露或者不正当地使用。泄露或者不正当地使用该商业秘密给对方造成损失的，应当承担损害赔偿责任。

第三章　合同的效力

第四十四条　【合同的生效】依法成立的合同，自成立时生效。

法律、行政法规规定应当办理批准、登记等手续生效的，依照其规定。

第四十五条　【附条件的合同】当事人对合同的效力可以约定附条件。附生效条件的合同，自条件成就时生效。附解除条件的合同，自条件成就时失效。

当事人为自己的利益不正当地阻止条件成就的，视为条件已成就；不正当地促成条件成就的，视为条件不成就。

第四十六条　【附期限的合同】当事人对合同的效力可以约定附期限。附生效期限的合同，自期限届至时生效。附终止期限的合同，自期限届满时失效。

第四十七条　【限制行为能力人订立的合同】限制民事行为能力人订立的合同，经法定代理人追认后，该合同有效，但纯获利益的合同或者与其年龄、智力、精神健康状况相适应而订立的合同，不必经法定代理人追认。

相对人可以催告法定代理人在一个月内予以追认。法定代理人未作表示的，视为拒绝追认。合同被追认之前，善意相对人有撤销的权利。撤销应当以通知的方式作出。

第四十八条　【无权代理人订立的合同】行为人没有代理权、超越代理权或者代理权终止后以被代理人名义订立的合同，未经被代理人追认，对被代理人不发生效力，由行为人承担责任。

相对人可以催告被代理人在一个月内予以追认。被代理人未作表示的，视为拒绝追认。合同被追认之前，善意相对人有撤销的权利。撤销应当以通知的方式作出。

第四十九条　【表见代理】行为人没有代理权、超越代理权或者代理权终止后以被代理人名义订立合同，相对人有理由相信行为人有代理权的，该代理行为有效。

第五十条　【法定代表人越权行为】法人或者其他组织的法定代表人、负责人超越权限订立的合同，除相对人知道或者应当知道其超越权限的以外，该代表行为有效。

第五十一条　【无处分权人订立的合同】无处分权的人处分他人财产，经权利人追认或者无处分权的人订立合同后取得处分权的，该合同有效。

第五十二条　【合同无效的法定情形】有下列情形之一的，合同无效：

（一）一方以欺诈、胁迫的手段订立合同，损害国家利益；

（二）恶意串通，损害国家、集体或者第三人利益；

（三）以合法形式掩盖非法目的；

（四）损害社会公共利益；

（五）违反法律、行政法规的强制性规定。

第五十三条　【合同免责条款的无效】合同中的下列免责条款无效：

（一）造成对方人身伤害的；

（二）因故意或者重大过失造成对方财产损失的。

第五十四条　【可撤销合同】下列合同，当事人一方有权请求人民法院或者仲裁机构变更或者撤销：

（一）因重大误解订立的；

（二）在订立合同时显失公平的。

一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下订立的合同，受损害方有权请求人民法院或者仲裁机构变更或者撤销。

当事人请求变更的，人民法院或者仲裁机构不得撤销。

第五十五条　【撤销权的消灭】有下列情形之一的，撤销权消灭：

（一）具有撤销权的当事人自知道或者应当知道撤销事由之日起一年内没有行使撤销权；

（二）具有撤销权的当事人知道撤销事由后明确表示或者以自己的行为放弃撤销权。

第五十六条　【合同自始无效与部分有效】无效的合同或者被撤销的合同自始没有法律约束力。合同部分无效，不影响其他部分效力的，其他部分仍然有效。

第五十七条　【合同解决争议条款的效力】合同无效、被撤销或者终止的，不影响合同中独立存在的有关解决争议方法的条款的效力。

第五十八条　【合同无效或被撤销的法律后果】合同无效或者被撤销后，因该合同取得的财产，应当予以返还；不能返还或者没有必要返还的，应当折价补偿。有过错的一方应当赔偿对方因此所受到的损失，双方都有过错的，应当各自承担相应的责任。

第五十九条　【恶意串通获取财产的返还】当事人恶意串通，损害国家、集体或者第三人利益的，因此取得的财产收归国家所有或者返还集体、第三人。

第四章　合同的履行

第六十条　【严格履行与诚实信用】当事人应当按照约定全面履行自己的义务。

当事人应当遵循诚实信用原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务。

第六十一条　【合同约定不明的补救】合同生效后，当事人就质量、价款或者报酬、履行地点等内容没有约定或者约定不明确的，可以协议补充；不能达成补充协议的，按照合同有关条款或者交易习惯确定。

第六十二条　【合同约定不明时的履行】当事人就有关合同内容约定不明确，依照本法第六十一条的规定仍不能确定的，适用下列规定：

（一）质量要求不明确的，按照国家标准、行业标准履行；没有国家标准、行业标准的，按照通常标准或者符合合同目的的特定标准履行。

（二）价款或者报酬不明确的，按照订立合同时履行地的市场价格履行；依法应当执行政府定价或者政府指导价的，按照规定履行。

（三）履行地点不明确，给付货币的，在接受货币一方所在地履行；交付不动产的，在不动产所在地履行；其他标的，在履行义务一方所在地履行。

（四）履行期限不明确的，债务人可以随时履行，债权人也可以随时要求履行，但应当给对方必要的准备时间。

（五）履行方式不明确的，按照有利于实现合同目的的方式履行。

（六）履行费用的负担不明确的，由履行义务一方负担。

第六十三条　【交付期限与价格执行】执行政府定价或者政府指导价的，在合同约定的交付期限内政府价格调整时，按照交付时的价格计价。逾期交付标的物的，遇价格上涨时，按照原价格执行；价格下降时，按照新价格执行。逾期提取标的物或者逾期付款的，遇价格上涨时，按照新价格执行；价格下降时，按照原价格执行。

第六十四条　【向第三人履行合同】当事人约定由债务人向第三人履行债务的，债务人未向第三人履行债务或者履行债务不符合约定，应当向债权人承担违约责任。

第六十五条　【第三人不履行合同的责任承担】当事人约定由第三人向债权人履行债务，第三人不履行债务或者履行债务不符合约定，债务人应当向债权人承担违约责任。

第六十六条　【同时履行抗辩权】当事人互负债务，没有先后履行顺序的，应当同时履行。一方在对方履行之前有权拒绝其履行要求。一方在对方履行债务不符合约定时，有权拒绝其相应的履行要求。

第六十七条　【先履行义务】当事人互负债务，有先后履行顺序，先履行一方未履行的，后履行一方有权拒绝其履行要求。先履行一方履行债务不符合约定的，后履行一方有权拒绝其相应的履行要求。

第六十八条　【不安抗辩权】应当先履行债务的当事人，有确切证据证明对方有下列情形之一的，可以中止履行：

（一）经营状况严重恶化；

（二）转移财产、抽逃资金，以逃避债务；

（三）丧失商业信誉；

（四）有丧失或者可能丧失履行债务能力的其他情形。

当事人没有确切证据中止履行的，应当承担违约责任。

第六十九条　【不安抗辩权的行使】当事人依照本法第六十八条的规定中止履行的，应当及时通知对方。对方提供适当担保时，应当恢复履行。中止履行后，对方在合理期限内未恢复履行能力并且未提供适当担保的，中止履行的一方可以解除合同。

第七十条　【因债权人原因致债务履行困难的处理】债权人分立、合并或者变更住所没有通知债务人，致使履行债务发生困难的，债务人可以中止履行或者将标的物提存。

第七十一条　【债务的提前履行】债权人可以拒绝债务人提前履行债务，但提前履行不损害债权人利益的除外。

债务人提前履行债务给债权人增加的费用，由债务人负担。

第七十二条　【债务的部分履行】债权人可以拒绝债务人部分履行债务，但部分履行不损害债权人利益的除外。

债务人部分履行债务给债权人增加的费用，由债务人负担。

第七十三条　【债权人的代位权】因债务人怠于行使其到期债权，对债权人造成损害的，债权人可以向人民法院请求以自己的名义代位行使债务人的债权，但该债权专属于债务人自身的除外。

代位权的行使范围以债权人的债权为限。债权人行使代位权的必要费用，由债务人负担。

第七十四条　【债权人的撤销权】因债务人放弃其到期债权或者无偿转让财产，对债权人造成损害的，债权人可以请求人民法院撤销债务人的行为。债务人以明显不合理的低价转让财产，对债权人造成损害，并且受让人知道该情形的，债权人也可以请求人民法院撤销债务人的行为。

撤销权的行使范围以债权人的债权为限。债权人行使撤销权的必要费用，由债务人负担。

第七十五条　【撤销权的期间】撤销权自债权人知道或者应当知道撤销事由之日起一年内行使。自债务人的行为发生之日起五年内没有行使撤销权的，该撤销权消灭。

第七十六条　【当事人变化对合同履行的影响】合同生效后，当事人不得因姓名、名称的变更或者法定代表人、负责人、承办人的变动而不履行合同义务。

第五章　合同的变更和转让

第七十七条　【合同变更条件】当事人协商一致，可以变更合同。

法律、行政法规规定变更合同应当办理批准、登记等手续的，依照其规定。

第七十八条　【合同变更内容不明的处理】当事人对合同变更的内容约定不明确的，推定为未变更。

第七十九条　【债权的转让】债权人可以将合同的权利全部或者部分转让给第三人，但有下列情形之一的除外：

（一）根据合同性质不得转让；

（二）按照当事人约定不得转让；

（三）依照法律规定不得转让。

第八十条　【债权转让的通知义务】债权人转让权利的，应当通知债务人。未经通知，该转让对债务人不发生效力。

债权人转让权利的通知不得撤销，但经受让人同意的除外。

第八十一条　【从权利的转移】债权人转让权利的，受让人取得与债权有关的从权利，但该从权利专属于债权人自身的除外。

第八十二条　【债务人的抗辩权】债务人接到债权转让通知后，债务人对让与人的抗辩，可以向受让人主张。

第八十三条　【债务人的抵销权】债务人接到债权转让通知时，债务人对让与人享有债权，并且债务人的债权先于转让的债权到期或者同时到期的，债务人可以向受让人主张抵销。

第八十四条　【债权人同意】债务人将合同的义务全部或者部分转移给第三人的，应当经债权人同意。

第八十五条　【承担人的抗辩】债务人转移义务的，新债务人可以主张原债务人对债权人的抗辩。

第八十六条　【从债的转移】债务人转移义务的，新债务人应当承担与主债务有关的从债务，但该从债务专属于原债务人自身的除外。

第八十七条　【合同转让形式要件】法律、行政法规规定转让权利或者转移义务应当办理批准、登记等手续的，依照其规定。

第八十八条　【概括转让】当事人一方经对方同意，可以将自己在合同中的权利和义务一并转让给第三人。

第八十九条　【概括转让的效力】权利和义务一并转让的，适用本法第七十九条、第八十一条至第八十三条、第八十五条至第八十七条的规定。

第九十条　【新当事人的概括承受】当事人订立合同后合并的，由合并后的法人或者其他组织行使合同权利，履行合同义务。当事人订立合同后分立的，除债权人和债务人另有约定的以外，由分立的法人或者其他组织对合同的权利和义务享有连带债权，承担连带债务。

第六章　合同的权利义务终止

第九十一条　【合同消灭的原因】有下列情形之一的，合同的权利义务终止：

（一）债务已经按照约定履行；

（二）合同解除；

（三）债务相互抵销；

（四）债务人依法将标的物提存；

（五）债权人免除债务；

（六）债权债务同归于一人；

（七）法律规定或者当事人约定终止的其他情形。

第九十二条　【合同终止后的义务】合同的权利义务终止后，当事人应当遵循诚实信用原则，根据交易习惯履行通知、协助、保密等义务。

第九十三条　【合同约定解除】当事人协商一致，可以解除合同。

当事人可以约定一方解除合同的条件。解除合同的条件成就时，解除权人可以解除合同。

第九十四条　【合同的法定解除】有下列情形之一的，当事人可以解除合同：

（一）因不可抗力致使不能实现合同目的；

（二）在履行期限届满之前，当事人一方明确表示或者以自己的行为表明不履行主要债务；

（三）当事人一方迟延履行主要债务，经催告后在合理期限内仍未履行；

（四）当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的；

（五）法律规定的其他情形。

第九十五条　【解除权消灭】法律规定或者当事人约定解除权行使期限，期限届满当事人不行使的，该权利消灭。

法律没有规定或者当事人没有约定解除权行使期限，经对方催告后在合理期限内不行使的，该权利消灭。

第九十六条　【解除权的行使】当事人一方依照本法第九十三条第二款、第九十四条的规定主张解除合同的，应当通知对方。合同自通知到达对方时解除。对方有异议的，可以请求人民法院或者仲裁机构确认解除合同的效力。

法律、行政法规规定解除合同应当办理批准、登记等手续的，依照其规定。

第九十七条　【解除的效力】合同解除后，尚未履行的，终止履行；已经履行的，根据履行情况和合同性质，当事人可以要求恢复原状、采取其他补救措施、并有权要求赔偿损失。

第九十八条　【结算、清理条款效力】合同的权利义务终止，不影响合同中结算和清理条款的效力。

第九十九条　【债务的抵销及行使】当事人互负到期债务，该债务的标的物种类、品质相同的，任何一方可以将自己的债务与对方的债务抵销，但依照法律规定或者按照合同性质不得抵销的除外。

当事人主张抵销的，应当通知对方。通知自到达对方时生效。抵销不得附条件或者附期限。

第一百条　【债务的约定抵销】当事人互负债务，标的物种类、品质不相同的，经双方协商一致，也可以抵销。

第一百零一条　【提存的要件】有下列情形之一，难以履行债务的，债务人可以将标的物提存：

（一）债权人无正当理由拒绝受领；

（二）债权人下落不明；

（三）债权人死亡未确定继承人或者丧失民事行为能力未确定监护人；

（四）法律规定的其他情形。

标的物不适于提存或者提存费用过高的，债务人依法可以拍卖或者变卖标的物，提存所得的价款。

第一百零二条　【提存后的通知】标的物提存后，除债权人下落不明的以外，债务人应当及时通知债权人或者债权人的继承人、监护人。

第一百零三条　【提存的效力】标的物提存后，毁损、灭失的风险由债权人承担。提存期间，标的物的孳息归债权人所有。提存费用由债权人负担。

第一百零四条　【提存物的受领及受领权消灭】债权人可以随时领取提存物，但债权人对债务人负有到期债务的，在债权人未履行债务或者提供担保之前，提存部门根据债务人的要求应当拒绝其领取提存物。

债权人领取提存物的权利，自提存之日起五年内不行使而消灭，提存物扣除提存费用后归国家所有。

第一百零五条　【免除的效力】债权人免除债务人部分或者全部债务的，合同的权利义务部分或者全部终止。

第一百零六条　【混同的效力】债权和债务同归于一人的，合同的权利义务终止，但涉及第三人利益的除外。

第七章　违约责任

第一百零七条　【违约责任】当事人一方不履行合同义务或者履行合同义务不符合约定的，应当承担继续履行、采取补救措施或者赔偿损失等违约责任。

第一百零八条　【拒绝履行】当事人一方明确表示或者以自己的行为表明不履行合同义务的，对方可以在履行期限届满之前要求其承担违约责任。

第一百零九条　【金钱债务的违约责任】当事人一方未支付价款或者报酬的，对方可以要求其支付价款或者报酬。

第一百一十条　【非金钱债务的违约责任】当事人一方不履行非金钱债务或者履行非金钱债务不符合约定的，对方可以要求履行，但有下列情形之一的除外：

（一）法律上或者事实上不能履行；

（二）债务的标的不适于强制履行或者履行费用过高；

（三）债权人在合理期限内未要求履行。

第一百一十一条　【瑕疵履行】质量不符合约定的，应当按照当事人的约定承担违约责任。对违约责任没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，受损害方根据标的的性质以及损失的大小，可以合理选择要求对方承担修理、更换、重作、退货、减少价款或者报酬等违约责任。

第一百一十二条　【履行、补救措施后的损失赔偿】当事人一方不履行合同义务或者履行合同义务不符合约定的，在履行义务或者采取补救措施后，对方还有其他损失的，应当赔偿损失。

第一百一十三条　【损害赔偿的范围】当事人一方不履行合同义务或者履行合同义务不符合约定，给对方造成损失的，损失赔偿额应当相当于因违约所造成的损失，包括合同履行后可以获得的利益，但不得超过违反合同一方订立合同时预见到或者应当预见到的因违反合同可能造成的损失。

经营者对消费者提供商品或者服务有欺诈行为的，依照《中华人民共和国消费者权益保护法》的规定承担损害赔偿责任。

第一百一十四条　【违约金】当事人可以约定一方违约时应当根据违约情况向对方支付一定数额的违约金，也可以约定因违约产生的损失赔偿额的计算方法。

约定的违约金低于造成的损失的，当事人可以请求人民法院或者仲裁机构予以增加；约定的违约金过分高于造成的损失的，当事人可以请求人民法院或者仲裁机构予以适当减少。

当事人就迟延履行约定违约金的，违约方支付违约金后，还应当履行债务。

第一百一十五条　【定金】当事人可以依照《中华人民共和国担保法》约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

第一百一十六条　【违约金与定金的选择】当事人既约定违约金，又约定定金的，一方违约时，对方可以选择适用违约金或者定金条款。

第一百一十七条　【不可抗力】因不可抗力不能履行合同的，根据不可抗力的影响，部分或者全部免除责任，但法律另有规定的除外。当事人迟延履行后发生不可抗力的，不能免除责任。

本法所称不可抗力，是指不能预见、不能避免并不能克服的客观情况。

第一百一十八条　【不可抗力的通知与证明】当事人一方因不可抗力不能履行合同的，应当及时通知对方，以减轻可能给对方造成的损失，并应当在合理期限内提供证明。

第一百一十九条　【减损规则】当事人一方违约后，对方应当采取适当措施防止损失的扩大；没有采取适当措施致使损失扩大的，不得就扩大的损失要求赔偿。

当事人因防止损失扩大而支出的合理费用，由违约方承担。

第一百二十条　【双方违约的责任】当事人双方都违反合同的，应当各自承担相应的责任。

第一百二十一条　【因第三人的过错造成的违约】当事人一方因第三人的原因造成违约的，应当向对方承担违约责任。当事人一方和第三人之间的纠纷，依照法律规定或者按照约定解决。

第一百二十二条　【责任竞合】因当事人一方的违约行为，侵害对方人身、财产权益的，受损害方有权选择依照本法要求其承担违约责任或者依照其他法律要求其承担侵权责任。

第八章　其他规定

第一百二十三条　【其他规定的适用】其他法律对合同另有规定的，依照其规定。

第一百二十四条　【无名合同】本法分则或者其他法律没有明文规定的合同，适用本法总则的规定，并可以参照本法分则或者其他法律最相类似的规定。

第一百二十五条　【合同解释】当事人对合同条款的理解有争议的，应当按照合同所使用的词句、合同的有关条款、合同的目的、交易习惯以及诚实信用原则，确定该条款的真实意思。

合同文本采用两种以上文字订立并约定具有同等效力的，对各文本使用的词句推定具有相同含义。各文本使用的词句不一致的，应当根据合同的目的予以解释。

第一百二十六条　【涉外合同】涉外合同的当事人可以选择处理合同争议所适用的法律，但法律另有规定的除外。涉外合同的当事人没有选择的，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。

第一百二十七条　【合同监督机关】工商行政管理部门和其他有关行政主管部门在各自的职权范围内，依照法律、行政法规的规定，对利用合同危害国家利益、社会公共利益的违法行为，负责监督处理；构成犯罪的，依法追究刑事责任。

第一百二十八条　【合同争议的解决】当事人可以通过和解或者调解解决合同争议。

当事人不愿和解、调解或者和解、调解不成的，可以根据仲裁协议向仲裁机构申请仲裁。涉外合同的当事人可以根据仲裁协议向中国仲裁机构或者其他仲裁机构申请仲裁。当事人没有订立仲裁协议或者仲裁协议无效的，可以向人民法院起诉。当事人应当履行发生法律效力的判决、仲裁裁决、调解书；拒不履行的，对方可以请求人民法院执行。

第一百二十九条　【特殊时效】因国际货物买卖合同和技术进出口合同争议提起诉讼或者申请仲裁的期限为四年，自当事人知道或者应当知道其权利受到侵害之日起计算。因其他合同争议提起诉讼或者申请仲裁的期限，依照有关法律的规定。

分则

第九章　买卖合同

第一百三十条　【定义】买卖合同是出卖人转移标的物的所有权于买受人，买受人支付价款的合同。

第一百三十一条　【买卖合同的内容】买卖合同的内容除依照本法第十二条的规定以外，还可以包括包装方式、检验标准和方法、结算方式、合同使用的文字及其效力等条款。

第一百三十二条　【标的物】出卖的标的物，应当属于出卖人所有或者出卖人有权处分。

法律、行政法规禁止或者限制转让的标的物，依照其规定。

第一百三十三条　【标的物所有权转移时间】标的物的所有权自标的物交付时起转移，但法律另有规定或者当事人另有约定的除外。

第一百三十四条　【标的物所有权转移的约定】当事人可以在买卖合同中约定买受人未履行支付价款或者其他义务的，标的物的所有权属于出卖人。

第一百三十五条　【出卖人的基本义务】出卖人应当履行向买受人交付标的物或者交付提取标的物的单证，并转移标的物所有权的义务。

第一百三十六条　【有关单证和资料的交付】出卖人应当按照约定或者交易习惯向买受人交付提取标的物单证以外的有关单证和资料。

第一百三十七条　【知识产权归属】出卖具有知识产权的计算机软件等标的物的，除法律另有规定或者当事人另有约定的以外，该标的物的知识产权不属于买受人。

第一百三十八条　【交付的时间】出卖人应当按照约定的期限交付标的物。约定交付期间的，出卖人可以在该交付期间内的任何时间交付。

第一百三十九条　【交付时间的推定】当事人没有约定标的物的交付期限或者约定不明确的，适用本法第六十一条、第六十二条第四项的规定。

第一百四十条　【占有标的物与交付时间】标的物在订立合同之前已为买受人占有的，合同生效的时间为交付时间。

第一百四十一条　【交付的地点】出卖人应当按照约定的地点交付标的物。

当事人没有约定交付地点或者约定不明确，依照本法第六十一条的规定仍不能确定的，适用下列规定：

（一）标的物需要运输的，出卖人应当将标的物交付给第一承运人以运交给买受人；

（二）标的物不需要运输，出卖人和买受人订立合同时知道标的物在某一地点的，出卖人应当在该地点交付标的物；不知道标的物在某一地点的，应当在出卖人订立合同时的营业地交付标的物。

第一百四十二条　【标的物的风险负担】标的物毁损、灭失的风险，在标的物交付之前由出卖人承担，交付之后由买受人承担，但法律另有规定或者当事人另有约定的除外。

第一百四十三条　【买受人违约交付的风险承担】因买受人的原因致使标的物不能按照约定的期限交付的，买受人应当自违反约定之日起承担标的物毁损、灭失的风险。

第一百四十四条　【在途标的物的风险承担】出卖人出卖交由承运人运输的在途标的物，除当事人另有约定的以外，毁损、灭失的风险自合同成立时起由买受人承担。

第一百四十五条　【标的物交付给第一承运人后的风险承担】当事人没有约定交付地点或者约定不明确，依照本法第一百四十一条第二款第一项的规定标的物需要运输的，出卖人将标的物交付给第一承运人后，标的物毁损、灭失的风险由买受人承担。

第一百四十六条　【买受人不履行接收标的物义务的风险承担】出卖人按照约定或者依照本法第一百四十一条第二款第二项的规定将标的物置于交付地点，买受人违反约定没有收取的，标的物毁损、灭失的风险自违反约定之日起由买受人承担。

第一百四十七条　【未交付单证、资料与风险承担】出卖人按照约定未交付有关标的物的单证和资料的，不影响标的物毁损、灭失风险的转移。

第一百四十八条　【标的物的瑕疵担保责任】因标的物质量不符合质量要求，致使不能实现合同目的的，买受人可以拒绝接受标的物或者解除合同。买受人拒绝接受标的物或者解除合同的，标的物毁损、灭失的风险由出卖人承担。

第一百四十九条　【风险承担不影响瑕疵担保】标的物毁损、灭失的风险由买受人承担的，不影响因出卖人履行债务不符合约定，买受人要求其承担违约责任的权利。

第一百五十条　【标的物权利瑕疵担保】出卖人就交付的标的物，负有保证第三人不得向买受人主张任何权利的义务，但法律另有规定的除外。

第一百五十一条　【权利瑕疵担保责任和免除】买受人订立合同时知道或者应当知道第三人对买卖的标的物享有权利的，出卖人不承担本法第一百五十条规定的义务。

第一百五十二条　【中止支付价款权】买受人有确切证据证明第三人可能就标的物主张权利的，可以中止支付相应的价款，但出卖人提供适当担保的除外。

第一百五十三条　【标的物的瑕疵担保】出卖人应当按照约定的质量要求交付标的物。出卖人提供有关标的物质量说明的，交付的标的物应当符合该说明的质量要求。

第一百五十四条　【法定质量担保】当事人对标的物的质量要求没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，适用本法第六十二条第一项的规定。

第一百五十五条　【承受人权利】出卖人交付的标的物不符合质量要求的，买受人可以依照本法第一百一十一条的规定要求承担违约责任。

第一百五十六条　【标的物包装方式】出卖人应当按照约定的包装方式交付标的物。对包装方式没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当按照通用的方式包装，没有通用方式的，应当采取足以保护标的物的包装方式。

第一百五十七条　【买受人的检验义务】买受人收到标的物时应当在约定的检验期间内检验。没有约定检验期间的，应当及时检验。

第一百五十八条　【买受人的通知义务及免除】当事人约定检验期间的，买受人应当在检验期间内将标的物的数量或者质量不符合约定的情形通知出卖人。买受人怠于通知的，视为标的物的数量或者质量符合约定。

当事人没有约定检验期间的，买受人应当在发现或者应当发现标的物的数量或者质量不符合约定的合理期间内通知出卖人。买受人在合理期间内未通知或者自标的物收到之日起两年内未通知出卖人的，视为标的物的数量或者质量符合约定，但对标的物有质量保证期的，适用质量保证期，不适用该两年的规定。

出卖人知道或者应当知道提供的标的物不符合约定的，买受人不受前两款规定的通知时间的限制。

第一百五十九条　【买受人的基本义务】买受人应当按照约定的数额支付价款。对价款没有约定或者约定不明确的，适用本法第六十一条、第六十二条第二项的规定。

第一百六十条　【支付价款的地点】买受人应当按照约定的地点支付价款。对支付地点没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，买受人应当在出卖人的营业地支付，但约定支付价款以交付标的物或者交付提取标的物单证为条件的，在交付标的物或者交付提取标的物单证的所在地支付。

第一百六十一条　【支付价款的时间】买受人应当按照约定的时间支付价款。对支付时间没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，买受人应当在收到标的物或者提取标的物单证的同时支付。

第一百六十二条　【多交标的物的处理】出卖人多交标的物的，买受人可以接收或者拒绝接收多交的部分。买受人接收多交部分的，按照合同的价格支付价款；买受人拒绝接收多交部分的，应当及时通知出卖人。

第一百六十三条　【标的物孳息的归属】标的物在交付之前产生的孳息，归出卖人所有，交付之后产生的孳息，归买受人所有。

第一百六十四条　【解除合同与主物的关系】因标的物的主物不符合约定而解除合同的，解除合同的效力及于从物。因标的物的从物不符合约定被解除的，解除的效力不及于主物。

第一百六十五条　【数物并存的合同解除】标的物为数物，其中一物不符合约定的，买受人可以就该物解除，但该物与他物分离使标的物的价值显受损害的，当事人可以就数物解除合同。

第一百六十六条　【分批交付标的物的合同解除】出卖人分批交付标的物的，出卖人对其中一批标的物不交付或者交付不符合约定，致使该批标的物不能实现合同目的的，买受人可以就该批标的物解除。

出卖人不交付其中一批标的物或者交付不符合约定，致使今后其他各批标的物的交付不能实现合同目的的，买受人可以就该批以及今后其他各批标的物解除。

买受人如果就其中一批标的物解除，该批标的物与其他各批标的物相互依存的，可以就已经交付和未交付的各批标的物解除。

第一百六十七条　【分期付款买卖中的合同解除】分期付款的买受人未支付到期价款的金额达到全部价款的五分之一的，出卖人可以要求买受人支付全部价款或者解除合同。

出卖人解除合同的，可以向买受人要求支付该标的物的使用费。

第一百六十八条　【样品买卖】凭样品买卖的当事人应当封存样品，并可以对样品质量予以说明。出卖人交付的标的物应当与样品及其说明的质量相同。

第一百六十九条　【样品买卖特殊责任】凭样品买卖的买受人不知道样品有隐蔽瑕疵的，即使交付的标的物与样品相同，出卖人交付的标的物的质量仍然应当符合同种物的通常标准。

第一百七十条　【试用买卖的试用期间】试用买卖的当事人可以约定标的物的试用期间。对试用期间没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，由出卖人确定。

第一百七十一条　【买受人对标的物的认可】试用买卖的买受人在试用期内可以购买标的物，也可以拒绝购买。试用期间届满，买受人对是否购买标的物未作表示的，视为购买。

第一百七十二条　【招标投标买卖】招标投标买卖的当事人的权利和义务以及招标投标程序等，依照有关法律、行政法规的规定。

第一百七十三条　【拍卖】拍卖的当事人的权利和义务以及拍卖程序等，依照有关法律、行政法规的规定。

第一百七十四条　【买卖合同准用于有偿合同】法律对其他有偿合同有规定的，依照其规定；没有规定的，参照买卖合同的有关规定。

第一百七十五条　【互易合同】当事人约定易货交易，转移标的物的所有权的，参照买卖合同的有关规定。

第十章　供用电、水、气、热力合同

第一百七十六条　【定义】供用电合同是供电人向用电人供电，用电人支付电费的合同。

第一百七十七条　【主要条款】供用电合同的内容包括供电的方式、质量、时间，用电容量、地址、性质，计量方式，电价、电费的结算方式，供用电设施的维护责任等条款。

第一百七十八条　【履行地】供用电合同的履行地点，按照当事人约定；当事人没有约定或者约定不明确的，供电设施的产权分界处为履行地点。

第一百七十九条　【安全供电义务及责任】供电人应当按照国家规定的供电质量标准和约定安全供电。供电人未按照国家规定的供电质量标准和约定安全供电，造成用电人损失的，应当承担损害赔偿责任。

第一百八十条　【中断供电的通知义务】供电人因供电设施计划检修、临时检修、依法限电或者用电人违法用电等原因，需要中断供电时，应当按照国家有关规定事先通知用电人。未事先通知用电人中断供电，造成用电人损失的，应当承担损害赔偿责任。

第一百八十一条　【不可抗力断电的抢修义务】因自然灾害等原因断电，供电人应当按照国家有关规定及时抢修。未及时抢修，造成用电人损失的，应当承担损害赔偿责任。

第一百八十二条　【用电人交付电费义务】用电人应当按照国家有关规定和当事人的约定及时交付电费。用电人逾期不交付电费的，应当按照约定支付违约金。经催告用电人在合理期限内仍不交付电费和违约金的，供电人可以按照国家规定的程序中止供电。

第一百八十三条　【安全用电义务】用电人应当按照国家有关规定和当事人的约定安全用电。用电人未按照国家有关规定和当事人的约定安全用电，造成供电人损失的，应当承担损害赔偿责任。

第一百八十四条　【供用水、气、热力合同】供用水、供用气、供用热力合同，参照供用电合同的有关规定。

第十一章　赠与合同

第一百八十五条　【定义】赠与合同是赠与人将自己的财产无偿给予受赠人，受赠人表示接受赠与的合同。

第一百八十六条　【赠与合同的任意撤销与限制】赠与人在赠与财产的权利转移之前可以撤销赠与。

具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，不适用前款规定。

第一百八十七条　【赠与的登记等手续】赠与的财产依法需要办理登记等手续的，应当办理有关手续。

第一百八十八条　【受赠人的交付请求权】具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，赠与人不交付赠与的财产的，受赠人可以要求交付。

第一百八十九条　【赠与人责任】因赠与人故意或者重大过失致使赠与的财产毁损、灭失的，赠与人应当承担损害赔偿责任。

第一百九十条　【附义务赠与】赠与可以附义务。

赠与附义务的，受赠人应当按照约定履行义务。

第一百九十一条　【赠与的瑕疵担保责任】赠与的财产有瑕疵的，赠与人不承担责任。附义务的赠与，赠与的财产有瑕疵的，赠与人在附义务的限度内承担与出卖人相同的责任。

赠与人故意不告知瑕疵或者保证无瑕疵，造成受赠人损失的，应当承担损害赔偿责任。

第一百九十二条　【赠与的法定撤销】受赠人有下列情形之一的，赠与人可以撤销赠与：

（一）严重侵害赠与人或者赠与人的近亲属；

（二）对赠与人有扶养义务而不履行；

（三）不履行赠与合同约定的义务。

赠与人的撤销权，自知道或者应当知道撤销原因之日起一年内行使。

第一百九十三条　【赠与人的继承人或法定代理人的撤销权】因受赠人的违法行为致使赠与人死亡或者丧失民事行为能力的，赠与人的继承人或者法定代理人可以撤销赠与。

赠与人的继承人或者法定代理人的撤销权，自知道或者应当知道撤销原因之日起六个月内行使。

第一百九十四条　【赠与财产的返还】撤销权人撤销赠与的，可以向受赠人要求返还赠与的财产。

第一百九十五条　【赠与义务的免除】赠与人的经济状况显著恶化，严重影响其生产经营或者家庭生活的，可以不再履行赠与义务。

第十二章　借款合同

第一百九十六条　【定义】借款合同是借款人向贷款人借款，到期返还借款并支付利息的合同。

第一百九十七条　【合同形式及主要条款】借款合同采用书面形式，但自然人之间借款另有约定的除外。

借款合同的内容包括借款种类、币种、用途、数额、利率、期限和还款方式等条款。

第一百九十八条　【合同的担保】订立借款合同，贷款人可以要求借款人提供担保。担保依照《中华人民共和国担保法》的规定。

第一百九十九条　【借款人提供其真实情况的义务】订立借款合同，借款人应当按照贷款人的要求提供与借款有关的业务活动和财务状况的真实情况。

第二百条　【利息的预先扣除】借款的利息不得预先在本金中扣除。利息预先在本金中扣除的，应当按照实际借款数额返还借款并计算利息。

第二百零一条　【贷款违约责任】贷款人未按照约定的日期、数额提供借款，造成借款人损失的，应当赔偿损失。

借款人未按照约定的日期、数额收取借款的，应当按照约定的日期、数额支付利息。

第二百零二条　【贷款人的检查、监督权】贷款人按照约定可以检查、监督借款的使用情况。借款人应当按照约定向贷款人定期提供有关财务会计报表等资料。

第二百零三条　【借款使用的限制】借款人未按照约定的借款用途使用借款的，贷款人可以停止发放借款、提前收回借款或者解除合同。

第二百零四条　【利率】办理贷款业务的金融机构贷款的利率，应当按照中国人民银行规定的贷款利率的上下限确定。

第二百零五条　【利息的支付】借款人应当按照约定的期限支付利息。对支付利息的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定，借款期间不满一年的，应当在返还借款时一并支付；借款期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在返还借款时一并支付。

第二百零六条　【借款的返还期限】借款人应当按照约定的期限返还借款。对借款期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，借款人可以随时返还；贷款人可以催告借款人在合理期限内返还。

第二百零七条　【逾期利息】借款人未按照约定的期限返还借款的，应当按照约定或者国家有关规定支付逾期利息。

第二百零八条　【提前偿还借款的利息计算】借款人提前偿还借款的，除当事人另有约定的以外，应当按照实际借款的期间计算利息。

第二百零九条　【借款展期】借款人可以在还款期限届满之前向贷款人申请展期。贷款人同意的，可以展期。

第二百一十条　【自然人间借款合同的生效时间】自然人之间的借款合同，自贷款人提供借款时生效。

第二百一十一条　【自然人间借款合同的利率】自然人之间的借款合同对支付利息没有约定或者约定不明确的，视为不支付利息。自然人之间的借款合同约定支付利息的，借款的利率不得违反国家有关限制借款利率的规定。

第十三章　租赁合同

第二百一十二条　【定义】租赁合同是出租人将租赁物交付承租人使用、收益，承租人支付租金的合同。

第二百一十三条　【合同的主要条款】租赁合同的内容包括租赁物的名称、数量、用途、租赁期限、租金及其支付期限和方式、租赁物维修等条款。

第二百一十四条　【租赁期限】租赁期限不得超过二十年。超过二十年的，超过部分无效。

租赁期间届满，当事人可以续订租赁合同，但约定的租赁期限自续订之日起不得超过二十年。

第二百一十五条　【租赁合同的形式】租赁期限六个月以上的，应当采用书面形式。当事人未采用书面形式的，视为不定期租赁。

第二百一十六条　【出租人基本义务】出租人应当按照约定将租赁物交付承租人，并在租赁期间保持租赁物符合约定的用途。

第二百一十七条　【承租人基本义务】承租人应当按照约定的方法使用租赁物。对租赁物的使用方法没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当按照租赁物的性质使用。

第二百一十八条　【正当使用租赁物的责任】承租人按照约定的方法或者租赁物的性质使用租赁物，致使租赁物受到损耗的，不承担损害赔偿责任。

第二百一十九条　【未正当使用租赁物的责任】承租人未按照约定的方法或者租赁物的性质使用租赁物，致使租赁物受到损失的，出租人可以解除合同并要求赔偿损失。

第二百二十条　【租赁物的维修】出租人应当履行租赁物的维修义务，但当事人另有约定的除外。

第二百二十一条　【出租人履行维修义务】承租人在租赁物需要维修时可以要求出租人在合理期限内维修。出租人未履行维修义务的，承租人可以自行维修，维修费用由出租人负担。因维修租赁物影响承租人使用的，应当相应减少租金或者延长租期。

第二百二十二条　【租凭物的保管】承租人应当妥善保管租赁物，因保管不善造成租赁物毁损、灭失的，应当承担损害赔偿责任。

第二百二十三条　【租赁物的改善】承租人经出租人同意，可以对租赁物进行改善或者增设他物。

承租人未经出租人同意，对租赁物进行改善或者增设他物的，出租人可以要求承租人恢复原状或者赔偿损失。

第二百二十四条　【转租】承租人经出租人同意，可以将租赁物转租给第三人。承租人转租的，承租人与出租人之间的租赁合同继续有效，第三人对租赁物造成损失的，承租人应当赔偿损失。

承租人未经出租人同意转租的，出租人可以解除合同。

第二百二十五条　【租赁物的收益】在租赁期间因占有、使用租赁物获得的收益，归承租人所有，但当事人另有约定的除外。

第二百二十六条　【支付租金的期限】承租人应当按照约定的期限支付租金。对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定，租赁期间不满一年的，应当在租赁期间届满时支付；租赁期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在租赁期间届满时支付。

第二百二十七条　【租金的未支付、迟延支付和逾期不支付】承租人无正当理由未支付或者迟延支付租金的，出租人可以要求承租人在合理期限内支付。承租人逾期不支付的，出租人可以解除合同。

第二百二十八条　【租赁物的权利瑕疵】因第三人主张权利，致使承租人不能对租赁物使用、收益的，承租人可以要求减少租金或者不支付租金。

第三人主张权利的，承租人应当及时通知出租人。

第二百二十九条　【所有权变动后的合同效力】租赁物在租赁期间发生所有权变动的，不影响租赁合同的效力。

第二百三十条　【优先购买权】出租人出卖租赁房屋的，应当在出卖之前的合理期限内通知承租人，承租人享有以同等条件优先购买的权利。

第二百三十一条　【租赁物的灭失】因不可归责于承租人的事由，致使租赁物部分或者全部毁损、灭失的，承租人可以要求减少租金或者不支付租金；因租赁物部分或者全部毁损、灭失，致使不能实现合同目的的，承租人可以解除合同。

第二百三十二条　【租期不明的处理】当事人对租赁期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，视为不定期租赁。当事人可以随时解除合同，但出租人解除合同应当在合理期限之前通知承租人。

第二百三十三条　【租赁物的瑕疵担保】租赁物危及承租人的安全或者健康的，即使承租人订立合同时明知该租赁物质量不合格，承租人仍然可以随时解除合同。

第二百三十四条　【共同居住人的居住权】承租人在房屋租赁期间死亡的，与其生前共同居住的人可以按照原租赁合同租赁该房屋。

第二百三十五条　【租赁物的返还】租赁期间届满，承租人应当返还租赁物。返还的租赁物应当符合按照约定或者租赁物的性质使用后的状态。

第二百三十六条　【续租】租赁期间届满，承租人继续使用租赁物，出租人没有提出异议的，原租赁合同继续有效，但租赁期限为不定期。

第十四章　融资租赁合同

第二百三十七条　【定义】融资租赁合同是出租人根据承租人对出卖人、租赁物的选择，向出卖人购买租赁物，提供给承租人使用，承租人支付租金的合同。

第二百三十八条　【合同的主要条款及形式】融资租赁合同的内容包括租赁物名称、数量、规格、技术性能、检验方法、租赁期限、租金构成及其支付期限和方式、币种、租赁期间届满租赁物的归属等条款。

融资租赁合同应当采用书面形式。

第二百三十九条　【租赁物的购买】出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，出卖人应当按照约定向承租人交付标的物，承租人享有与受领标的物有关的买受人的权利。

第二百四十条　【索赔权】出租人、出卖人、承租人可以约定，出卖人不履行买卖合同义务的，由承租人行使索赔的权利。承租人行使索赔权利的，出租人应当协助。

第二百四十一条　【买卖合同的变更】出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，未经承租人同意，出租人不得变更与承租人有关的合同内容。

第二百四十二条　【租赁物所有权】出租人享有租赁物的所有权。承租人破产的，租赁物不属于破产财产。

第二百四十三条　【租金的确定】融资租赁合同的租金，除当事人另有约定的以外，应当根据购买租赁物的大部分或者全部成本以及出租人的合理利润确定。

第二百四十四条　【租赁物的瑕疵担保责任】租赁物不符合约定或者不符合使用目的的，出租人不承担责任，但承租人依赖出租人的技能确定租赁物或者出租人干预选择租赁物的除外。

第二百四十五条　【租赁物的占有和使用】出租人应当保证承租人对租赁物的占有和使用。

第二百四十六条　【租赁物造成的损害责任】承租人占有租赁物期间，租赁物造成第三人的人身伤害或者财产损害的，出租人不承担责任。

第二百四十七条　【租赁物的保管、使用、维修】承租人应当妥善保管、使用租赁物。

承租人应当履行占有租赁物期间的维修义务。

第二百四十八条　【承租人拒付租金责任】承租人应当按照约定支付租金。承租人经催告后在合理期限内仍不支付租金的，出租人可以要求支付全部租金；也可以解除合同，收回租赁物。

第二百四十九条　【租赁物价值的部分返还权】当事人约定租赁期间届满租赁物归承租人所有，承租人已经支付大部分租金，但无力支付剩余租金，出租人因此解除合同收回租赁物的，收回的租赁物的价值超过承租人欠付的租金以及其他费用的，承租人可以要求部分返还。

第二百五十条　【租赁期满租赁物归属】出租人和承租人可以约定租赁期间届满租赁物的归属。对租赁物的归属没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，租赁物的所有权归出租人。

第十五章　承揽合同

第二百五十一条　【定义】承揽合同是承揽人按照定作人的要求完成工作，交付工作成果，定作人给付报酬的合同。

承揽包括加工、定作、修理、复制、测试、检验等工作。

第二百五十二条　【合同的主要条款】承揽合同的内容包括承揽的标的、数量、质量、报酬、承揽方式、材料的提供、履行期限、验收标准和方法等条款。

第二百五十三条　【承揽工作的完成】承揽人应当以自己的设备、技术和劳力，完成主要工作，但当事人另有约定的除外。

承揽人将其承揽的主要工作交由第三人完成的，应当就该第三人完成的工作成果向定作人负责；未经定作人同意的，定作人也可以解除合同。

第二百五十四条　【承揽人对辅助性工作的责任】承揽人可以将其承揽的辅助工作交由第三人完成。承揽人将其承揽的辅助工作交由第三人完成的，应当就该第三人完成的工作成果向定作人负责。

第二百五十五条　【承揽人提供材料的义务】承揽人提供材料的，承揽人应当按照约定选用材料，并接受定作人检验。

第二百五十六条　【定作人提供材料及双方义务】定作人提供材料的，定作人应当按照约定提供材料。承揽人对定作人提供的材料，应当及时检验，发现不符合约定时，应当及时通知定作人更换、补齐或者采取其他补救措施。

承揽人不得擅自更换定作人提供的材料，不得更换不需要修理的零部件。

第二百五十七条　【承揽人的通知义务】承揽人发现定作人提供的图纸或者技术要求不合理的，应当及时通知定作人。因定作人怠于答复等原因造成承揽人损失的，应当赔偿损失。

第二百五十八条　【中途变更工作要求的责任】定作人中途变更承揽工作的要求，造成承揽人损失的，应当赔偿损失。

第二百五十九条　【定作人的协助义务】承揽工作需要定作人协助的，定作人有协助的义务。

定作人不履行协助义务致使承揽工作不能完成的，承揽人可以催告定作人在合理期限内履行义务，并可以顺延履行期限；定作人逾期不履行的，承揽人可以解除合同。

第二百六十条　【承揽人接受监督检查的义务】承揽人在工作期间，应当接受定作人必要的监督检验。定作人不得因监督检验妨碍承揽人的正常工作。

第二百六十一条　【验收质量保证】承揽人完成工作的，应当向定作人交付工作成果，并提交必要的技术资料和有关质量证明。定作人应当验收该工作成果。

第二百六十二条　【质量不合约定的责任】承揽人交付的工作成果不符合质量要求的，定作人可以要求承揽人承担修理、重作、减少报酬、赔偿损失等违约责任。

第二百六十三条　【支付报酬期限】定作人应当按照约定的期限支付报酬。对支付报酬的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，定作人应当在承揽人交付工作成果时支付；工作成果部分交付的，定作人应当相应支付。

第二百六十四条　【承揽人的留置权】定作人未向承揽人支付报酬或者材料费等价款的，承揽人对完成的工作成果享有留置权，但当事人另有约定的除外。

第二百六十五条　【材料的保管】承揽人应当妥善保管定作人提供的材料以及完成的工作成果，因保管不善造成毁损、灭失的，应当承担损害赔偿责任。

第二百六十六条　【承揽人的保密义务】承揽人应当按照定作人的要求保守秘密，未经定作人许可，不得留存复制品或者技术资料。

第二百六十七条　【共同承揽】共同承揽人对定作人承担连带责任，但当事人另有约定的除外。

第二百六十八条　【定作人的解除权】定作人可以随时解除承揽合同，造成承揽人损失的，应当赔偿损失。

第十六章　建设工程合同

第二百六十九条　【定义】建设工程合同是承包人进行工程建设，发包人支付价款的合同。

建设工程合同包括工程勘察、设计、施工合同。

第二百七十条　【合同形式】建设工程合同应当采用书面形式。

第二百七十一条　【招标投标】建设工程的招标投标活动，应当依照有关法律的规定公开、公平、公正进行。

第二百七十二条　【总包与分包】发包人可以与总承包人订立建设工程合同，也可以分别与勘察人、设计人、施工人订立勘察、设计、施工承包合同。发包人不得将应当由一个承包人完成的建设工程肢解成若干部分发包给几个承包人。

总承包人或者勘察、设计、施工承包人经发包人同意，可以将自己承包的部分工作交由第三人完成。第三人就其完成的工作成果与总承包人或者勘察、设计、施工承包人向发包人承担连带责任。承包人不得将其承包的全部建设工程转包给第三人或者将其承包的全部建设工程肢解以后以分包的名义分别转包给第三人。

禁止承包人将工程分包给不具备相应资质条件的单位。禁止分包单位将其承包的工程再分包。建设工程主体结构的施工必须由承包人自行完成。

第二百七十三条　【重大建设工程合同的订立】国家重大建设工程合同，应当按照国家规定的程序和国家批准的投资计划、可行性研究报告等文件订立。

第二百七十四条　【勘察、设计合同主要内容】勘察、设计合同的内容包括提交有关基础资料和文件（包括概预算）的期限、质量要求、费用以及其他协作条件等条款。

第二百七十五条　【施工合同主要条款】施工合同的内容包括工程范围、建设工期、中间交工工程的开工和竣工时间、工程质量、工程造价、技术资料交付时间、材料和设备供应责任、拨款和结算、竣工验收、质量保修范围和质量保证期、双方相互协作等条款。

第二百七十六条　【建设工程监理】建设工程实行监理的，发包人应当与监理人采用书面形式订立委托监理合同。发包人与监理人的权利和义务以及法律责任，应当依照本法委托合同以及其他有关法律、行政法规的规定。

第二百七十七条　【发包人检查权】发包人在不妨碍承包人正常作业的情况下，可以随时对作业进度、质量进行检查。

第二百七十八条　【隐蔽工程的验收】隐蔽工程在隐蔽以前，承包人应当通知发包人检查。发包人没有及时检查的，承包人可以顺延工程日期，并有权要求赔偿停工、窝工等损失。

第二百七十九条　【竣工验收】建设工程竣工后，发包人应当根据施工图纸及说明书、国家颁发的施工验收规范和质量检验标准及时进行验收。验收合格的，发包人应当按照约定支付价款，并接收该建设工程。

建设工程竣工经验收合格后，方可交付使用；未经验收或者验收不合格的，不得交付使用。

第二百八十条　【勘察、设计人质量责任】勘察、设计的质量不符合要求或者未按照期限提交勘察、设计文件拖延工期，造成发包人损失的，勘察人、设计人应当继续完善勘察、设计，减收或者免收勘察、设计费并赔偿损失。

第二百八十一条　【施工人的质量责任】因施工人的原因致使建设工程质量不符合约定的，发包人有权要求施工人在合理期限内无偿修理或者返工、改建。经过修理或者返工、改建后，造成逾期交付的，施工人应当承担违约责任。

第二百八十二条　【质量保证责任】因承包人的原因致使建设工程在合理使用期限内造成人身和财产损害的，承包人应当承担损害赔偿责任。

第二百八十三条　【发包人违约责任】发包人未按照约定的时间和要求提供原材料、设备、场地、资金、技术资料的，承包人可以顺延工程日期，并有权要求赔偿停工、窝工等损失。

第二百八十四条　【发包人原因致工程停建、缓建的责任】因发包人的原因致使工程中途停建、缓建的，发包人应当采取措施弥补或者减少损失，赔偿承包人因此造成的停工、窝工、倒运、机械设备调迁、材料和构件积压等损失和实际费用。

第二百八十五条　【发包人的原因致勘察、设计、返工、停工或修改设计的责任】因发包人变更计划，提供的资料不准确，或者未按照期限提供必需的勘察、设计工作条件而造成勘察、设计的返工、停工或者修改设计，发包人应当按照勘察人、设计人实际消耗的工作量增付费用。

第二百八十六条　【工程价款的支付】发包人未按照约定支付价款的，承包人可以催告发包人在合理期限内支付价款。发包人逾期不支付的，除按照建设工程的性质不宜折价、拍卖的以外，承包人可以与发包人协议将该工程折价，也可以申请人民法院将该工程依法拍卖。建设工程的价款就该工程折价或者拍卖的价款优先受偿。

第二百八十七条　【适用承揽合同的规定】本章没有规定的，适用承揽合同的有关规定。

第十七章　运输合同

第一节　一般规定

第二百八十八条　【定义】运输合同是承运人将旅客或者货物从起运地点运输到约定地点，旅客、托运人或者收货人支付票款或者运输费用的合同。

第二百八十九条　【公共运输承运人】从事公共运输的承运人不得拒绝旅客、托运人通常、合理的运输要求。

第二百九十条　【按约定期间运输义务】承运人应当在约定期间或者合理期间内将旅客、货物安全运输到约定地点。

第二百九十一条　【按约定路线运输义务】承运人应当按照约定的或者通常的运输路线将旅客、货物运输到约定地点。

第二百九十二条　【旅客、托运人或收货人基本义务】旅客、托运人或者收货人应当支付票款或者运输费用。承运人未按照约定路线或者通常路线运输增加票款或者运输费用的，旅客、托运人或者收货人可以拒绝支付增加部分的票款或者运输费用。

第二节　客运合同

第二百九十三条　【合同的成立】客运合同自承运人向旅客交付客票时成立，但当事人另有约定或者另有交易习惯的除外。

第二百九十四条　【持有效客票乘运义务】旅客应当持有效客票乘运。旅客无票乘运、超程乘运、越级乘运或者持失效客票乘运的，应当补交票款，承运人可以按照规定加收票款。旅客不交付票款的，承运人可以拒绝运输。

第二百九十五条　【退票与变更】旅客因自己的原因不能按照客票记载的时间乘坐的，应当在约定的时间内办理退票或者变更手续。逾期办理的，承运人可以不退票款，并不再承担运输义务。

第二百九十六条　【按约定限量携带行李义务】旅客在运输中应当按照约定的限量携带行李。超过限量携带行李的，应当办理托运手续。

第二百九十七条　【违禁品或危险物品的携带禁止】旅客不得随身携带或者在行李中夹带易燃、易爆、有毒、有腐蚀性、有放射性以及有可能危及运输工具上人身和财产安全的危险物品或者其他违禁物品。

旅客违反前款规定的，承运人可以将违禁物品卸下、销毁或者送交有关部门。旅客坚持携带或者夹带违禁物品的，承运人应当拒绝运输。

第二百九十八条　【承运人告知重要事项义务】承运人应当向旅客及时告知有关不能正常运输的重要事由和安全运输应当注意的事项。

第二百九十九条　【承运人迟延运输】承运人应当按照客票载明的时间和班次运输旅客。承运人迟延运输的，应当根据旅客的要求安排改乘其他班次或者退票。

第三百条　【承运人变更运输工具】承运人擅自变更运输工具而降低服务标准的，应当根据旅客的要求退票或者减收票款；提高服务标准的，不应当加收票款。

第三百零一条　【对旅客的救助义务】承运人在运输过程中，应当尽力救助患有急病、分娩、遇险的旅客。

第三百零二条　【旅客伤亡的损害赔偿责任】承运人应当对运输过程中旅客的伤亡承担损害赔偿责任，但伤亡是旅客自身健康原因造成的或者承运人证明伤亡是旅客故意、重大过失造成的除外。

前款规定适用于按照规定免票、持优待票或者经承运人许可搭乘的无票旅客。

第三百零三条　【对行李的赔偿责任】在运输过程中旅客自带物品毁损、灭失，承运人有过错的，应当承担损害赔偿责任。

旅客托运的行李毁损、灭失的，适用货物运输的有关规定。

第三节　货运合同

第三百零四条　【托运人告知义务】托运人办理货物运输，应当向承运人准确表明收货人的名称或者姓名或者凭指示的收货人，货物的名称、性质、重量、数量，收货地点等有关货物运输的必要情况。

因托运人申报不实或者遗漏重要情况，造成承运人损失的，托运人应当承担损害赔偿责任。

第三百零五条　【托运人提交文件义务】货物运输需要办理审批、检验等手续的，托运人应当将办理完有关手续的文件提交承运人。

第三百零六条　【托运人的包装义务】托运人应当按照约定的方式包装货物。对包装方式没有约定或者约定不明确的，适用本法第一百五十六条的规定。

托运人违反前款规定的，承运人可以拒绝运输。

第三百零七条　【托运人运送危险货物的义务】托运人托运易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当按照国家有关危险物品运输的规定对危险物品妥善包装，作出危险物标志和标签，并将有关危险物品的名称、性质和防范措施的书面材料提交承运人。

托运人违反前款规定的，承运人可以拒绝运输，也可以采取相应措施以避免损失的发生，因此产生的费用由托运人承担。

第三百零八条　【托运人请求变更的权利】在承运人将货物交付收货人之前，托运人可以要求承运人中止运输、返还货物、变更到达地或者将货物交给其他收货人，但应当赔偿承运人因此受到的损失。

第三百零九条　【承运人的通知义务及收货人及时提货义务】货物运输到达后，承运人知道收货人的，应当及时通知收货人，收货人应当及时提货。收货人逾期提货的，应当向承运人支付保管费等费用。

第三百一十条　【收货人对货物的检验】收货人提货时应当按照约定的期限检验货物。对检验货物的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在合理期限内检验货物。收货人在约定的期限或者合理期限内对货物的数量、毁损等未提出异议的，视为承运人已经按照运输单证的记载交付的初步证据。

第三百一十一条　【承运人的赔偿责任】承运人对运输过程中货物的毁损、灭失承担损害赔偿责任，但承运人证明货物的毁损、灭失是因不可抗力、货物本身的自然性质或者合理损耗以及托运人、收货人的过错造成的，不承担损害赔偿责任。

第三百一十二条　【确定货损额的方法】货物的毁损、灭失的赔偿额，当事人有约定的，按照其约定；没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，按照交付或者应当交付时货物到达地的市场价格计算。法律、行政法规对赔偿额的计算方法和赔偿限额另有规定的，依照其规定。

第三百一十三条　【相继运输的责任承担】两个以上承运人以同一运输方式联运的，与托运人订立合同的承运人应当对全程运输承担责任。损失发生在某一运输区段的，与托运人订立合同的承运人和该区段的承运人承担连带责任。

第三百一十四条　【货物的灭失与运费的处理】货物在运输过程中因不可抗力灭失，未收取运费的，承运人不得要求支付运费；已收取运费的，托运人可以要求返还。

第三百一十五条　【运送物的留置】托运人或者收货人不支付运费、保管费以及其他运输费用的，承运人对相应的运输货物享有留置权，但当事人另有约定的除外。

第三百一十六条　【货物的提存】收货人不明或者收货人无正当理由拒绝受领货物的，依照本法第一百零一条的规定，承运人可以提存货物。

第四节　多式联运合同

第三百一十七条　【多式联运经营人的权利义务】多式联运经营人负责履行或者组织履行多式联运合同，对全程运输享有承运人的权利，承担承运人的义务。

第三百一十八条　【多式联运的责任制度】多式联运经营人可以与参加多式联运的各区段承运人就多式联运合同的各区段运输约定相互之间的责任，但该约定不影响多式联运经营人对全程运输承担的义务。

第三百一十九条　【联运单据的转让】多式联运经营人收到托运人交付的货物时，应当签发多式联运单据。按照托运人的要求，多式联运单据可以是可转让单据，也可以是不可转让单据。

第三百二十条　【托运人的损害赔偿责任】因托运人托运货物时的过错造成多式联运经营人损失的，即使托运人已经转让多式联运单据，托运人仍然应当承担损害赔偿责任。

第三百二十一条　【赔偿责任适用法律的规定】货物的毁损、灭失发生于多式联运的某一运输区段的，多式联运经营人的赔偿责任和责任限额，适用调整该区段运输方式的有关法律规定。货物毁损、灭失发生的运输区段不能确定的，依照本章规定承担损害赔偿责任。

第十八章　技术合同

第一节　一般规定

第三百二十二条　【定义】技术合同是当事人就技术开发、转让、咨询或者服务订立的确立相互之间权利和义务的合同。

第三百二十三条　【订立技术合同的原则】订立技术合同，应当有利于科学技术的进步，加速科学技术成果的转化、应用和推广。

第三百二十四条　【技术合同的主要条款】技术合同的内容由当事人约定，一般包括以下条款：

（一）项目名称；

（二）标的的内容、范围和要求；

（三）履行的计划、进度、期限、地点、地域和方式；

（四）技术情报和资料的保密；

（五）风险责任的承担；

（六）技术成果的归属和收益的分成办法；

（七）验收标准和方法；

（八）价款、报酬或者使用费及其支付方式；

（九）违约金或者损失赔偿的计算方法；

（十）解决争议的方法；

（十一）名词和术语的解释。

与履行合同有关的技术背景资料、可行性论证和技术评价报告、项目任务书和计划书、技术标准、技术规范、原始设计和工艺文件，以及其他技术文档，按照当事人的约定可以作为合同的组成部分。

技术合同涉及专利的，应当注明发明创造的名称、专利申请人和专利权人、申请日期、申请号、专利号以及专利权的有效期限。

第三百二十五条　【技术合同价款、报酬或使用费】技术合同价款、报酬或者使用费的支付方式由当事人约定，可以采取一次总算、一次总付或者一次总算、分期支付，也可以采取提成支付或者提成支付附加预付入门费的方式。

约定提成支付的，可以按照产品价格、实施专利和使用技术秘密后新增的产值、利润或者产品销售额的一定比例提成，也可以按照约定的其他方式计算。提成支付的比例可以采取固定比例、逐年递增比例或者逐年递减比例。

约定提成支付的，当事人应当在合同中约定查阅有关会计帐目的办法。

第三百二十六条　【职务技术成果的经济权属】职务技术成果的使用权、转让权属于法人或者其他组织的，法人或者其他组织可以就该项职务技术成果订立技术合同。法人或者其他组织应当从使用和转让该项职务技术成果所取得的收益中提取一定比例，对完成该项职务技术成果的个人给予奖励或者报酬。法人或者其他组织订立技术合同转让职务技术成果时，职务技术成果的完成人享有以同等条件优先受让的权利。

职务技术成果是执行法人或者其他组织的工作任务，或者主要是利用法人或者其他组织的物质技术条件所完成的技术成果。

第三百二十七条　【非职务技术成果的经济权属】非职务技术成果的使用权、转让权属于完成技术成果的个人，完成技术成果的个人可以就该项非职务技术成果订立技术合同。

第三百二十八条　【技术成果的精神权属】完成技术成果的个人有在有关技术成果文件上写明自己是技术成果完成者的权利和取得荣誉证书、奖励的权利。

第三百二十九条　【技术合同的无效】非法垄断技术、妨碍技术进步或者侵害他人技术成果的技术合同无效。

第二节　技术开发合同

第三百三十条　【定义及合同形式】技术开发合同是指当事人之间就新技术、新产品、新工艺或者新材料及其系统的研究开发所订立的合同。

技术开发合同包括委托开发合同和合作开发合同。

技术开发合同应当采用书面形式。

当事人之间就具有产业应用价值的科技成果实施转化订立的合同，参照技术开发合同的规定。

第三百三十一条　【委托人义务】委托开发合同的委托人应当按照约定支付研究开发经费和报酬；提供技术资料、原始数据；完成协作事项；接受研究开发成果。

第三百三十二条　【受托人义务】委托开发合同的研究开发人应当按照约定制定和实施研究开发计划；合理使用研究开发经费；按期完成研究开发工作，交付研究开发成果，提供有关的技术资料和必要的技术指导，帮助委托人掌握研究开发成果。

第三百三十三条　【委托人的违约责任】委托人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十四条　【受托人的违约责任】研究开发人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十五条　【合作开发各方的主要义务】合作开发合同的当事人应当按照约定进行投资，包括以技术进行投资；分工参与研究开发工作；协作配合研究开发工作。

第三百三十六条　【合作开发各方的违约责任】合作开发合同的当事人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十七条　【合同的解除】因作为技术开发合同标的的技术已经由他人公开，致使技术开发合同的履行没有意义的，当事人可以解除合同。

第三百三十八条　【风险负担及通知义务】在技术开发合同履行过程中，因出现无法克服的技术困难，致使研究开发失败或者部分失败的，该风险责任由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，风险责任由当事人合理分担。

当事人一方发现前款规定的可能致使研究开发失败或者部分失败的情形时，应当及时通知另一方并采取适当措施减少损失。没有及时通知并采取适当措施，致使损失扩大的，应当就扩大的损失承担责任。

第三百三十九条　【技术成果的归属】委托开发完成的发明创造，除当事人另有约定的以外，申请专利的权利属于研究开发人。研究开发人取得专利权的，委托人可以免费实施该专利。

研究开发人转让专利申请权的，委托人享有以同等条件优先受让的权利。

第三百四十条　【合作开发技术成果的归属】合作开发完成的发明创造，除当事人另有约定的以外，申请专利的权利属于合作开发的当事人共有。当事人一方转让其共有的专利申请权的，其他各方享有以同等条件优先受让的权利。

合作开发的当事人一方声明放弃其共有的专利申请权的，可以由另一方单独申请或者由其他各方共同申请。申请人取得专利权的，放弃专利申请权的一方可以免费实施该专利。

合作开发的当事人一方不同意申请专利的，另一方或者其他各方不得申请专利。

第三百四十一条　【技术秘密成果的归属与分享】委托开发或者合作开发完成的技术秘密成果的使用权、转让权以及利益的分配办法，由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，当事人均有使用和转让的权利，但委托开发的研究开发人不得在向委托人交付研究开发成果之前，将研究开发成果转让给第三人。

第三节　技术转让合同

第三百四十二条　【内容及形式】技术转让合同包括专利权转让、专利申请权转让、技术秘密转让、专利实施许可合同。

技术转让合同应当采用书面形式。

第三百四十三条　【技术转让范围的约定】技术转让合同可以约定让与人和受让人实施专利或者使用技术秘密的范围，但不得限制技术竞争和技术发展。

第三百四十四条　【专利实施许可合同的限制】专利实施许可合同只在该专利权的存续期间内有效。专利权有效期限届满或者专利权被宣布无效的，专利权人不得就该专利与他人订立专利实施许可合同。

第三百四十五条　【专利实施许可合同让与人主要义务】专利实施许可合同的让与人应当按照约定许可受让人实施专利，交付实施专利有关的技术资料，提供必要的技术指导。

第三百四十六条　【专利实施许可合同受让人主要义务】专利实施许可合同的受让人应当按照约定实施专利，不得许可约定以外的第三人实施该专利；并按照约定支付使用费。

第三百四十七条　【技术秘密转让合同让与人的义务】技术秘密转让合同的让与人应当按照约定提供技术资料，进行技术指导，保证技术的实用性、可靠性，承担保密义务。

第三百四十八条　【技术秘密转让合同的受让人义务】技术秘密转让合同的受让人应当按照约定使用技术，支付使用费，承担保密义务。

第三百四十九条　【技术转让合同让与人基本义务】技术转让合同的让与人应当保证自己是所提供的技术的合法拥有者，并保证所提供的技术完整、无误、有效，能够达到约定的目标。

第三百五十条　【技术转让合同受让人技术保密义务】技术转让合同的受让人应当按照约定的范围和期限，对让与人提供的技术中尚未公开的秘密部分，承担保密义务。

第三百五十一条　【让与人违约责任】让与人未按照约定转让技术的，应当返还部分或者全部使用费，并应当承担违约责任；实施专利或者使用技术秘密超越约定的范围的，违反约定擅自许可第三人实施该项专利或者使用该项技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

第三百五十二条　【受让人违约责任】受让人未按照约定支付使用费的，应当补交使用费并按照约定支付违约金；不补交使用费或者支付违约金的，应当停止实施专利或者使用技术秘密，交还技术资料，承担违约责任；实施专利或者使用技术秘密超越约定的范围的，未经让与人同意擅自许可第三人实施该专利或者使用该技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

第三百五十三条　【技术合同让与人侵权责任】受让人按照约定实施专利、使用技术秘密侵害他人合法权益的，由让与人承担责任，但当事人另有约定的除外。

第三百五十四条　【后续技术成果的归属与分享】当事人可以按照互利的原则，在技术转让合同中约定实施专利、使用技术秘密后续改进的技术成果的分享办法。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，一方后续改进的技术成果，其他各方无权分享。

第三百五十五条　【技术进出口合同的法律适用】法律、行政法规对技术进出口合同或者专利、专利申请合同另有规定的，依照其规定。

第四节　技术咨询合同和技术服务合同

第三百五十六条　【内容】技术咨询合同包括就特定技术项目提供可行性论证、技术预测、专题技术调查、分析评价报告等合同。

技术服务合同是指当事人一方以技术知识为另一方解决特定技术问题所订立的合同，不包括建设工程合同和承揽合同。

第三百五十七条　【技术咨询合同委托人主要义务】技术咨询合同的委托人应当按照约定阐明咨询的问题，提供技术背景材料及有关技术资料、数据；接受受托人的工作成果，支付报酬。

第三百五十八条　【技术咨询合同受托人主要义务】技术咨询合同的受托人应当按照约定的期限完成咨询报告或者解答问题；提出的咨询报告应当达到约定的要求。

第三百五十九条　【委托人与受托人的违约责任】技术咨询合同的委托人未按照约定提供必要的资料和数据，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术咨询合同的受托人未按期提出咨询报告或者提出的咨询报告不符合约定的，应当承担减收或者免收报酬等违约责任。

技术咨询合同的委托人按照受托人符合约定要求的咨询报告和意见作出决策所造成的损失，由委托人承担，但当事人另有约定的除外。

第三百六十条　【技术服务合同委托人义务】技术服务合同的委托人应当按照约定提供工作条件，完成配合事项；接受工作成果并支付报酬。

第三百六十一条　【技术服务合同受托人义务】技术服务合同的受托人应当按照约定完成服务项目，解决技术问题，保证工作质量，并传授解决技术问题的知识。

第三百六十二条　【技术服务合同双方当事人的违约责任】技术服务合同的委托人不履行合同义务或者履行合同义务不符合约定，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术服务合同的受托人未按照合同约定完成服务工作的，应当承担免收报酬等违约责任。

第三百六十三条　【新创技术成果的归属和分享】在技术咨询合同、技术服务合同履行过程中，受托人利用委托人提供的技术资料和工作条件完成的新的技术成果，属于受托人。委托人利用受托人的工作成果完成的新的技术成果，属于委托人。当事人另有约定的，按照其约定。

第三百六十四条　【技术培训合同、技术中介合同的法律适用】法律、行政法规对技术中介合同、技术培训合同另有规定的，依照其规定。

第十九章　保管合同

第三百六十五条　【定义】保管合同是保管人保管寄存人交付的保管物，并返还该物的合同。

第三百六十六条　【保管费的支付】寄存人应当按照约定向保管人支付保管费。

当事人对保管费没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，保管是无偿的。

第三百六十七条　【保管合同的成立】保管合同自保管物交付时成立，但当事人另有约定的除外。

第三百六十八条　【保管凭证】寄存人向保管人交付保管物的，保管人应当给付保管凭证，但另有交易习惯的除外。

第三百六十九条　【保管行为的要求】保管人应当妥善保管保管物。

当事人可以约定保管场所或者方法。除紧急情况或者为了维护寄存人利益的以外，不得擅自改变保管场所或者方法。

第三百七十条　【保管物有瑕疵或需特殊保管时寄存人的义务】寄存人交付的保管物有瑕疵或者按照保管物的性质需要采取特殊保管措施的，寄存人应当将有关情况告知保管人。寄存人未告知，致使保管物受损失的，保管人不承担损害赔偿责任；保管人因此受损失的，除保管人知道或者应当知道并且未采取补救措施的以外，寄存人应当承担损害赔偿

责任。

第三百七十一条　【第三人代为保管】保管人不得将保管物转交第三人保管，但当事人另有约定的除外。

保管人违反前款规定，将保管物转交第三人保管，对保管物造成损失的，应当承担损害赔偿责任。

第三百七十二条　【保管人不得使用保管物的义务】保管人不得使用或者许可第三人使用保管物，但当事人另有约定的除外。

第三百七十三条　【第三人主张权利的返还】第三人对保管物主张权利的，除依法对保管物采取保全或者执行的以外，保管人应当履行向寄存人返还保管物的义务。

第三人对保管人提起诉讼或者对保管物申请扣押的，保管人应当及时通知寄存人。

第三百七十四条　【保管物的毁损灭失与保管人责任】保管期间，因保管人保管不善造成保管物毁损、灭失的，保管人应当承担损害赔偿责任，但保管是无偿的，保管人证明自己没有重大过失的，不承担损害赔偿责任。

第三百七十五条　【寄存人的告示义务】寄存人寄存货币、有价证券或者其他贵重物品的，应当向保管人声明，由保管人验收或者封存。寄存人未声明的，该物品毁损、灭失后，保管人可以按照一般物品予以赔偿。

第三百七十六条　【保管物领取】寄存人可以随时领取保管物。

当事人对保管期间没有约定或者约定不明确的，保管人可以随时要求寄存人领取保管物；约定保管期间的，保管人无特别事由，不得要求寄存人提前领取保管物。

第三百七十七条　【保管物的返还】保管期间届满或者寄存人提前领取保管物的，保管人应当将原物及其孳息归还寄存人。

第三百七十八条　【货币等的返还】保管人保管货币的，可以返还相同种类、数量的货币。保管其他可替代物的，可以按照约定返还相同种类、品质、数量的物品。

第三百七十九条　【保管费支付期限】有偿的保管合同，寄存人应当按照约定的期限向保管人支付保管费。

当事人对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在领取保管物的同时支付。

第三百八十条　【保管人的留置权】寄存人未按照约定支付保管费以及其他费用的，保管人对保管物享有留置权，但当事人另有约定的除外。

第二十章　仓储合同

第三百八十一条　【定义】仓储合同是保管人储存存货人交付的仓储物，存货人支付仓储费的合同。

第三百八十二条　【仓储合同生效时间】仓储合同自成立时生效。

第三百八十三条　【危险物品的储存】储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品或者易变质物品，存货人应当说明该物品的性质，提供有关资料。

存货人违反前款规定的，保管人可以拒收仓储物，也可以采取相应措施以避免损失的发生，因此产生的费用由存货人承担。

保管人储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当具备相应的保管条件。

第三百八十四条　【仓储物的验收】保管人应当按照约定对入库仓储物进行验收。保管人验收时发现入库仓储物与约定不符合的，应当及时通知存货人。保管人验收后，发生仓储物的品种、数量、质量不符合约定的，保管人应当承担损害赔偿责任。

第三百八十五条　【仓单】存货人交付仓储物的，保管人应当给付仓单。

第三百八十六条　【仓单应载事项】保管人应当在仓单上签字或者盖章。仓单包括下列事项：

（一）存货人的名称或者姓名和住所；

（二）仓储物的品种、数量、质量、包装、件数和标记；

（三）仓储物的损耗标准；

（四）储存场所；

（五）储存期间；

（六）仓储费；

（七）仓储物已经办理保险的，其保险金额、期间以及保险人的名称；

（八）填发人、填发地和填发日期。

第三百八十七条　【仓单的背书及其效力】仓单是提取仓储物的凭证。存货人或者仓单持有人在仓单上背书并经保管人签字或者盖章的，可以转让提取仓储物的权利。

第三百八十八条　【检查权】保管人根据存货人或者仓单持有人的要求，应当同意其检查仓储物或者提取样品。

第三百八十九条　【保管人的通知义务】保管人对入库仓储物发现有变质或者其他损坏的，应当及时通知存货人或者仓单持有人。

第三百九十条　【保管人的催告义务】保管人对入库仓储物发现有变质或者其他损坏，危及其他仓储物的安全和正常保管的，应当催告存货人或者仓单持有人作出必要的处置。因情况紧急，保管人可以作出必要的处置，但事后应当将该情况及时通知存货人或者仓单持有人。

第三百九十一条　【仓储物提取时间】当事人对储存期间没有约定或者约定不明确的，存货人或者仓单持有人可以随时提取仓储物，保管人也可以随时要求存货人或者仓单持有人提取仓储物，但应当给予必要的准备时间。

第三百九十二条　【仓单持有人提取仓储物】储存期间届满，存货人或者仓单持有人应当凭仓单提取仓储物。存货人或者仓单持有人逾期提取的，应当加收仓储费；提前提取的，不减收仓储费。

第三百九十三条　【保管人的提存权】储存期间届满，存货人或者仓单持有人不提取仓储物的，保管人可以催告其在合理期限内提取，逾期不提取的，保管人可以提存仓储物。

第三百九十四条　【保管人违约责任】储存期间，因保管人保管不善造成仓储物毁损、灭失的，保管人应当承担损害赔偿责任。

因仓储物的性质、包装不符合约定或者超过有效储存期造成仓储物变质、损坏的，保管人不承担损害赔偿责任。

第三百九十五条　【仓储合同的法律适用】本章没有规定的，适用保管合同的有关规定。

第二十一章　委托合同

第三百九十六条　【定义】委托合同是委托人和受托人约定，由受托人处理委托人事务的合同。

第三百九十七条　【委托范围】委托人可以特别委托受托人处理一项或者数项事务，也可以概括委托受托人处理一切事务。

第三百九十八条　【委托费用】委托人应当预付处理委托事务的费用。受托人为处理委托事务垫付的必要费用，委托人应当偿还该费用及其利息。

第三百九十九条　【受托人服从指示的义务】受托人应当按照委托人的指示处理委托事务。需要变更委托人指示的，应当经委托人同意；因情况紧急，难以和委托人取得联系的，受托人应当妥善处理委托事务，但事后应当将该情况及时报告委托人。

第四百条　【亲自处理及转委托】受托人应当亲自处理委托事务。经委托人同意，受托人可以转委托。转委托经同意的，委托人可以就委托事务直接指示转委托的第三人，受托人仅就第三人的选任及其对第三人的指示承担责任。转委托未经同意的，受托人应当对转委托的第三人的行为承担责任，但在紧急情况下受托人为维护委托人的利益需要转委托的除外。

第四百零一条　【受托人的报告义务】受托人应当按照委托人的要求，报告委托事务的处理情况。委托合同终止时，受托人应当报告委托事务的结果。

第四百零二条　【委托人的介入权】受托人以自己的名义，在委托人的授权范围内与第三人订立的合同，第三人在订立合同时知道受托人与委托人之间的代理关系的，该合同直接约束委托人和第三人，但有确切证据证明该合同只约束受托人和第三人的除外。

第四百零三条　【委托人对第三人的权利及第三人选择相对人的权利】受托人以自己的名义与第三人订立合同时，第三人不知道受托人与委托人之间的代理关系的，受托人因第三人的原因对委托人不履行义务，受托人应当向委托人披露第三人，委托人因此可以行使受托人对第三人的权利，但第三人与受托人订立合同时如果知道该委托人就不会订立合同的除外。

受托人因委托人的原因对第三人不履行义务，受托人应当向第三人披露委托人，第三人因此可以选择受托人或者委托人作为相对人主张其权利，但第三人不得变更选定的相对人。

委托人行使受托人对第三人的权利的，第三人可以向委托人主张其对受托人的抗辩。第三人选定委托人作为其相对人的，委托人可以向第三人主张其对受托人的抗辩以及受托人对第三人的抗辩。

第四百零四条　【受托人交付财产义务】受托人处理委托事务取得的财产，应当转交给委托人。

第四百零五条　【委托人支付报酬的义务】受托人完成委托事务的，委托人应当向其支付报酬。因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬。当事人另有约定的，按照其约定。

第四百零六条　【受托人的损害赔偿责任】有偿的委托合同，因受托人的过错给委托人造成损失的，委托人可以要求赔偿损失。无偿的委托合同，因受托人的故意或者重大过失给委托人造成损失的，委托人可以要求赔偿损失。

受托人超越权限给委托人造成损失的，应当赔偿损失。

第四百零七条　【委托人的赔偿责任】受托人处理委托事务时，因不可归责于自己的事由受到损失的，可以向委托人要求赔偿损失。

第四百零八条　【另行委托】委托人经受托人同意，可以在受托人之外委托第三人处理委托事务。因此给受托人造成损失的，受托人可以向委托人要求赔偿损失。

第四百零九条　【受托人的连带责任】两个以上的受托人共同处理委托事务的，对委托人承担连带责任。

第四百一十条　【任意解除权】委托人或者受托人可以随时解除委托合同。因解除合同给对方造成损失的，除不可归责于该当事人的事由以外，应当赔偿损失。

第四百一十一条　【委托合同的终止】委托人或者受托人死亡、丧失民事行为能力或者破产的，委托合同终止，但当事人另有约定或者根据委托事务的性质不宜终止的除外。

第四百一十二条　【委托人的后合同义务】因委托人死亡、丧失民事行为能力或者破产，致使委托合同终止将损害委托人利益的，在委托人的继承人、法定代理人或者清算组织承受委托事务之前，受托人应当继续处理委托事务。

第四百一十三条　【受托人死亡后其继承人等的义务】因受托人死亡、丧失民事行为能力或者破产，致使委托合同终止的，受托人的继承人、法定代理人或者清算组织应当及时通知委托人。因委托合同终止将损害委托人利益的，在委托人作出善后处理之前，受托人的继承人、法定代理人或者清算组织应当采取必要措施。

第二十二章　行纪合同

第四百一十四条　【定义】行纪合同是行纪人以自己的名义为委托人从事贸易活动，委托人支付报酬的合同。

第四百一十五条　【处理委托事务的费用承担】行纪人处理委托事务支出的费用，由行纪人负担，但当事人另有约定的除外。

第四百一十六条　【行纪人对委托物的保管义务】行纪人占有委托物的，应当妥善保管委托物。

第四百一十七条　【委托物的处理】委托物交付给行纪人时有瑕疵或者容易腐烂、变质的，经委托人同意，行纪人可以处分该物；和委托人不能及时取得联系的，行纪人可以合理处分。

第四百一十八条　【未按指示进行行纪活动的后果】行纪人低于委托人指定的价格卖出或者高于委托人指定的价格买入的，应当经委托人同意。未经委托人同意，行纪人补偿其差额的，该买卖对委托人发生效力。

行纪人高于委托人指定的价格卖出或者低于委托人指定的价格买入的，可以按照约定增加报酬。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，该利益属于委托人。

委托人对价格有特别指示的，行纪人不得违背该指示卖出或者买入。

第四百一十九条　【行纪人的介入权】行纪人卖出或者买入具有市场定价的商品，除委托人有相反的意思表示的以外，行纪人自己可以作为买受人或者出卖人。

行纪人有前款规定情形的，仍然可以要求委托人支付报酬。

第四百二十条　【委托物的处置】行纪人按照约定买入委托物，委托人应当及时受领。经行纪人催告，委托人无正当理由拒绝受领的，行纪人依照本法第一百零一条的规定可以提存委托物。

委托物不能卖出或者委托人撤回出卖，经行纪人催告，委托人不取回或者不处分该物的，行纪人依照本法第一百零一条的规定可以提存委托物。

第四百二十一条　【行纪人与第三人的关系】行纪人与第三人订立合同的，行纪人对该合同直接享有权利、承担义务。

第三人不履行义务致使委托人受到损害的，行纪人应当承担损害赔偿责任，但行纪人与委托人另有约定的除外。

第四百二十二条　【行纪人的报酬请求权及留置权】行纪人完成或者部分完成委托事务的，委托人应当向其支付相应的报酬。委托人逾期不支付报酬的，行纪人对委托物享有留置权，但当事人另有约定的除外。

第四百二十三条　【对委托合同的适用】本章没有规定的，适用委托合同的有关规定。

第二十三章　居间合同

第四百二十四条　【定义】居间合同是居间人向委托人报告订立合同的机会或者提供订立合同的媒介服务，委托人支付报酬的合同。

第四百二十五条　【居间人如实报告义务】居间人应当就有关订立合同的事项向委托人如实报告。

居间人故意隐瞒与订立合同有关的重要事实或者提供虚假情况，损害委托人利益的，不得要求支付报酬并应当承担损害赔偿责任。

第四百二十六条　【居间人的报酬请求权】居间人促成合同成立后，委托人应当按照约定支付报酬。对居间人的报酬没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，根据居间人的劳务合理确定。因居间人提供订立合同的媒介服务而促成合同成立的，由该合同的当事人平均负担居间人的报酬。

居间人促成合同成立的，居间活动的费用，由居间人负担。

第四百二十七条　【未促成合同成立的处理】居间人未促成合同成立的，不得要求支付报酬，但可以要求委托人支付从事居间活动支出的必要费用。

附则

第四百二十八条　【生效日期及废止条款】本法自１９９９年１０月1日起施行，《中华人民共和国经济合同法》、《中华人民共和国涉外经济合同法》、《中华人民共和国技术合同法》同时废止。

Regulations of the People’s Republic of China on the Administration of Company Registration (Revised 2005)

(Promulgated by Order No. 156 of the State Council of the People’s Republic of China on June 24, 1994 and revised according to the Decision of the State Council on Revising the Regulations of the People’s Republic of China on the Administration of Company Registration on December 18, 2005)

Chapter I General Provisions

Article 1 To validate the status of enterprise legal person of companies and standardize the conduct of company registration, these Regulations have been formulated in accordance with the Company Law of the People’s Republic of China (hereinafter referred to as "company law").

Article 2 A limited liability company or a joint stock limited company (hereinafter referred to as "company") shall conduct company registration of its formation, modification and termination.

To apply for company registration, an applicant shall be responsible for the authenticity of the application documents and materials.

Article 3 A company may acquire the status of enterprise legal person only after having been legally registered by the company registration organ and collected a Business License of Enterprise Legal Person.

A company formed after these Regulations becoming effective shall not engage in any business activity in the name of a company without registration with the company registration organ.

Article 4 The administration for industry and commerce shall be the company registration organ.

A company registration organ at a lower level shall carry out company registration under the leadership of a company registration organ at a higher level.

A company registration organ shall perform its functions according to law, free from any unlawful interference.

Article 5 The State Administration for Industry and Commerce shall be in charge of the work of company registration across the country.

Chapter II Jurisdiction over Registration

Article 6 The State Administration for Industry and Commerce shall take charge of the registration of the following companies:

(1) a company where the state-owned asset supervision and administration institution of the State Council performs the functions of a contributor, and a company which is formed by the aforesaid company as an investor holding more than 50% of the shares therein;

(2) a foreign-funded company;

(3) a company which shall be registered by the State Administration for Industry and Commerce in accordance with a relevant law, administrative regulation or decision of the State Council; and

(4) any other company which shall be registered by the State Administration for Industry and Commerce in accordance with the provisions of the State Administration for Industry and Commerce.

Article 7 The administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government shall take charge of the registration of the following companies within its administrative division:

(1) a company where the state-owned asset supervision and administration institution of the people's government of a province, autonomous region or municipality directly under the Central Government performs the functions of a contributor, and a company which is formed by the aforesaid company as an investor holding more than 50% of the shares therein;

(2) a company formed by a natural person as an investor which shall be registered by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government in accordance with the provisions of the administration for industry and commerce of the province, autonomous region or municipality directly under the Central Government;

(3) a company which shall be registered by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government in accordance with a relevant law, administrative regulation or decision of the State Council; and

(4) any other company which shall be registered as empowered by the State Administration for Industry and Commerce.

Article 8 The administration for industry and commerce of a districted city (region) or county, the sub-administration for industry and commerce of a municipality directly under the Central Government, or the district sub-administration of the administration for industry and commerce of a districted city shall take charge of the registration of the following companies within its administrative division:

(1) a company other than a company as set out in Articles 6 and 7 of these Regulations; and

(2) a company which shall registered as empowered by the State Administration for Industry and Commerce or the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government.

The specific jurisdiction over registration as set out in the preceding paragraph shall be formulated by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government. However, the administration

for industry and commerce of a districted city (region) shall take charge of the registration of joint stock limited companies.

Chapter III Items for Registration

Article 9 The items for company registration shall include:

(1) name;

(2) residence;

(3) name of the legal representative;

(4) registered capital;

(5) paid-up capital;

(6) type of company;

(7) business scope;

(8) duration of business operation; and

(9) names of the shareholders of a limited liability company or names of promoters of a joint stock limited company, and amounts, time and forms of contributions as subscribed to and paid up.

Article 10 The items for company registration shall conform to the provisions of laws and administrative regulations. A company registration organ shall not register an item for registration which does not conform to the provisions of a law or administrative regulation.

Article 11 The name of a company shall conform to the relevant provisions of the state. A company may use one name only. The name of a company, which has been approved and registered by the company registration organ, shall be protected by law.

Article 12 The residence of a company shall be the seat of the principal office of the company. There may be only one residence registered with the company registration organ. The residence of a company shall be within the territorial jurisdiction of the company registration organ.

Article 13 The registered capital of a company shall be denominated in Renminbi, except as otherwise provided for by a law or administrative regulation.

Article 14 The form of contribution by a shareholder shall conform to the provisions of Article 27 of the Company Law. Where a shareholder contributes any property other than currency, property in kind, intellectual property or land use right, the measures for registration thereof shall be formulated by the State Administration for Industry and Commerce in conjunction with the relevant departments of the State Council.

No shareholder shall contribute, through evaluation, labor, credit, name of a natural person, goodwill, franchise or any property over which a security has been posted.

Article 15 The business scope of a company shall be prescribed in the bylaws of the company and registered according to law.

For the description of the business scope of a company, the standards for industrial categories of the national economy shall be referred to.

Article 16 The types of companies shall include limited liability company and joint stock limited company.

For a one-person limited liability company, the sole investor of a natural person or a legal person shall be stated in the registration of the company, and shall be also stated in the business license of the company.

Chapter IV Registration of Formation

Article 17 To form a company, an application shall be filed for the pre-approval of the company name.

For a company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, or whose business scope includes an item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, an application shall be filed for the pre-approval of the company name before report for approval in the company name as pre-approved by the company registration organ.

Article 18 To form a limited liability company, a representative designated or an agent jointly authorized by all the shareholders shall apply for the pre-approval of the company name to the company registration organ; to form a joint stock limited company, a representative designated or an agent jointly authorized by all the promoters shall apply for the pre-approval of the company name to the company registration organ.

In the application for the pre-approval of company name, the following documents shall be submitted:

(1) a written application for pre-approval of company name, which is signed by all the shareholders of a limited liability company or by all the promoters of a joint stock limited company;

(2) a certificate of designation of a representative or joint authorization of an agent by all the shareholders or promoters; and

(3) any other document as required by the State Administration for Industry and Commerce.

Article 19 A pre-approved company name shall be reserved for six months, and within such a period, the pre-approved name shall not be used for any business operation or transferred.

Article 20 To form a limited liability company, a representative designated or an agent jointly authorized by all the shareholders shall apply for registration of formation to the company registration organ. To form a company wholly owned by the state, the

state-owned asset supervision and administration institution of the State Council or the local people's government as empowered by the local people's government shall act as an applicant to apply for registration of formation. For a limited liability company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, an application shall be filed for registration of formation within 90 days from the date of approval; for an overdue application for registration for formation, the applicant shall report to the examination and approval organ for confirmation of validity of the original approval document or for a separate approval.

To apply for forming a limited liability company, an applicant shall submit the following documents to the company registration organ:

(1) a written application for registration of formation, which is signed by the legal representative of the company;

(2) a certificate of designation of a representative or joint authorization of an agent by all the shareholders;

(3) bylaws of the company;

(4) a certificate of capital verification produced by a legally formed capital verification institution, except as otherwise provided for by a law or administrative regulation;

(5) a certificate of transfer of title, which shall be submitted at the time of registration of formation, where the initial contribution made by a shareholder is non-monetary property;

(6) a certificate of capacity of each shareholder which is an entity or certificate of identification of each shareholder which is a natural person;

(7) documents stating the names and residences of the directors, supervisors and managers and certificates of the relevant appointment, election or employment;

(8) an appointment document and a certificate of identification of the legal representative of the company;

(9) a notice of pre-approval of enterprise name;

(10) a certificate of residence of the company; and

(11) any other document as required by the State Administration for Industry and Commerce.

The amount of initial contribution made by a shareholder of a foreign-funded limited liability company shall conform to laws and administrative regulations, and the rest of contribution shall be paid up within two years from the date of formation of the company. In particular, for an investment company, the rest of contribution may be paid up within five years.

For a limited liability company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 21 To form a joint stock limited company, the board of directors of the company shall apply for registration of formation to the company registration organ. For a joint stock limited company which is formed by stock floatation, the board of directors of the company shall apply for registration of formation to the company registration organ within 30 days after the end of the meeting of foundation.

To apply for forming a joint stock limited company, an applicant shall submit the following documents to the company registration organ:

(1) a written application for registration of formation, which is signed by the legal representative of the company;

(2) a certificate of designation of a representative or joint authorization of an agent by the board of directors;

(3) bylaws of the company;

(4) a certificate of capital verification produced by a legally formed capital verification institution;

(5) a certificate of transfer of title, which shall be submitted at the time of registration of formation, where the initial contribution made by a shareholder is non-monetary property;

(6) a certificate of capacity of each promoter which is an entity or certificate of identification of each promoter which is a natural person;

(7) documents stating the names and residences of the directors, supervisors and managers and certificates of the relevant appointment, election or employment;

(8) an appointment document and a certificate of identification of the legal representative of the company;

(9) a notice of pre-approval of enterprise;

(10) a certificate of residence of the company; and

(11) any other document as required by the State Administration for Industry and Commerce.

For a joint stock limited company which is formed by stock floatation, the minutes of the meeting of foundation shall be also submitted; for a joint stock limited company which is formed by stock floatation and issues stocks publicly, the relevant approval document of the state-owned asset supervision and administration institution of the State Council shall be also submitted.

For a joint stock limited company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 22 Where the business scope in the application for company registration includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the item shall be reported to the

relevant department of the state for approval before the application for registration, and the relevant approval document shall be submitted to the company registration organ.

Article 23 Where any provision of the bylaws of a company violates a law or administrative regulation, a company registration organ shall have the authority to require the company to amend it correspondingly.

Article 24 The certificate of residence of a company refers to a document that may certify that the company enjoys the right to use the residence.

Article 25 A company registration organ shall issue a Business License of Enterprise Legal Person to a legally formed company. The date of issuance of the business license of the company shall be the date of formation of the company. The company shall have its corporate seal made, open a bank account and apply for the registration of tax payment on the strength of the Business License of Enterprise Legal Person issued by the company registration organ.

Chapter V Registration of Modification

Article 26 To modify any registered item, a company shall apply for registration of modification to the original company registration organ.

Without registration of modification, no company shall modify any registered item.

Article 27 To apply for registration of modification, a company shall submit the following documents to the company registration organ:

(1) a written application for registration of modification, which is signed by the legal representative of the company;

(2) a resolution or decision on modification made according to the Company Law; and

(3) any other document as required by the State Administration for Industry and Commerce.

Where any registered item to be modified by a company involves the amendment of the bylaws of the company, the amended bylaws of the company or an amendment to the bylaws of the company signed by the legal representative of the company shall be submitted.

For a registered item to be modified which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted to the company registration organ.

Article 28 To modify the company name, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

Article 29 To modify the company residence, a company shall apply for registration of modification before it moves into the new residence, and submit a certificate of use of the new residence.

Where the modification of residence crosses the territorial jurisdictions of the company registration organs, a company shall apply for registration of modification to the company registration organ at the place of its new residence before moving into its new residence; where the company registration organ at the place of new residence of the company accepts the application, the original company registration organ shall transfer the company registration files of the company to the company registration organ at the place of new residence of the company.

Article 30 To modify the legal representative, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

Article 31 To modify the registered capital, a company shall submit a certificate of capital verification produced by a legally formed capital verification institution.

Where a company increases its registered capital, the contributions of the shareholders of a limited liability company for the increased capital and the subscriptions to new stocks by the shareholders of a joint stock limited company shall be respectively subject to the relevant provisions of the Company Law on the payment of contribution for the formation of a limited liability company and the payment for stock subscription for the formation of a joint stock company. Where a joint stock limited company increases its registered capital by publicly issuing new stocks or where a listed company increases its registered capital by privately issuing new stocks, the relevant approval document of the securities regulatory organ of the State Council shall be also submitted.

Where the statutory common reserve of a company is converted into its registered capital, the certificate of capital verification shall show that the retained statutory common reserve of the company is not be lower than 25% of the registered capital of the company before the conversion.

To reduce the registered capital, a company shall apply for registration of modification within 45 days from the date of announcement, and submit the relevant proof that the company has published an announcement on reduction of registered capital in a newspaper and a statement on debt repayment or debt guarantee by the company.

The registered capital of a company after reduction shall not be lower than the minimum statutory amount.

Article 32 To modify the paid-up capital, a company shall submit a certificate of capital verification produced by a legally formed capital verification institution, and the capital contributions shall be made according to the time and form of contribution as prescribed in the bylaws of the company. A company shall apply for registration of modification within 30 days from the date when the capital contributions or stock payments are paid up.

Article 33 To modify the business scope, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made; where the modification of the business scope of a company involves any item which must be reported for approval before registration according to a law,

administrative regulation or decision of the State Council, the company shall apply for registration of modification within 30 days from the date of approval by the relevant state department.

Where a license or any other approval document for an item in the business scope of a company which must be reported for approval according to a law, administrative regulation or decision of the State Council is suspended or revoked, or the term of validity of the license or any other approval document expires, the company shall, within 30 days from the date of suspension or revocation of the license or any other approval document or from the date of expiration of the license or any other approval document, apply for registration of modification or conduct the formalities for deregistration according to the provisions of Chapter VI of these Regulations.

Article 34 To modify the type of company, a company shall apply for registration of modification to a company registration organ within the prescribed time limit according to the formation requirements for the type of company after modification, and submit the relevant documents.

Article 35 Where a shareholder of a limited liability company transfers any shares in the company, the company shall apply for registration of modification within 30 days from the date of transfer of shares, and submit the certificate of capacity of the new shareholder which is an entity or certificate of identification of the new shareholder which is a natural person.

Where the legal inheritor of a deceased natural person shareholder of a limited liability company succeeds to the status of shareholder, the company shall apply for registration of modification according to the preceding paragraph.

Where a shareholder of a limited liability company or a promoter of a joint stock limited company changes its name, the company shall apply for registration of modification within 30 days from the date of change of name.

Article 36 Where the modification of any registered item of a company involves the modification of any registered item of its branch, the company shall apply for registration of modification of its branch within 30 days from the date of registration of modification of the company.

Article 37 Where the amendment of the bylaws of a company does not involve any registered item, the company shall submit the amended bylaws or an amendment to the bylaws to the original company registration organ for the record.

Article 38 Where any director, supervisor or manager of a company changes, the company shall file the change with the original company registration organ for the record.

Article 39 Where any registered item of a surviving company changes after a merger or separation, the company shall apply for registration of modification; a company which is dissolved after a merger or separation shall apply for deregistration; a company newly formed after a merger or separation shall apply for registration of formation.

For a merger or separation of a company, the company shall apply for registration within 45 days from the date of announcement, and submit the merger agreement, the resolution or decision on merger or separation, the relevant proof that the company has published an announcement on merger or separation in a newspaper and a statement on debt repayment or debt guarantee by the company. For a merger or separation of a company, which must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 40 Where the modification of a registered item involves any item stated in the Business License of Enterprise Legal Person, a company registration organ shall reissue a business license to replace the original one.

Article 41 To apply for revocation of registration of modification to the company registration organ according to the provision of Article 22 of the Company Law, a company shall submit the following documents:

(1) a written application, which is signed by the legal representative of the company; and

(2) a judgment of the people's court.

Chapter VI Deregistration

Article 42 Where a company is dissolved and shall be liquidated according to law, a liquidation group shall, within 10 days from the date of its formation, submit a list of the members and person in charge of the liquidation group to the company registration organ for the record.

Article 43 Under any of the following circumstances, the liquidation group of a company shall apply for deregistration to the original company registration organ within 30 days from the date of conclusion of liquidation of the company:

(1) the company is declared bankrupt according to law;

(2) the duration of business operation prescribed in the bylaws of the company expires or any other situation for dissolution prescribed in the bylaws of the company occurs, unless the company continues to exist by virtue of an amendment to the bylaws of the company;

(3) the company is dissolved by a resolution of the shareholders' meeting or shareholder's assembly or is dissolved by the shareholder of a one-person limited liability company or a resolution of the board of directors of a foreign-funded company;

(4) the business license of the company is revoked or the company is ordered to be closed down or dissolved according to law;

(5) the company is dissolved by the people's court according to law; or

(6) any other circumstance of dissolution set out by a law or administrative regulation.

Article 44 To apply for deregistration, a company shall submit the following documents:

(1) a written application for deregistration, which is signed by the person in charge of the liquidation group of the company;

(2) a bankruptcy ruling or dissolution judgment of the people's court, a resolution or decision made by the company according to the Company Law or a document of the administration organ on ordered closedown or dissolution of the company;

(3) a liquidation report archived and affirmed by the shareholders' meeting or shareholder's assembly, the shareholder of a one-person limited liability company, the board of directors of a foreign-funded company, the people's court or the organ approving the company;

(4) the Business License of Enterprise Legal Person; and

(5) any other document as required by a law or administrative regulation.

To apply for deregistration, a wholly state-owned company shall also submit a decision of the state-owned asset supervision and administration institution. In particular, a key wholly state-owned company as determined by the State Council shall also submit the approval document of the people's government at the same level.

To apply for deregistration, a company which has a branch shall also submit the certificate of deregistration of its branch.

Article 45 A company shall be terminated upon the deregistration by the company registration organ.

Chapter VII Registration of a Branch of a Company

Article 46 A branch of a company refers to an organization formed by a company to engage in business operation at a place other than the residence of the company. A branch shall not have the status of enterprise legal person.

Article 47 The items for registration of a branch of a company shall include: name, business premises, person in charge and business scope of the branch.

The name of a branch of a company shall conform to the relevant provisions of the state.

The business scope of a branch of a company shall not be outside the business scope of the company.

Article 48 To form a branch, a company shall apply for registration to the company registration organ at the place of residence of the branch within 30 days from the date when a decision is made; where the formation of a branch must be reported to the relevant department for approval according to a law, administrative regulation or decision of the State Council, a company shall apply for registration to the company registration organ within 30 days from the date of approval.

To form a branch, a company shall submit the following documents to the company registration organ:

(1) a written application for registration of formation of a branch, which is signed by the legal representative of the company;

(2) bylaws of the company, and a photocopy of the Business License of Enterprise Legal Person on which the corporate seal is affixed;

(3) a certificate of use of business premises;

(4) an appointment document and a certificate of identification of the person in charge of the branch; and

(5) any other document as required by the State Administration for Industry and Commerce.

Where the formation of a branch must be reported for approval according to a law, administrative regulation or decision of the State Council, or the business scope of a branch includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

The company registration organ of a branch shall issue a Business License to a branch whose registration is approved. A company shall, within 30 days from the date of registration of its branch, file a record with the company registration organ on the strength of the Business License of its branch.

Article 49 To modify a registered item, a branch of a company shall apply for registration of modification to the company registration organ.

To apply for registration of modification, a branch shall submit a written application for registration of modification which is signed by the legal representative of the company. To modify the name or business scope, a branch shall submit a photocopy of the Business License of Enterprise Legal Person on which the corporate seal of the company is affixed, and where the business scope of a branch includes any item which must be reported for approval before registration according to a laws, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted. To modify the business premises, a branch shall submit a certificate of use of the new business premises. To modify the person in charge, a branch shall submit the appointment and removal documents and certificates of identification.

Upon approving the registration of modification, the company registration organ shall reissue a Business License to replace the original one.

Article 50 Where a branch of a company is dissolved by the company or ordered to be closed down according to law, or the business license of a branch of a company is revoked, the company shall apply for deregistration to the company registration organ of the branch within 30 days from the date when a decision is taken. To apply for deregistration, the company shall submit a written application for deregistration which is signed by the legal representative of the company and the Business License of the branch. Upon approving the deregistration, the company registration organ shall recover the Business License of the branch.

Chapter VIII Procedures for Registration

Article 51 To apply for registration of a company or a branch of a company, an applicant may come to the company registration organ to file an application, or file an application by such means as letter, telegraph, telex, fax, electronic data exchange or e-mail.

Where an application is filed by such means as telegraph, telex, fax, electronic data exchange or e-mail, the contact method and mailing address of the applicant shall be provided.

Article 52 The company registration organ shall decide whether or not to accept an application according to the following circumstances respectively:

(1) Where the application documents and materials are complete and consistent with the statutory formats, or an applicant has submitted all the additional or corrected application documents and materials as required by the company registration organ, the company registration organ shall decide to accept the application.

(2) Where the application documents and materials are complete and consistent with the statutory formats but the company registration organ deems that the application documents and materials need verification, the company registration organ shall decide to accept the application, and, at the same time, notify in writing the applicant of the items to be verified and reasons and time limit for verification.

(3) Where an application document or material has any error which may be corrected on the spot, the applicant shall be allowed to correct the error on the spot, affix its signature or seal on the place of correction and note the date of correction; after confirming that the application documents and materials are complete and consistent with the statutory formats, the company registration organ shall decide to accept the application.

(4) Where the application documents and materials are incomplete or inconsistent with the statutory formats, the company registration organ shall, on the spot or within 5 days, inform the applicant of all additions and corrections needed at one time; for notification on the spot, the company registration organ shall return the application documents and materials to the applicant; for notification within 5 days, the company registration organ shall receive the application documents and materials and issue a receipt of the application documents and materials, and where the company registration organ does not notify the applicant within the time limit, it shall be deemed that the company registration organ has accepted the application from the date of receipt of the application documents and materials.

(5) Where an item does not fall within the scope of company registration or does not fall within the scope of its registration jurisdiction, the company registration organ shall immediately decide not to accept the application, and notify the applicant to apply to a relevant administrative organ.

A company registration organ shall, within 5 days from the date of receipt of the application documents and materials, decide whether or not to accept an application which is filed by such means as letter, telegraph, telex, fax, electronic data exchange or e-mail.

Article 53 Unless a decision on approval of registration is made according to paragraph 1(1) of Article 54 of these Regulations, a company registration organ shall issue a Notice of Acceptance after deciding to accept an application; or after deciding to disapprove an application, shall issue a Notice of Disapproval, explaining the reasons for disapproval and notifying the applicant of its right to apply for an administrative reconsideration or file an administrative lawsuit according to law.

Article 54 After deciding to accept an application for registration, a company registration organ shall decide whether or not to approve the registration within the prescribed time limit according to the different circumstances:

(1) Where an application filed by an applicant coming to the company registration organ is accepted, the company registration organ shall decide whether or not to approve the registration on the spot.

(2) Where an application filed by an applicant by letter is accepted, the company registration organ shall decide whether or not to approve the registration within 15 days from the date of acceptance.

(3) Where an application filed by an applicant by such means as telegraph, telex, fax, electronic data exchange or e-mail, the applicant shall, within 15 days from the date of receipt of the Notice of Acceptance, submit the original application documents and materials which are consistent with the contents of the telegraph, telex, fax, electronic data exchange or e-mail and the statutory formats; where the applicant comes to the company registration organ to submit the original application documents and materials, the company registration organ shall decide whether or not to approve the registration on the spot; where the applicant submits the original application documents and materials by letter, the company registration organ shall decide whether or not to approve the registration within 15 days from the date of acceptance.

(4) Where a company registration organ does not receive the original application documents and materials within 60 days from the date of issuance of the Notice of Acceptance, or the original application documents and materials are inconsistent with the application documents and materials accepted by the company registration organ, the company registration organ shall decide to disapprove the registration.

Where a company registration organ needs to verify the application documents and materials, it shall decide whether or not to approve the registration within 15 days from the date of acceptance.

Article 55 Where a company registration organ decides to grant the pre-approval of a company name, it shall issue a Notice of Pre-approval of Enterprise Name; where the organ decides to approve the registration of formation of a company, it shall issue a Notice of Approval of Formation Registration, and notify the applicant to collect a business license within 10 days from the date of decision; where the organ decides to approve the registration of modification of a company, it shall issue a Notice of Approval of Modification Registration, and notify the applicant to replace its business license within 10 days from

the date of decision; where the organ decides to approve the deregistration of a company, it shall issue a Notice of Approval of Deregistration, and recover the business license.

Where a company registration organ decides not to grant the pre-approval of a company name or decides to disapprove a registration, it shall issue a Notice of Rejection of Enterprise Name or a Notice of Rejection of Registration, explaining the reasons for its not granting the pre-approval or for its disapproval of registration and notifying the applicant of its right to apply for an administrative reconsideration or file an administrative lawsuit according to law.

Article 56 To conduct the registration of formation or registration of modification, a company shall pay a registration fee to the company registration organ according to legal provisions.

To collect a Business License of Enterprise Legal Person, the fee for registration of formation shall be charged at 0.8‰ of the total amount of the registered capital; where the registered capital exceeds 10 million yuan, for the excess, such a fee shall be charged at 0.4‰; where the registered capital exceeds 100 million yuan, for the excess, no such a fee shall be charged.

To collect a Business License, the fee for registration of formation shall be 300 yuan.

To modify any registered item, the fee for registration of modification shall be 100 yuan.

Article 57 A company registration organ shall enter a company registration item which is approved to be registered into the company register book for the public to consult and copy.

Article 58 An announcement of revocation of the Business License of Enterprise Legal Person or Business License shall be published by a company registration organ.

Chapter IX Annual Inspection

Article 59 From March 1 to June 30 each year, a company registration organ shall conduct the annual inspection of companies.

Article 60 A company shall accept the annual inspection within the prescribed period of time according to the requirements of the company registration organ, and submit an annual inspection report, an annual balance sheet and profit and loss statement, and a duplicate of the Business License of Enterprise Legal Person.

A company which has a branch shall clearly reflect the relevant information on the branch in the submitted annual inspection materials, and submit a photocopy of the Business License.

Article 61 A company registration organ shall examine the information on the company registration items, on the basis of the annual inspection materials submitted by the company.

Article 62 A company shall pay an annual inspection fee to a company registration organ. The annual inspection fee shall be 50 yuan.

Chapter X Management of Licenses and Archives

Article 63 The Business License of Enterprise Legal Person or Business License shall be divided into original and duplicates, and the original and duplicates shall have equal legal effect.

The original of the Business License of Enterprise Legal Person or the original of the Business License should be placed on a conspicuous position at the residence of a company or business premises of a branch of a company.

A company may, according to the business needs, apply for issuance of several duplicates of the business license to the company registration organ.

Article 64 No entity or individual shall forge, alter, lease, lend or transfer a business license.

Where a business license is lost or damaged, a company shall declare its invalidity in a newspaper or periodical designated by a company registration organ, and apply for the reissue of the business license.

Where a company registration organ decides to approve a registration of modification, a deregistration or a revocation of registration of modification, and a company refuses to or cannot hand in its business license, the company registration organ shall announce the invalidity of the business license.

Article 65 A company registration organ may temporarily withhold a business license which needs authentication, but the withholding period shall not exceed 10 days.

Article 66 The borrowing, excerpting, carrying or duplicating of the company registration archives shall be carried out according to the prescribed powers and procedures.

No entity or individual shall modify, alter, mark or damage the company registration archives.

Article 67 The patterns of the original and duplicates of a business license and the major formats of documents or forms concerning the company registration shall be uniformly formulated by the State Administration for Industry and Commerce.

Chapter XI Legal Liability

Article 68 Where a company registration is acquired by falsification of the registered capital, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 15% of the falsified registered capital; if the case is serious, shall revoke the company registration or revoke the business license.

Article 69 Where a company registration is acquired by false submissions or other fraudulent means, a company registration organ shall order correction, and impose a fine of not less than 50,000 yuan but not more than 500,000 yuan; if the case is serious, shall revoke the company registration or revoke the business license.

Article 70 Where a promoter or shareholder of a company makes any false capital contribution, failing to deliver or failing to deliver as scheduled the monetary or non-monetary property as the contribution, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 10% of the amount of the false capital contribution.

Article 71 Where a promoter or shareholder illegally withdraws its capital contribution after the company is formed, the company registration organ shall order correction, and impose a fine of not less than 5% but not more than 15% of the amount of illegally withdrawn capital.

Article 72 Where a company fails to open business more than six months after its formation without good reasons, or ceases business operation for more than six months consecutively after opening business, a company registration organ may revoke its business license.

Article 73 Where a company fails to conduct the relevant registration of modification according to these Regulations for any modification of the company registration items, a company registration organ shall order the company to conduct the registration within a prescribed time limit; and, if the company fails to do so within the prescribed time limit, shall impose a fine of not less than10,000 yuan but not more than100,000 yuan. In particular, where the business scope of a company to be modified includes any item which must be reported for approval according to a law, administrative regulation or decision of the State Council and such an approval is not acquired, if the company engages in the relevant business operation without the approval and the case is serious, the company registration organ shall revoke its business license.

Where a company fails to conduct the relevant record-filing formality according to these Regulations, the company registration organ shall order the company to conduct it within a prescribed time limit; and, if the company fails to do so within the prescribed time limit, shall impose a fine of not more than 30, 000 yuan.

Article 74 Where a company fails to notify its creditors by a notice or by an announcement of a merger, separation, reduction of registered capital or liquidation, a company registration organ shall order correction, and impose a fine of not less than 10, 000 yuan but not more than 100, 000 yuan.

Where, in liquidation, a company conceals any property, makes any false record in its balance sheet or property checklist, or distributes the company property before repayment of debts, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 10% of the amount of concealed property or distributed property before repayment of debts on the company; and shall impose a fine of not less than 10, 000 yuan but not more than100, 000 yuan on the directly responsible person in charge and other directly liable persons.

Where, during the period of liquidation, a company engages in any business operation irrelevant to the liquidation, the company registration organ shall impose a warning, and confiscate the illegal proceeds.

Article 75 Where a liquidation group fails to submit a liquidation report to the company registration organ according to legal provisions, or the submitted liquidation report conceals any major fact or has any major omission, a company registration organ shall order correction.

Where any member of a liquidation group takes advantage of his power to practice favoritism, seeks any illegal proceeds or encroaches on any company asset, the company registration organ shall order return of the company asset and confiscate the illegal proceeds, and may impose a fine of not less than the amount but not more than 5 times the amount of illegal proceeds.

Article 76 Where a company fails to accept the annual inspection according to legal provisions, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan, and order it to accept the annual inspection within a prescribed time limit; and, if the company still fails to accept the annual inspection within the prescribed time limit, shall revoke its business license. Where a company conceals the truth or make falsification in the annual inspection, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 50,000 yuan, and order correction within a prescribed time limit; and, if the case is serious, shall revoke its business license.

Article 77 Where a company forges, alters, leases, lends or transfers its business license, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan; and, if the case is serious, shall revoke its business license.

Article 78 Where a business license is not placed on a conspicuous position at the residence of a company or business premises of a branch of a company, a company registration organ shall order correction; and if the ordered correction is refused, shall impose a fine of not less than 1,000 yuan but not more than 5,000 yuan.

Article 79 Where an institution which undertakes the asset appraisal, capital verification or verification of certificates provides any false materials, a company registration organ shall confiscate the illegal proceeds and impose a fine of not less than the amount but not more than 5 times the amount of the illegal proceeds, and the relevant competent department may also order the institution to suspend business operation, revoke the qualification certificates of the directly liable persons, and revoke its business license.

Where an institution which undertakes the asset appraisal, capital verification or verification of certificates negligently submits a report containing any major omission, a company registration organ shall order correction; and if the case is relatively serious, shall impose a fine of not less than the amount but not more than 5 times the amount of its proceeds, and the relevant competent department may order the institution to suspend business operation, revoke the qualification certificates of the directly liable persons and revoke its business license.

Article 80 Where any entity fails to register itself as a limited liability company or a joint stock limited company according to law but acts in the name of a limited liability company or a joint stock limited company, or fails to register itself as a branch of a limited liability

company or a joint stock limited company according to law but acts in the name of a branch of a limited liability company or a joint stock limited company, a company registration organ shall order correction or impose a ban, and may impose a fine of not more than 100,000 yuan.

Article 81 Where a company registration organ approves an application for company registration which does not meet the prescribed conditions, or disapproves an application for company registration which meets the prescribed conditions, the administrative sanctions shall be imposed on the directly responsible person in charge and other directly liable persons according to law.

Article 82 Where a superior department of a company registration organ orders the company registration organ to approve an application for company registration which does not meet the prescribed conditions or disapprove an application for company registration which meets the prescribed conditions, or covers up any illegal registration, the administrative sanctions shall be imposed on the directly responsible person in charge and other directly liable persons according to law.

Article 83 Where a foreign company forms any branch within the territory of China without approval in violation of the Company Law, the company registration organ shall order correction or closedown, and may impose a fine of not less than 50, 000 yuan but not more than 200, 000 yuan.

Article 84 Where a company engages in serious illegal activities in the name of the company, which compromises the national security or public interest, its business license shall be revoked.

Article 85 Where a branch of a company commits any illegal act as prescribed in this Chapter, the provisions of this Chapter shall apply.

Article 86 Where a violation of these Regulations constitutes a crime, the criminal liability shall be investigated according to law.

Chapter XII Supplementary Provisions

Article 87 The registration of a foreign-funded company shall be subject to these Regulations. Where a law on foreign-funded enterprise provides otherwise for the registration of a foreign-funded enterprise, such a law shall apply.

Article 88 Where the formation of a company must be reported for approval according to a law, administrative regulation or decision of the State Council, or the business scope of a company includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the State Administration for Industry and Commerce shall compile and publish a Catalogue of Administrative Licensing before Enterprise Registration according to the relevant laws, administrative regulations and decisions of the State Council.

Article 89 These Regulations shall come into force on July 1, 1994.

中华人民共和国公司登记管理条例

（1994年6月24日中华人民共和国国务院令第156号发布，根据2005年12月18日《国务院关于修改〈中华人民共和国公司登记管理条例〉的决定》修订）

第一章　总则

第一条　为了确认公司的企业法人资格，规范公司登记行为，依据《中华人民共和国公司法》（以下简称《公司法》），制定本条例。

第二条　有限责任公司和股份有限公司（以下统称公司）设立、变更、终止，应当依照本条例办理公司登记。

申请办理公司登记，申请人应当对申请文件、材料的真实性负责。

第三条　公司经公司登记机关依法登记，领取《企业法人营业执照》，方取得企业法人资格。

自本条例施行之日起设立公司，未经公司登记机关登记的，不得以公司名义从事经营活动。

第四条　工商行政管理机关是公司登记机关。

下级公司登记机关在上级公司登记机关的领导下开展公司登记工作。

公司登记机关依法履行职责，不受非法干预。

第五条　国家工商行政管理总局主管全国的公司登记工作。

第二章　登记管辖

第六条　国家工商行政管理总局负责下列公司的登记：

（一）国务院国有资产监督管理机构履行出资人职责的公司以及该公司投资设立并持有50%以上股份的公司；

（二）外商投资的公司；

（三）依照法律、行政法规或者国务院决定的规定，应当由国家工商行政管理总局登记的公司；

（四）国家工商行政管理总局规定应当由其登记的其他公司。

第七条　省、自治区、直辖市工商行政管理局负责本辖区内下列公司的登记：

（一）省、自治区、直辖市人民政府国有资产监督管理机构履行出资人职责的公司以及该公司投资设立并持有50%以上股份的公司；

（ 二 ）省、自治区、直辖市工商行政管理局规定由其登记的自然人投资设立的公司；

（ 三 ）依照法律、行政法规或者国务院决定的规定，应当由省、自治区、直辖市工商行政管理局登记的公司；

（ 四 ）国家工商行政管理总局授权登记的其他公司。

第八条　设区的市（ 地区 ）工商行政管理局、县工商行政管理局，以及直辖市的工商行政管理分局、设区的市工商行政管理局的区分局，负责本辖区内下列公司的登记：

（ 一 ）本条例第六条和第七条所列公司以外的其他公司；

（ 二 ）国家工商行政管理总局和省、自治区、直辖市工商行政管理局授权登记的公司。

前款规定的具体登记管辖由省、自治区、直辖市工商行政管理局规定。但是，其中的股份有限公司由设区的市（ 地区 ）工商行政管理局负责登记。

第三章　登记事项

第九条　公司的登记事项包括：

（ 一 ）名称；

（ 二 ）住所；

（ 三 ）法定代表人姓名；

（ 四 ）注册资本；

（ 五 ）实收资本；

（ 六 ）公司类型；

（ 七 ）经营范围；

（ 八 ）营业期限；

（ 九 ）有限责任公司股东或者股份有限公司发起人的姓名或者名称，以及认缴和实缴的出资额、出资时间、出资方式。

第十条　公司的登记事项应当符合法律、行政法规的规定。不符合法律、行政法规规定的，公司登记机关不予登记。

第十一条　公司名称应当符合国家有关规定。公司只能使用一个名称。经公司登记机关核准登记的公司名称受法律保护。

第十二条　公司的住所是公司主要办事机构所在地。经公司登记机关登记的公司的住所只能有一个。公司的住所应当在其公司登记机关辖区内。

第十三条　公司的注册资本和实收资本应当以人民币表示，法律、行政法规另有规定的除外。

第十四条　股东的出资方式应当符合《公司法》第二十七条的规定。股东以货币、实物、知识产权、土地使用权以外的其他财产出资的，其登记办法由国家工商行政管理总局会同国务院有关部门规定。

股东不得以劳务、信用、自然人姓名、商誉、特许经营权或者设定担保的财产等作价出资。

第十五条　公司的经营范围由公司章程规定，并依法登记。

公司的经营范围用语应当参照国民经济行业分类标准。

第十六条　公司类型包括有限责任公司和股份有限公司。

一人有限责任公司应当在公司登记中注明自然人独资或者法人独资，并在公司营业执照中载明。

第四章　设立登记

第十七条　设立公司应当申请名称预先核准。

法律、行政法规或者国务院决定规定设立公司必须报经批准，或者公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当在报送批准前办理公司名称预先核准，并以公司登记机关核准的公司名称报送批准。

第十八条　设立有限责任公司，应当由全体股东指定的代表或者共同委托的代理人向公司登记机关申请名称预先核准；设立股份有限公司，应当由全体发起人指定的代表或者共同委托的代理人向公司登记机关申请名称预先核准。

申请名称预先核准，应当提交下列文件：

（一）有限责任公司的全体股东或者股份有限公司的全体发起人签署的公司名称预先核准申请书；

（二）全体股东或者发起人指定代表或者共同委托代理人的证明；

（三）国家工商行政管理总局规定要求提交的其他文件。

第十九条　预先核准的公司名称保留期为6个月。预先核准的公司名称在保留期内，不得用于从事经营活动，不得转让。

第二十条　设立有限责任公司，应当由全体股东指定的代表或者共同委托的代理人向公司登记机关申请设立登记。设立国有独资公司，应当由国务院或者地方人民政府授权的本级人民政府国有资产监督管理机构作为申请人，申请设立登记。法律、行政法规或者国务院决定规定设立有限责任公司必须报经批准的，应当自批准之日起90日内向公司登记机关申请设立登记；逾期申请设立登记的，申请人应当报批准机关确认原批准文件的效力或者另行报批。

申请设立有限责任公司，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的设立登记申请书；

（二）全体股东指定代表或者共同委托代理人的证明；

（ 三 ）公司章程；

（ 四 ）依法设立的验资机构出具的验资证明，法律、行政法规另有规定的除外；

（ 五 ）股东首次出资是非货币财产的，应当在公司设立登记时提交已办理其财产权转移手续的证明文件；

（ 六 ）股东的主体资格证明或者自然人身份证明；

（ 七 ）载明公司董事、监事、经理的姓名、住所的文件以及有关委派、选举或者聘用的证明；

（ 八 ）公司法定代表人任职文件和身份证明；

（ 九 ）企业名称预先核准通知书；

（ 十 ）公司住所证明；

（ 十一 ）国家工商行政管理总局规定要求提交的其他文件。

外商投资的有限责任公司的股东首次出资额应当符合法律、行政法规的规定，其余部分应当自公司成立之日起 2 年内缴足，其中，投资公司可以在 5 年内缴足。

法律、行政法规或者国务院决定规定设立有限责任公司必须报经批准的，还应当提交有关批准文件。

第二十一条　设立股份有限公司，应当由董事会向公司登记机关申请设立登记。以募集方式设立股份有限公司的，应当于创立大会结束后 30 日内向公司登记机关申请设立登记。

申请设立股份有限公司，应当向公司登记机关提交下列文件：

（ 一 ）公司法定代表人签署的设立登记申请书；

（ 二 ）董事会指定代表或者共同委托代理人的证明；

（ 三 ）公司章程；

（ 四 ）依法设立的验资机构出具的验资证明；

（ 五 ）发起人首次出资是非货币财产的，应当在公司设立登记时提交已办理其财产权转移手续的证明文件；

（ 六 ）发起人的主体资格证明或者自然人身份证明；

（ 七 ）载明公司董事、监事、经理姓名、住所的文件以及有关委派、选举或者聘用的证明；

（ 八 ）公司法定代表人任职文件和身份证明；

（ 九 ）企业名称预先核准通知书；

（ 十 ）公司住所证明；

（ 十一 ）国家工商行政管理总局规定要求提交的其他文件。

以募集方式设立股份有限公司的，还应当提交创立大会的会议记录；以募集方式设立股份有限公司公开发行股票的，还应当提交国务院证券监督管理机构的核准文件。

法律、行政法规或者国务院决定规定设立股份有限公司必须报经批准的，还应当提交有关批准文件。

第二十二条　公司申请登记的经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当在申请登记前报经国家有关部门批准，并向公司登记机关提交有关批准文件。

第二十三条　公司章程有违反法律、行政法规的内容的，公司登记机关有权要求公司作相应修改。

第二十四条　公司住所证明是指能够证明公司对其住所享有使用权的文件。

第二十五条　依法设立的公司，由公司登记机关发给《企业法人营业执照》。公司营业执照签发日期为公司成立日期。公司凭公司登记机关核发的《企业法人营业执照》刻制印章，开立银行账户，申请纳税登记。

第五章　变更登记

第二十六条　公司变更登记事项，应当向原公司登记机关申请变更登记。

未经变更登记，公司不得擅自改变登记事项。

第二十七条　公司申请变更登记，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的变更登记申请书；

（二）依照《公司法》作出的变更决议或者决定；

（三）国家工商行政管理总局规定要求提交的其他文件。

公司变更登记事项涉及修改公司章程的，应当提交由公司法定代表人签署的修改后的公司章程或者公司章程修正案。

变更登记事项依照法律、行政法规或者国务院决定规定在登记前须经批准的，还应当向公司登记机关提交有关批准文件。

第二十八条　公司变更名称的，应当自变更决议或者决定作出之日起 30 日内申请变更登记。

第二十九条　公司变更住所的，应当在迁入新住所前申请变更登记，并提交新住所使用证明。

公司变更住所跨公司登记机关辖区的，应当在迁入新住所前向迁入地公司登记机关申请变更登记；迁入地公司登记机关受理的，由原公司登记机关将公司登记档案移送迁入地公司登记机关。

第三十条　公司变更法定代表人的，应当自变更决议或者决定作出之日起 30 日内申请变更登记。

第三十一条　公司变更注册资本的，应当提交依法设立的验资机构出具的验资证明。

公司增加注册资本的，有限责任公司股东认缴新增资本的出资和股份有限公司的股东认购新股，应当分别依照《公司法》设立有限责任公司缴纳出资和设立股份有限公司缴纳股款的有关规定执行。股份有限公司以公开发行新股方式或者上市公司以非公开发行新股方式增加注册资本的，还应当提交国务院证券监督管理机构的核准文件。

公司法定公积金转增为注册资本的，验资证明应当载明留存的该项公积金不少于转增前公司注册资本的25%。

公司减少注册资本的，应当自公告之日起45日后申请变更登记，并应当提交公司在报纸上登载公司减少注册资本公告的有关证明和公司债务清偿或者债务担保情况的说明。

公司减资后的注册资本不得低于法定的最低限额。

第三十二条　公司变更实收资本的，应当提交依法设立的验资机构出具的验资证明，并应当按照公司章程载明的出资时间、出资方式缴纳出资。公司应当自足额缴纳出资或者股款之日起30日内申请变更登记。

第三十三条　公司变更经营范围的，应当自变更决议或者决定作出之日起30日内申请变更登记；变更经营范围涉及法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当自国家有关部门批准之日起30日内申请变更登记。

公司的经营范围中属于法律、行政法规或者国务院决定规定须经批准的项目被吊销、撤销许可证或者其他批准文件，或者许可证、其他批准文件有效期届满的，应当自吊销、撤销许可证、其他批准文件或者许可证、其他批准文件有效期届满之日起30日内申请变更登记或者依照本条例第六章的规定办理注销登记。

第三十四条　公司变更类型的，应当按照拟变更的公司类型的设立条件，在规定的期限内向公司登记机关申请变更登记，并提交有关文件。

第三十五条　有限责任公司股东转让股权的，应当自转让股权之日起30日内申请变更登记，并应当提交新股东的主体资格证明或者自然人身份证明。

有限责任公司的自然人股东死亡后，其合法继承人继承股东资格的，公司应当依照前款规定申请变更登记。

有限责任公司的股东或者股份有限公司的发起人改变姓名或者名称的，应当自改变姓名或者名称之日起30日内申请变更登记。

第三十六条　公司登记事项变更涉及分公司登记事项变更的，应当自公司变更登记之日起30日内申请分公司变更登记。

第三十七条　公司章程修改未涉及登记事项的，公司应当将修改后的公司章程或者公司章程修正案送原公司登记机关备案。

第三十八条　公司董事、监事、经理发生变动的，应当向原公司登记机关备案。

第三十九条　因合并、分立而存续的公司，其登记事项发生变化的，应当申请变更登记；因合并、分立而解散的公司，应当申请注销登记；因合并、分立而新设立的公司，应当申请设立登记。

公司合并、分立的，应当自公告之日起45日后申请登记，提交合并协议和合并、分立决议或者决定以及公司在报纸上登载公司合并、分立公告的有关证明和债务清偿或者债务担保情况的说明。法律、行政法规或者国务院决定规定公司合并、分立必须报经批准的，还应当提交有关批准文件。

第四十条　变更登记事项涉及《企业法人营业执照》载明事项的，公司登记机关应当换发营业执照。

第四十一条　公司依照《公司法》第二十二条规定向公司登记机关申请撤销变更登记的，应当提交下列文件：

（一）公司法定代表人签署的申请书；

（二）人民法院的裁判文书。

第六章　注销登记

第四十二条　公司解散，依法应当清算的，清算组应当自成立之日起10日内将清算组成员、清算组负责人名单向公司登记机关备案。

第四十三条　有下列情形之一的，公司清算组应当自公司清算结束之日起30日内向原公司登记机关申请注销登记：

（一）公司被依法宣告破产；

（二）公司章程规定的营业期限届满或者公司章程规定的其他解散事由出现，但公司通过修改公司章程而存续的除外；

（三）股东会、股东大会决议解散或者一人有限责任公司的股东、外商投资的公司董事会决议解散；

（四）依法被吊销营业执照、责令关闭或者被撤销；

（五）人民法院依法予以解散；

（六）法律、行政法规规定的其他解散情形。

第四十四条　公司申请注销登记，应当提交下列文件：

（一）公司清算组负责人签署的注销登记申请书；

（二）人民法院的破产裁定、解散裁判文书，公司依照《公司法》作出的决议或者决定，行政机关责令关闭或者公司被撤销的文件；

（三）股东会、股东大会、一人有限责任公司的股东、外商投资的公司董事会或者人民法院、公司批准机关备案、确认的清算报告；

（四）《企业法人营业执照》；

（五）法律、行政法规规定应当提交的其他文件。

国有独资公司申请注销登记，还应当提交国有资产监督管理机构的决定，其中，国务院确定的重要的国有独资公司，还应当提交本级人民政府的批准文件。

有分公司的公司申请注销登记，还应当提交分公司的注销登记证明。

第四十五条　经公司登记机关注销登记，公司终止。

第七章　分公司的登记

第四十六条　分公司是指公司在其住所以外设立的从事经营活动的机构。分公司不具有企业法人资格。

第四十七条　分公司的登记事项包括：名称、营业场所、负责人、经营范围。

分公司的名称应当符合国家有关规定。

分公司的经营范围不得超出公司的经营范围。

第四十八条　公司设立分公司的，应当自决定作出之日起30日内向分公司所在地的公司登记机关申请登记；法律、行政法规或者国务院决定规定必须报经有关部门批准的，应当自批准之日起30日内向公司登记机关申请登记。

设立分公司，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的设立分公司的登记申请书；

（二）公司章程以及加盖公司印章的《企业法人营业执照》复印件；

（三）营业场所使用证明；

（四）分公司负责人任职文件和身份证明；

（五）国家工商行政管理总局规定要求提交的其他文件。

法律、行政法规或者国务院决定规定设立分公司必须报经批准，或者分公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，还应当提交有关批准文件。

分公司的公司登记机关准予登记的，发给《营业执照》。公司应当自分公司登记之日起30日内，持分公司的《营业执照》到公司登记机关办理备案。

第四十九条　分公司变更登记事项的，应当向公司登记机关申请变更登记。

申请变更登记，应当提交公司法定代表人签署的变更登记申请书。变更名称、经营范围的，应当提交加盖公司印章的《企业法人营业执照》复印件，分公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，还应当提交有关批准文件。变更营业场所的，应当提交新的营业场所使用证明。变更负责人的，应当提交公司的任免文件以及其身份证明。

公司登记机关准予变更登记的，换发《营业执照》。

第五十条　分公司被公司撤销、依法责令关闭、吊销营业执照的，公司应当自决定作出之日起30日内向该分公司的公司登记机关申请注销登记。申请注销登记应当提交公司法定代表人签署的注销登记申请书和分公司的《营业执照》。公司登记机关准予注销登记后，应当收缴分公司的《营业执照》。

第八章　登记程序

第五十一条　申请公司、分公司登记，申请人可以到公司登记机关提交申请，也可以通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出申请。

通过电报、电传、传真、电子数据交换和电子邮件等方式提出申请的，应当提供申请人的联系方式以及通讯地址。

第五十二条　公司登记机关应当根据下列情况分别作出是否受理的决定：

（一）申请文件、材料齐全，符合法定形式的，或者申请人按照公司登记机关的要求提交全部补正申请文件、材料的，应当决定予以受理。

（二）申请文件、材料齐全，符合法定形式，但公司登记机关认为申请文件、材料需要核实的，应当决定予以受理，同时书面告知申请人需要核实的事项、理由以及时间。

（三）申请文件、材料存在可以当场更正的错误的，应当允许申请人当场予以更正，由申请人在更正处签名或者盖章，注明更正日期；经确认申请文件、材料齐全，符合法定形式的，应当决定予以受理。

（四）申请文件、材料不齐全或者不符合法定形式的，应当当场或者在5日内一次告知申请人需要补正的全部内容；当场告知时，应当将申请文件、材料退回申请人；属于5日内告知的，应当收取申请文件、材料并出具收到申请文件、材料的凭据，逾期不告知的，自收到申请文件、材料之日起即为受理。

（五）不属于公司登记范畴或者不属于本机关登记管辖范围的事项，应当即时决定不予受理，并告知申请人向有关行政机关申请。

公司登记机关对通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出申请的，应当自收到申请文件、材料之日起5日内作出是否受理的决定。

第五十三条　除依照本条例第五十四条第一款第（一）项作出准予登记决定的外，公司登记机关决定予以受理的，应当出具《受理通知书》；决定不予受理的，应当出具《不予受理通知书》，说明不予受理的理由，并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第五十四条　公司登记机关对决定予以受理的登记申请，应当分别情况在规定的期限内作出是否准予登记的决定：

（一）对申请人到公司登记机关提出的申请予以受理的，应当当场作出准予登记的决定。

（二）对申请人通过信函方式提交的申请予以受理的，应当自受理之日起15日内作出准予登记的决定。

（三）通过电报、电传、传真、电子数据交换和电子邮件等方式提交申请的，申请人应当自收到《受理通知书》之日起15日内，提交与电报、电传、传真、电子数据交换和电子邮件等内容一致并符合法定形式的申请文件、材料原件；申请人到公司登记机关提交申请文件、材料原件的，应当当场作出准予登记的决定；申请人通过信函方式提交申请文件、材料原件的，应当自受理之日起15日内作出准予登记的决定。

（ 四 ）公司登记机关自发出《受理通知书》之日起 60 日内，未收到申请文件、材料原件，或者申请文件、材料原件与公司登记机关所受理的申请文件、材料不一致的，应当作出不予登记的决定。

公司登记机关需要对申请文件、材料核实的，应当自受理之日起 15 日内作出是否准予登记的决定。

第五十五条　公司登记机关作出准予公司名称预先核准决定的，应当出具《企业名称预先核准通知书》；作出准予公司设立登记决定的，应当出具《准予设立登记通知书》，告知申请人自决定之日起 10 日内，领取营业执照；作出准予公司变更登记决定的，应当出具《准予变更登记通知书》，告知申请人自决定之日起 10 日内，换发营业执照；作出准予公司注销登记决定的，应当出具《准予注销登记通知书》，收缴营业执照。

公司登记机关作出不予名称预先核准、不予登记决定的，应当出具《企业名称驳回通知书》、《登记驳回通知书》，说明不予核准、登记的理由，并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第五十六条　公司办理设立登记、变更登记，应当按照规定向公司登记机关缴纳登记费。

领取《企业法人营业执照》的，设立登记费按注册资本总额的 0.8‰缴纳；注册资本超过 1000 万元的，超过部分按 0.4‰缴纳；注册资本超过 1 亿元的，超过部分不再缴纳。

领取《营业执照》的，设立登记费为 300 元。

变更登记事项的，变更登记费为 100 元。

第五十七条　公司登记机关应当将登记的公司登记事项记载于公司登记簿上，供社会公众查阅、复制。

第五十八条　吊销《企业法人营业执照》和《营业执照》的公告由公司登记机关发布。

第九章　年度检验

第五十九条　每年 3 月 1 日至 6 月 30 日，公司登记机关对公司进行年度检验。

第六十条　公司应当按照公司登记机关的要求，在规定的时间内接受年度检验，并提交年度检验报告书、年度资产负债表和损益表、《企业法人营业执照》副本。

设立分公司的公司在其提交的年度检验材料中，应当明确反映分公司的有关情况，并提交《营业执照》的复印件。

第六十一条　公司登记机关应当根据公司提交的年度检验材料，对与公司登记事项有关的情况进行审查。

第六十二条　公司应当向公司登记机关缴纳年度检验费。年度检验费为 50 元。

第十章　证照和档案管理

第六十三条　《企业法人营业执照》、《营业执照》分为正本和副本，正本和副本具有同等法律效力。

《企业法人营业执照》正本或者《营业执照》正本应当置于公司住所或者分公司营业场所的醒目位置。

公司可以根据业务需要向公司登记机关申请核发营业执照若干副本。

第六十四条　任何单位和个人不得伪造、涂改、出租、出借、转让营业执照。

营业执照遗失或者毁坏的，公司应当在公司登记机关指定的报刊上声明作废，申请补领。

公司登记机关依法作出变更登记、注销登记、撤销变更登记决定，公司拒不缴回或者无法缴回营业执照的，由公司登记机关公告营业执照作废。

第六十五条　公司登记机关对需要认定的营业执照，可以临时扣留，扣留期限不得超过10天。

第六十六条　借阅、抄录、携带、复制公司登记档案资料的，应当按照规定的权限和程序办理。

任何单位和个人不得修改、涂抹、标注、损毁公司登记档案资料。

第六十七条　营业执照正本、副本样式以及公司登记的有关重要文书格式或者表式，由国家工商行政管理总局统一制定。

第十一章　法律责任

第六十八条　虚报注册资本，取得公司登记的，由公司登记机关责令改正，处以虚报注册资本金额5%以上15%以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第六十九条　提交虚假材料或者采取其他欺诈手段隐瞒重要事实，取得公司登记的，由公司登记机关责令改正，处以5万元以上50万元以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第七十条　公司的发起人、股东虚假出资，未交付或者未按期交付作为出资的货币或者非货币财产的，由公司登记机关责令改正，处以虚假出资金额5%以上15%以下的罚款。

第七十一条　公司的发起人、股东在公司成立后，抽逃出资的，由公司登记机关责令改正，处以所抽逃出资金额5%以上15%以下的罚款。

第七十二条　公司成立后无正当理由超过6个月未开业的，或者开业后自行停业连续6个月以上的，可以由公司登记机关吊销营业执照。

第七十三条　公司登记事项发生变更时，未依照本条例规定办理有关变更登记的，由公司登记机关责令限期登记；逾期不登记的，处以1万元以上10万元以下的罚款。其中，变更经营范围涉及法律、行政法规或者国务院决定规定须经批准的项目而未取得批准，擅自从事相关经营活动，情节严重的，吊销营业执照。

公司未依照本条例规定办理有关备案的，由公司登记机关责令限期办理；逾期未办理的，处以3万元以下的罚款。

第七十四条　公司在合并、分立、减少注册资本或者进行清算时，不按照规定通知或者公告债权人的，由公司登记机关责令改正，处以1万元以上10万元以下的罚款。

公司在进行清算时，隐匿财产，对资产负债表或者财产清单作虚假记载或者在未清偿债务前分配公司财产的，由公司登记机关责令改正，对公司处以隐匿财产或者未清偿债务前分配公司财产金额5%以上10%以下的罚款；对直接负责的主管人员和其他直接责任人员处以1万元以上10万元以下的罚款。

公司在清算期间开展与清算无关的经营活动的，由公司登记机关予以警告，没收违法所得。

第七十五条　清算组不按照规定向公司登记机关报送清算报告，或者报送清算报告隐瞒重要事实或者有重大遗漏的，由公司登记机关责令改正。

清算组成员利用职权徇私舞弊、谋取非法收入或者侵占公司财产的，由公司登记机关责令退还公司财产，没收违法所得，并可以处以违法所得1倍以上5倍以下的罚款。

第七十六条　公司不按照规定接受年度检验的，由公司登记机关处以1万元以上10万元以下的罚款，并限期接受年度检验；逾期仍不接受年度检验的，吊销营业执照。年度检验中隐瞒真实情况、弄虚作假的，由公司登记机关处以1万元以上5万元以下的罚款，并限期改正；情节严重的，吊销营业执照。

第七十七条　伪造、涂改、出租、出借、转让营业执照的，由公司登记机关处以1万元以上10万元以下的罚款；情节严重的，吊销营业执照。

第七十八条　未将营业执照置于住所或者营业场所醒目位置的，由公司登记机关责令改正；拒不改正的，处以1000元以上5000元以下的罚款。

第七十九条　承担资产评估、验资或者验证的机构提供虚假材料的，由公司登记机关没收违法所得，处以违法所得1倍以上5倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因过失提供有重大遗漏的报告的，由公司登记机关责令改正，情节较重的，处以所得收入1倍以上5倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

第八十条　未依法登记为有限责任公司或者股份有限公司，而冒用有限责任公司或者股份有限公司名义的，或者未依法登记为有限责任公司或者股份有限公司的分公司，而冒用有限责任公司或者股份有限公司的分公司名义的，由公司登记机关责令改正或者予以取缔，可以并处10万元以下的罚款。

第八十一条　公司登记机关对不符合规定条件的公司登记申请予以登记，或者对符合规定条件的登记申请不予登记的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分。

第八十二条　公司登记机关的上级部门强令公司登记机关对不符合规定条件的登记申请予以登记，或者对符合规定条件的登记申请不予登记的，或者对违法登记进行包庇的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第八十三条　外国公司违反《公司法》规定，擅自在中国境内设立分支机构的，由公司登记机关责令改正或者关闭，可以并处5万元以上20万元以下的罚款。

第八十四条　利用公司名义从事危害国家安全、社会公共利益的严重违法行为的，吊销营业执照。

第八十五条　分公司有本章规定的违法行为的，适用本章规定。

第八十六条　违反本条例规定，构成犯罪的，依法追究刑事责任。

第十二章　附则

第八十七条　外商投资的公司的登记适用本条例。有关外商投资企业的法律对其登记另有规定的，适用其规定。

第八十八条　法律、行政法规或者国务院决定规定设立公司必须报经批准，或者公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，由国家工商行政管理总局依照法律、行政法规或者国务院决定规定编制企业登记前置行政许可目录并公布。

第八十九条　本条例自 1994 年 7 月 1 日起施行。

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Securities Law of the People's Republic of China

Order of the President
(Order No. 43 [2005])

The Securities Law of the People's Republic of China was amended and adopted at the 18th Meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005. We hereby promulgate the Securities Law of the People's Republic of China, as amended, which shall come into force as of January 1, 2006.
President of the People's Republic of China Hu Jintao
October 27, 2005

Securities Law of the People's Republic of China

(Adopted at the 6th Meeting of the Standing Committee of the 9th National People's Congress on December 29, 1998, amended at the 18th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on October 27, 2005 according to the Decision on Amending the Securities Law of the People's Republic of China which was made at the 11th meeting of the Standing Committee of the 10th People's Congress on August 28, 2004)
Table of Contents

Chapter I General Provisions

Article 1 The present Law is formulated in order to standardize the issuance and trading of securities, protect the legitimate rights and interests of investors, safeguard the economic order and public interests of the society and promote the development of the socialist market economy.

Article 2 The present Law shall apply to the issuance and trading of stocks, corporate bonds as well as any other

securities as lawfully recognized by the State Council within the territory of the People's Republic of China. Where there is no such provision in the present Law, the provisions of the Corporation Law of the People's Republic of China and other relevant laws and administrative regulations shall apply.
Any listed trading of government bonds and share of securities investment funds shall be governed by the present Law. In case there is any special provision in any other law or administrative Regulation, such special provision shall prevail.
The measures for the administration of issuance and trading of securities derivatives shall be prescribed by the State Council according to the principles of the Present Law.

Article 3 The issuance and trading of securities shall be carried out according to the principles of openness, fairness and impartiality.

Article 4 The parties involved in any issuance or transaction of securities shall have equal legal status and shall uphold the principles of free will, compensation, and uprightness and creditworthiness.

Article 5 The issuance and trading of securities shall abide by laws and administrative regulations. Any fraud, insider trading or manipulation of the securities market shall be prohibited.

Article 6 The divided operation and management shall be applied to the industries of securities, banking, trust and insurance. The securities companies and the business organs of banks, trust, and insurance shall be separately established, unless it is otherwise provided for by the state.

Article 7 The securities regulatory authority under the State Council shall carry out centralized and unified supervision and administration of the national securities market.
The securities regulatory authority under the State Council may, according to the relevant requirements, establish dispatched offices, which shall perform their duties and functions of supervision and administration according to their authorization.

Article 8 Under the centralized and unified supervision and administration of the state regarding the issuance and trading of securities, a securities industrial association shall be established according to law, which shall adopt the self-regulating administration.

Article 9 The auditing organs of the state shall carry out auditing supervision of the securities exchanges, securities companies, securities registration and clearing institutions, and securities regulatory bodies.

Chapter II Issuance of Securities

Article 10 A public issuance of securities shall meet the requirements of the relevant laws and administrative regulations, and shall be reported to the securities regulatory authority under the State Council or any department as authorized by the State Council for examination and approval according to law. Without any examination and approval according to law, no entity or individual may make a public issuance of any securities.
It shall be deemed as a public issuance under any of the following circumstances:
(1) Making a public issuance of securities towards unspecified objects;
(2) Making a public issuance of securities to accumulatively more than 200 specified objects;
(3) Making a public issuance as prescribed by any law or administrative regulation.
For any securities that are not issued in a public manner, the means of advertising, public inducement or public issuance in any disguised form shall not be adopted thereto.

Article 11 An issuer that applies for the public issuance of stocks or convertible corporate bonds by means of underwriting according to law or for the public issuance of any other securities, which is subject to recommendation as is prescribed by any law or administrative regulation, shall hire an institution with the qualification of recommendation as its recommender.
A recommender shall observe the operational rules and industrial norms and, based on the principles of being honesty,

creditworthy, diligent and accountable, carry out a prudent examination of the application documents and information disclosure materials of its issuers as well as supervise and urge its issuers to operate in a regulative manner.
The qualification requirements of the recommender as well as the relevant measures for administration shall be formulated by the securities regulatory authority under the State Council.

Article 12 A public offer of stocks for establishing a joint stock limited company shall meet the requirements as prescribed in the Corporation Law of the People's Republic of China as well as any other requirements as prescribed by the securities regulatory authority under the State Council which have been approved by the State Council. An application for public offer of stocks as well as the following documents shall be reported to the securities regulatory authority under the State Council:
(1) The constitution of the company;
(2) The promoter's agreement;
(3) The name or title of the promoter, the amount of shares as subscribed to by the promoters, the category of contributed capital as well as the capital verification certification;
(4) The prospectus;
(5) The name and address of the bank that receives the funds as generated from the issuance of stocks on the behalf of the company; and
(6) The name of the underwriting organization as well as the relevant agreements.
Where a recommender shall be hired, as is prescribed by the present Law, a Recommendation Letter of Issuance as produced by the recommender shall be submitted as well.
Where the establishment of a company shall be reported for approval, as is prescribed by any law or administrative regulation, the relevant approval documents shall be submitted as well.

Article 13 An initial public offer (IPO) of stocks of a company shall meet the following requirements:
(1) Having a complete and well-operated organization;
(2) Having the capability of making profits continuously and a sound financial status;
(3) Having no false record in its financial statements over the latest 3 years and having no other major irregularity; and
(4) Meeting any other requirements as prescribed by the securities regulatory authority under the State Council which have been approved by the State Council.
A listed company that makes any initial non-public offer of stocks shall meet the requirements as prescribed by the securities regulatory authority under the State Council, which have been approved by the State Council and shall be reported to the securities regulatory authority under the State Council for examination and approval.

Article 14 A company that makes an IPO of stocks shall file an application for public offer of stocks and submit the following documents to the securities regulatory authority under the State Council:
(1) The business license of the company;
(2) The constitution of the company;
(3) The resolution of the general assembly of shareholders;
(4) The prospectus;
(5) The financial statements;
(6) The name and address of the bank that receives the funds as generated from the public offer of stocks on the behalf of the company; and
(7) The name of the underwriting institution as well as the relevant agreements.
Where a recommender shall be hired, as is prescribed by the present Law, the Recommendation Letter of Issuance as produced by the recommender shall be submitted as well.

Article 15 The funds as raised through public offer of stocks made by a company shall be used according to the purpose as prescribed in the prospectus. Any alteration of the use of funds as prescribed in the prospectus shall be subject to a

resolution of the general assembly of shareholders. Where the company fails to correct any unlawful alteration of its use of funds or where any alteration of its use of funds fails to be adopted by the general assembly of shareholders, the relevant company shall not make any IPO of stocks. In the foregoing circumstance, a company shall not make any non-public offer of stocks.

Article 16 A public issuance of corporate bonds shall meet the following requirements:
(1) The net asset of a joint stock limited company is no less than RMB 30 million yuan and the net asset of a limited-liability company is no less than RMB 60 million yuan;
(2) The accumulated bond balance constitutes no more than 40 % of the net asset of a company;
(3) The average distributable profits over the latest 3 years are sufficient to pay the 1-year interests of corporate bonds;
(4) The investment of raised funds complies with the industrial policies of the state;
(5) The yield rate of bonds does not surpass the level of interest rate as set by the State Council; and
(6) Any other requirements as prescribed by the State Council.
The funds as raised through public issuance of corporate bonds shall be used for the verified purposes and shall not be used for covering any deficit or non-production expenditure.
The public issuance of convertible corporate bonds as made by a listed company shall not only meet the requirements as provided for in paragraph 1 herein but also meet the requirements of the present Law on the public offer of stocks, and shall be reported to the securities regulatory authority under the State Council for examination and approval.

Article 17 As to an application for public issuance of corporate bonds, the following documents shall be reported to the department as authorized by the State Council or the securities regulatory authority under the State Council:
(1) The business license of the company;
(2) The constitution of the company;
(3) The procedures for issuing corporate bonds;
(4) An assent appraisal report and an asset verification report; and
(5) Any other document as prescribed by the department as authorized by the State Council or by the securities regulatory authority under the State Council.
Where a recommender shall be hired, as is prescribed by the present Law, the Recommendation Letter of Issuance as produced by the recommender shall be submitted as well.

Article 18 Under any of the following circumstances, no more public issuance of corporate bonds may be carried out:
(1) Where the corporate bonds as issued in the previous public issuance haven’t been fully subscribed;
(2) Where a company has any breach relating to the corporate bonds as publicly issued or any other debts, or has postponed the payment of the relevant principal plus interests, and such situation still exists; or
(3) Where a company violates the present Law by altering the purpose of use of the funds raised through public issuance of corporate bonds.

Article 19 The formats and ways of submitting application documents as reported by an issuer for examination and approval of securities issuance according to law shall be prescribed by the competent organ or department in charge of examination and approval.

Article 20 The application documents for securities issuance as reported by an issuer to the securities regulatory authority under the State Council or the department as authorized by the State Council shall be authentic, accurate and complete. A securities trading service institution and its staff that produces the relevant documents for securities issuance shall strictly perform its/his statutory functions and duties and guarantee the authenticity, accuracy and integrity of the documents as produced thereby.

Article 21 Where an issuer applies for an IPO of stocks, it shall, after submitting the application documents, disclose the relevant application documents in advance according to the provisions of the securities regulatory authority under the

State Council.

Article 22 The securities regulatory authority under the State Council shall establish an issuance examination committee, which shall examine the applications for stock issuance according to law.
The issuance examination committee shall be composed of professionals from the securities regulatory authority under the State Council and other relevant experts from outside the said authority, cast votes to decide on the applications for stock issuance and give its examination opinions.
The specific formulation measures, tenure of members as well as work procedures of the issuance examination committee shall be formulated by the securities regulatory authority under the State Council.

Article 23 The securities regulatory authority under the State Council shall take charge of the examination and approval of the applications for stock issuance according to the statutory requirements. The procedures for examination and approval shall be publicized and shall be subject to supervision according to law.
The personnel participating in the examination and verification of stock issuance shall not have any interest relationship with an issuance applicant, shall not directly or indirectly accept any present of the issuance applicant, not hold any stock as verified for issuance, and shall not have any private contact with an issuance applicant.
The department as authorized by the State Council shall carry out the examination and approval of applications for issuance of corporate bonds by referring to the preceding 2 paragraphs herein.

Article 24 The securities regulatory authority under the State Council or the department as authorized by the State Council shall, within 3 months as of accepting an application for securities issuance, make an decision on approval or disapproval according to the statutory requirements and procedures, but the time for an issuer to supplement or correct its application documents for issuance according to the relevant requirements shall not be calculated in the aforesaid term for examination and approval. In the case of disapproval, an explanation shall be given.

Article 25 Where an application for securities issuance has been approved, the relevant issuer shall, according to the provisions of the relevant laws and administrative regulations, announce the relevant financing documents of public issuance before publicly issuing any securities and shall make the aforesaid documents available for public reference in a designated place.
Before the information of securities issuance is publicized according to law, no insider may publicize or divulge relevant information.
An issuer shall not issue any securities before making an announcement of the relevant financing documents of public issuance.

Article 26 The securities regulatory authority under the State council or the department as authorized by the State Council shall, where finding any decision on approving securities issuance fails to comply with the relevant statutory requirements and procedures and if the relevant securities haven't been issued, revoke the decision on approval and terminate the issuance. For any securities that have been issued but haven't been listed, the relevant decision on approval for issuance shall be revoked. The relevant issuer shall, according to the issuing price plus interests as calculated at the bank deposit rate for the corresponding period of time, refund the securities holders. A recommender shall bear several and joint liabilities together with the relevant issuer, except for one who is able to prove that he has no fault therein. Where any controlling shareholder or actual controller has any fault, he shall bear several and joint liabilities together with the relevant issuer,

Article 27 After a legal offer of stocks, an issuer shall be responsible for any flux in its operations or profits by itself. The investment risk as incurred therefrom shall be borne by investors themselves.

Article 28 Where an issuer issues any securities to any non-specified object and if the said securities shall be underwritten by a securities company, as is provided for by any law or administrative regulation, the issuer shall conclude an

underwriting agreement with a securities company. The forms of "sale by proxy" or "exclusive sale" shall be adopted for the underwriting of securities.
The term "sale by proxy" refers to an underwriting form, whereby a securities company sells securities as a proxy of the relevant issuer and, upon the end of the underwriting period, returns all the securities unsold to the relevant issuer.
The term "exclusive sale" refers to an underwriting form, whereby a securities company purchases all of the securities of an issuer according to the agreement there between or purchases all of the remaining unsold securities by itself upon the end of the underwriting period.

Article 29 An issuer that makes public issuance of securities has the right to select a securities company for underwriting according to law at its own will. A securities company shall not canvass any securities underwriting business by any unjust competition means.

Article 30 Where a securities company underwrites any securities, it shall conclude an agreement with the relevant issuer on sale by proxy or exclusive sale, which shall indicate the following items:
(1) The name, domicile as well as the name of the legal representative of the parties concerned;
(2) The classes, quantity, amount as well as issuing prices of the securities under sale by proxy or exclusive sale;
(3) The term of sale by proxy or exclusive sale as well as the start-stop date;
(4) The ways and date of payment for sale by proxy or exclusive sale;
(5) The expenses for and settlement methods of sale by proxy or exclusive sale;
(6) The liabilities for breach; and
(7) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 31 A securities company that engages in the underwriting of securities shall carry out verification on the authenticity, accuracy and integrity of the financing documents of public issuance. Where any false record, misleading statement or major omission is found, no sales activity may be carried out. Where any securities have been sold out under the foregoing circumstances, the relevant sales activity shall be immediately terminated and measures for correction shall be taken.

Article 32 Where the total face value of securities as issued to non-specified objects exceed RMB 50 million yuan, the said securities shall be underwritten by an underwriting syndicate. An underwriting syndicate shall be composed of a securities company acting as the principal underwriter and other participant underwriters.

Article 33 The term for sale by proxy or exclusive sale shall not exceed than 90 days at the most.
A securities company shall, within the term of sale by proxy or exclusive sale, guarantee the priority of the relevant subscribers in purchasing securities under sale by proxy or exclusive sale. A securities company shall not reserve in advance any securities under sale by proxy thereby or purchase in advance and sustain any securities under exclusive sale thereby.

Article 34 Where any stock is issued at a premium, the issuing price thereof shall be determined through negotiation between the relevant issuer and the securities company that engages in the underwriting.

Article 35 As for a public offer of stocks through sale by proxy, when the term of sale by proxy expires and if the number of stocks fails to reach 70 % of the planned number in the public offer, it shall be deemed as a failure. The relevant issuer shall refund the issuing price plus interests as calculated at the bank deposit rate for the contemporary period of time to the subscribers of stocks.

Article 36 In a public offer of stocks, when the term for sale by proxy or exclusive sale expires, the issuer shall report the information on stock issuance to the securities regulatory authority under the State Council for archival filing within the prescribed term.

Chapter III Trading of Securities

Section I General Provisions

Article 37 The securities as purchased and sold by any party who is involved in any securities trading shall be the securities that have been legally issued and delivered.
Any securities that have been illegally issued shall not be purchased or sold.

Article 38 Any stocks, corporate bonds or any other securities that have been legally issued, where there are any restrictive provisions of laws on the term of transfer thereof, shall not be purchased or sold within the restricted term.

Article 39 Any stocks, corporate bonds or any other securities that have been publicly issued according to law shall be listed in a stock exchange as legally established or in any other places for securities trading as approved by the State Council.

Article 40 The means of public and centralized trading or any other means as approval by the securities regulatory authority under the State Council shall be adopted for the listed trading of securities in stock exchanges.

Article 41 The securities as purchased or sold by the parties involved in securities trading may be in paper form or in any other form as approval by the securities regulatory authority under the State Council.

Article 42 The securities trading shall be carried out in the form of spot goods as well as any other form as prescribed by the State Council.

Article 43 The practitioners in stock exchanges, securities companies and securities registration and clearing institutions, the functionary of securities regulatory bodies, as well as any other personnel who have been prohibited by any law or administrative regulation from engaging in any stock trading shall not, within their tenures or the relevant statutory term, hold or purchase or sell any stock directly or in any assumed name or in the name of any other person, nor may they accept any stocks from any other person as a present.
Anyone, before becoming any person as prescribed in the preceding paragraph herein, shall transfer the stocks he has held according to law.

Article 44 The stock exchanges, securities companies, as well as securities registration and clearing institutions shall keep confidential the accounts as opened for their clients according to law.

Article 45 A securities trading service institution and the relevant personnel that produce such documents as auditing reports, asset appraisal reports or legal opinions for stock issuance shall not purchase or sell any of the aforesaid stocks within the underwriting term of stocks or within 6 months as of the expiration of the underwriting term of stocks.
Except for the provisions as prescribed in the preceding paragraph herein, a securities trading service institutions and the relevant personnel that produce such documents as auditing reports, asset appraisal reports or legal opinions for listed companies shall not purchase or sell any of the aforesaid stocks within the period from the day when he accepts the entrustment of the listed company to the day when the aforesaid documents are publicized.

Article 46 The fee charge for securities trading shall be reasonable. The charging items, rates and methods shall be publicized.
The charging items, rates, and administrative measures of securities trading shall be uniformly formulated by the relevant administrative department of the State Council.

Article 47 Where any director, supervisor and senior manager of a listed company or any shareholder who holds more than 5% of the shares of a listed company, sells the stocks of the company as held within 6 months after purchase, or purchases any stock as sold within 6 months thereafter, the proceeds as generated therefrom shall be incorporated into the profits of the relevant company. The board of directors of the company shall take back the proceeds. However, where

a securities company holds more than 5% of the shares of a listed company, which are the residual stocks after sale by proxy as purchased thereby, the sale of the foregoing stocks shall not be limited by the term of 6 months.
Where the board of directors of a company fails to implement the provisions as prescribed in the preceding paragraph herein, the shareholders concerned have the right to require the board of directors to implement them within 30 days.
Where the board of directors of a company fails to implement them within the aforesaid term, the shareholders shall have the right to directly file a lawsuit with the people's court in their own names for the interests of the company.
Where the board of directors of a company fails to implement the provisions as prescribed in paragraph 1 herein, the directors in charge shall bear several and joint liabilities according to law.

Section II Listing of Securities

Article 48 An application for the listing of any securities shall be filed with a stock exchange and shall be subject to the examination and approval of the stock exchange according to law, and a listing agreement shall be concluded by both parties.
Stock exchanges shall, according to the decision of the department as authorized by the State Council, arrange for the listing of government bonds.

Article 49 For an application for the listing of any stocks, convertible corporate bonds or any other securities, which are subject to recommendation as is prescribed by any law or administrative regulation, an institution with the qualification of recommendation shall be hired as the recommender.
The provisions of paragraphs 2 and 3 of Article 11 of the present Law shall apply to the recommender of stock listing.

Article 50 A joint stock limited company that applies for the listing of its stocks shall meet the following requirements:
(1) The stocks shall have been publicly issued upon the approval of the securities regulatory authority under the State Council;
(2) The total amount of capital stock of the company shall be no less than RMB 30 million yuan;
(3) The shares as publicly issued shall reach more than 25 % of the total amount of corporate shares; where the total amount of capital stock of a company exceeds RMB 0.4 billion yuan, the shares as publicly issued shall be no less than 10% thereof; and
(4) The company shall not have any major irregularity over the latest three years and there is no false record in its financial statements.
A stock exchange may prescribe the requirements of listing that are more strict than those as prescribed in the preceding paragraph herein, which shall be reported to the securities regulatory authority under the State Council for approval.

Article 51 The state encourages the listing of corporate stocks that comply with the relevant industrial policies and meet the relevant requirements of listing.

Article 52 As to an application for the listing of stocks, the following documents shall be submitted to a stock exchange:
(1) The listing report;
(2) The resolution of the general assembly of shareholders regarding the application for the listing of stocks;
(3) The constitution of the company;
(4) The business license of the company;
(5) The financial statements of the company for the latest three years as audited by an accounting firm according to law;
(6) The legal opinions as well as the Recommendation Letter of Listing;
(7) The latest prospectus; and
(8) Any other document as prescribed by the listing rules of the stock exchange.

Article 53 Where an application for the listing of stocks have been approved by the stock exchange, the relevant company that has concluded a listing agreement thereon shall announce the relevant documents for stock listing within the

prescribed period and shall make the said documents available for public reference in designated places.

Article 54 A company that has concluded a listing agreement shall not only announce the documents as prescribed in the preceding Article herein but also announce the following items:
(1) The date when the stocks have been approved to be listed in a stock exchange;
(2) The name list of the top 10 shareholders who hold the largest number of shares in the company as well as the amount of stocks they hold;
(3) The actual controller of the company; and
(4) The names of the directors, supervisors and senior managers of the company as well as the relevant information on the stocks and bonds of the company they hold.

Article 55 Where a listed company is under any of the following circumstances, the stock exchange shall decide to suspend the listing of its stocks:
(1) Where the total amount of capital stock or share distribution of the company changes and thus fails to meet the requirements for listing;
(2) Where the company fails to publicize its financial status according to the relevant provisions or has any false record in its financial statements, which may mislead the investors;
(3) Where the company has any major irregularity;
(4) Where the company has been operating at a loss for the latest 3 consecutive years; or
(5) Under any other circumstance as prescribed in the listing rules of the stock exchange.

Article 56 Where a listed company is under any of the following circumstances, the stock exchange shall decide to terminate the listing of its stocks:
(1) Where the total amount of capital stock or share distribution of the company changes and thus fails to meet the requirements of listing, and where the company fails again to meet the requirements of listing within the period as prescribed by the stock exchange;
(2) Where the company fails to publicize its financial status according to the relevant provisions or has any false record in its financial statements, and refuses to make any correction;
(3) Where the company has been operating at a loss for the latest 3 consecutive years and fails to gain profits in last year;
(4) Where the company is dissolved or is declared bankrupt; or
(5) Under any other circumstance as prescribed in the listing rules of the stock exchange.

Article 57 A company shall, when applying for the listing of corporate bonds, meet the following requirements:
(1) The term of corporate bonds shall be more than 1 year;
(2) The amount of corporate bonds to be actually issued shall be no less than RMB 50 million yuan; and
(3) The company shall meet the statutory requirements for the issuance of corporate bonds when applying for the listing of its bonds.

Article 58 A company shall, when applying for the listing of its corporate bonds, report the following documents to the stock exchange:
(1) The listing report;
(2) The resolution as adopted by the board of directors regarding the application for listing;
(3) The constitution of the company;
(4) The business license of the company;
(5) The measures for financing through the issuance of corporate bonds;
(6) The amount of corporate bonds to be actually issued; and
(7) Any other document as prescribed in the listing rules of the stock exchange.
As to an application for the listing of convertible corporate bonds, the Recommendation Letter of Listing as produced by

the relevant recommender shall be submitted.

Article 59 Where an application for the listing of corporate bonds has been approved by the stock exchange, the company that has concluded a listing agreement thereon shall, within the prescribed period, announce its report on the listing of its corporate bonds as well as the relevant documents, and make its application documents available for public reference in designated places.

Article 60 After any corporate bonds are listed, where the relevant company is under any of the following circumstances, the stock exchange may decide to suspend the listing of its corporate bonds:
(1) Where the company has any major irregularity;
(2) Where the company has any major change and thus fails to meet the requirements for the listing of corporate bonds;
(3) Where the funds as raised through the issuance of corporate bonds fail to be used according to the verified purposes of use;
(4) Where the company fails to perform its obligations according to the measures for financing through the issuance of corporate bonds; or
(5) Where the company has been operating at a loss for the latest 2 consecutive years.

Article 61 Where a company is under any of the circumstances as described in item (1) or (4) of the preceding Article and the consequences as incurred therefrom have been verified to be serious, or where a company is under any of the circumstances as described in item (2), (3), or (5) of the preceding Article and fails to eliminate the relevant consequences within a specified time limit, the stock exchange shall decide to terminate the listing of corporate bonds of the company. Where a company is dissolved or declared bankrupt, the stock exchange shall terminate the listing of the corporate bonds thereof.

Article 62 Any company, which is dissatisfied with the decision of the stock exchange on disapproving, suspending or terminating its listing, may apply to the review organ as established by the stock exchange for review.

Section III On-going Disclosure of Information

Article 63 The information as disclosed by issuers and listed companies according to law shall be authentic, accurate and complete and shall not have any false record, misleading statement or major omission.

Article 64 For the stocks that have been publicly issued upon the verification of the securities regulatory authority under the State Council or for the corporate bonds that have been publicly issued upon the verification of the department as authorized by the State Council according to law, the prospectus or the measures for financing through the issuance of corporate bonds shall be announced. In an IPO of stocks or corporate bonds, the relevant financial statements shall be announced as well.

Article 65 A company whose shares or bonds have been listed for trading shall, within two months as of the end of the first half of each accounting year, submit to the securities regulatory authority under the State Council and the stock exchange a midterm report indicating the following contents and make a public announcement for it:
(1) The financial statements and business situation of the company;
(2) The major litigation the company is involved in;
(3) The particulars of any change concerning the shares or corporate bonds thereof it has already issued;
(4) The important matters as submitted to the general assembly of shareholders for deliberation; and
(5) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 66 A listed company whose shares or bonds have been listed for trading shall, within four months as of the end of each accounting year, submit to the securities regulatory authority under the State Council and the stock exchange an annual report indicating the following contents, and make a public announcement for it:

(1) A brief account of the company's general situation;
(2) The financial statement and business situation of the company;
(3) A brief introduction to the directors, supervisors, and senior managers of the company well as the information regarding their shareholdings;
(4) The information on the shares and corporate bonds it has already issued, including a name list of the top 10 shareholders who hold the largest number of shares in the company as well as the amount of shares each of them holds; and
(5) The actual controller of the company; and
(6) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 67 In the case of a major event that may considerably affect the trading price of a listed company's shares and that is not yet known to the investors, the listed company shall immediately submit a temporary report regarding the said major event to the securities regulatory authority under the State Council and the stock exchange, and make an announcement to the general public as well, in which the cause, present situation, and possible legal consequence of the event shall be indicated:
The term "major event" as mentioned in the preceding paragraph herein refers to any of the following circumstances:
(1) A major change in the business guidelines or business scope of the company;
(2) A decision of the company on any major investment or major asset purchase;
(3) An important contract as concluded by the company, which may have an important effect on the assets, liabilities, rights, interests or business achievements of the company;
(4) The incurrence of any major debt in the company or default on any major debt that is due;
(5) The incurrence of any major deficit or a major loss in the company;
(6) A major change in the external conditions for the business operation of the company;
(7) A change concerning directors, no less than one-third of supervisors or managers of the company;
(8) A considerable change in the holdings of shareholders or actual controllers each of whom holds or controls no less than 5% of the company's shares;
(9) A decision of the company on capital decrease, merger, division, dissolution, or application for bankruptcy;
(10) Any major litigation in which the company is involved, or where the resolution of the general assembly of shareholders or the board of directors have been cancelled or announced invalid;
(11) Where the company is involved in any crime, which has been filed as a case as well as investigated into by the judicial organ or where any director, supervisor or senior manager of the company is subject to compulsory measures as rendered by the judicial organ; or
(12) Any other matter as prescribed by the securities regulatory authority under the State Council.

Article 68 The directors and senor managers of a listed company shall produce written opinions to confirm the periodic reports of the company.
The board of supervisors of a listed company shall carry out an examination on the periodic report of its company as formulated by the board of directors and produce the relevant examination opinions in written form.
The directors, supervisors and senior managers of a listed company shall guarantee the authenticity, accuracy and integrity of the information as disclosed by the listed company.

Article 69 Where any of the prospectus, measures for financing through the issuance of corporate bonds, financial statements, listing reports, annual reports, midterm reports, temporary reports or any disclosed information that has been announced by an issuer or listed company has any false record, misleading statement or major omission, and thus incurs losses to investors in the process of securities trading, the issuer or the listed company shall bear the liabilities of compensation. Any director, supervisor, senior manager or any other person of the issuer or the listed company as held to be directly responsible shall take several and joint liabilities of compensation, unless he is able to prove that he has no

fault therein. Where any shareholder or actual controller of an issuer or a listed company has any fault, he or it shall bear several and joint liabilities of compensation together with the relevant issuer or listed company.

Article 70 The information which must be disclosed as prescribed by law shall be publicized through the media as designated by the securities regulatory authority under the State Council and shall, at the same time, be made available for public reference at the company's domicile and the stock exchange.

Article 71 The securities regulatory authority under the State Council shall carry out supervision over the annual reports, midterm reports, temporary reports of listed companies as well as their announcements, over the distribution or rationing of new shares of such listed companies, and over the controlling shareholders and information disclosure obligors of the listed companies.
The securities regulatory body, stock exchange, recommender or securities company involved in underwriting as well as the relevant personnel thereof shall not, before an announcement is made by the company according to the provisions of the relevant laws and administrative regulations, divulge any content concerned before making the announcement.

Article 72 Where a stock exchange decides to suspend or terminate the listing of any securities, it shall announce the decision in a timely manner and report it to the securities regulatory authority under the State Council for archival filing.

Section IV Prohibited Trading Acts

Article 73 Any insider who has access to any insider information of securities trading or who has unlawfully obtained any insider information is prohibited from taking advantage of the insider information he holds to engage in any securities trading.

Article 74 The insiders who have access to insider information of securities trading include:
(1) Directors, supervisors, and senior managers of an issuer;
(2) Shareholders who hold more than 5% of the shares of a company as well as the directors, supervisors, and senior managers thereof, or the actual controller of a company as well as the directors, supervisors, and senior managers thereof;
(3) The holding company of an issuer as well as the directors, supervisors, and senior managers thereof;
(4) The personnel who may take advantage of their posts in their company to obtain any insider information of the company concerning the issuance and trading of its securities;
(5) The functionaries of the securities regulatory body, and other personnel who administer the issuance and trading of securities pursuant to their statutory functions and duties;
(6) The relevant personnel of the recommendation institutions, securities companies engaging in underwriting, stock exchanges, securities registration and clearing institutions, and securities trading service organizations; and
(7) Any other person as prescribed by the securities regulatory authority under the State Council.

Article 75 The term "insider information" refers to the information that concerns the business or finance of a company or may have a major effect on the market price of the securities thereof and that hasn't been publicized in securities trading. All of the following information falls into the scope of insider information:
(1) The major events as prescribed in paragraph 2 of Article 67 of the present Law;
(2) The plan of a company concerning any distribution of dividends or increase of capital;
(3) Any major change in the company's equity structure;
(4) Any major change in the guaranty of the company's debt;
(5) Where the mortgaged, sold or discarded value of any major asset as involved in the business operation of the company exceeds 30 % of the said asset at a single time;
(6) Where any act as conducted by any director, supervisor or senior manager of the company may be rendered to be responsible for any major damage and compensation;

(7) The relevant plan of a listed company regarding acquisition; and
(8) Any other important information that has been recognized by the securities regulatory authority under the State Council as having a marked effect on the trading prices of securities.

Article 76 Any insider who has access to insider information or has unlawfully obtained any insider information on securities trading may not purchase or sell the securities of the relevant company, or divulge such information, or advise any other person to purchase or sell such securities.
Where there is any other provision of the present Law on governing the purchase of shares of a listed company by a natural person, legal person or any other organization who individually holds or holds with any other person no less than 5% of the company's shares by means of an agreement or any other arrangement, such provision shall prevail.
Where any insider trading incurs any loss to investors, the actor shall make compensations according to law.

Article 77 Anyone is prohibited from manipulating the securities market by any of the following means:
(1) Whether anyone, independently or in collusion with others, manipulates the trading price of securities or trading quantity of securities by centralizing their advantages in funds, their shareholding advantages or taking their information advantage to trade jointly or continuously;
(2) Where anyone collaborates with any other person to trade securities pursuant to the time, price and method as agreed upon in advance, thereby affecting the price or quantity of the securities traded;
(3) Where anyone trades securities between the accounts under his own control, thereby affecting the price or quantity of the securities traded; or
(4) Where anyone manipulates the securities market by any other means.
Where anyone incurs any loss to investors by manipulating the securities market, the actor shall be subject to the liabilities of compensation according to law.

Article 78 It is prohibited for state functionaries, practitioners of the news media as well as other relevant personnel concerned to disturb the securities market by fabricating or disseminating any false information.
It is prohibited for stock exchanges, securities companies, securities registration and clearing institutions, securities trading service institutions and the practitioners thereof, as well as the securities industry associations, the securities regulatory bodies and their functionaries to make any false statement or give any misleading information in the activities of securities trading.
The securities market information as disseminated by any media shall be authentic and objective. Any dissemination of misleading information is prohibited.

Article 79 It is prohibited for a securities company as well as the practitioners thereof to commit any of the following fraudulent acts in the process of securities trading, which may injure the interests of their clients:
(1) Violating the entrustment of its client by purchasing or selling any securities on its behalf;
(2) Failing to provide any client with written confirmation of any transaction within the prescribed period of time;
(3) Misappropriating the securities as entrusted by any client for purchase or sale, or misappropriating the funds in any client's account;
(4)Unlawfully purchasing or selling securities for its client without authorization, or unlawfully purchasing or selling any securities in the name of any client;
(5) Inveigling any client into making any unnecessary purchase or sale of securities in order to obtain commissions;
(6) Making use of mass media or by any other means to provide or disseminate any false or misleading information to investors; or
(7) Having any other act that goes against the true intention as expressed by a client and damages the interests thereof.
Where anyone practices any trickery and thus incurs any loss to the relevant clients, the actor shall make compensations according to law.

Article 80 It’s prohibited for any legal person to unlawfully make use of any other person’s account to undertake any securities trading. It’s prohibited for any legal person to lend its own or any other person’s securities account.

Article 81 The channel for capital to enter into the stock market shall be broadened according to law. It’s prohibited for any unqualified capital to go into the stock market.

Article 82 It’s prohibited for any person to misappropriate any public fund to trade securities.

Article 83 The state-owned enterprises and state-controlled enterprises that engage in any trading of listed stocks shall observe the relevant provisions of the state.

Article 84 When stock exchanges, securities companies, securities registration and clearing institutions, securities trading service organizations as well as their functionaries discover any prohibited activities in securities trading, they shall report such activities to the securities regulation body in a timely manner.

Chapter IV Acquisition of Listed Companies

Article 85 An investor may purchase a listed company by means of tender offer or agreement as well as by any other legal means.

Article 86 When an investor, through securities trading at a stock exchange, comes to hold individually or with any other person 5 % of the shares as issued by a listed company by means of agreement or any other arrangement, the investor shall, within three days as of the date when such shareholding becomes a fact, submit a written report to the securities regulatory authority under the State Council and the stock exchange, notify the relevant listed company and announce the fact to the general public. Within the aforesaid prescribed period, the investor may not purchase or sell any more shares of the listed company.
Once an investor holds individually or with any other person 5 % of the shares as issued by a listed company by means of agreement or any other arrangement, he shall, pursuant to the provisions of the preceding paragraph herein, make a report and announcement for each 5% increase or decrease in the proportion of the issued shares of the said company he holds through securities trading at the stock exchange. Within the reporting period as well as two days after the relevant the report and announcement are made, the investor may not purchase or sell any more shares of the listed company.

Article 87 The written report and announcement as made according to the provisions of the preceding article shall include the following contents:
(1) The name and domicile of the shareholder;
(2) The description and amount of the shares as held; and
(3) The date on which the shareholding or any increase or decrease in the shareholding reaches the statutory percentage.

Article 88 Where an investor holds individually or with any other person 30% of the stocks as issued by a listed company by means of agreement or any other arrangement through securities trading at the stock exchange and continues the purchase, he shall issue a tender offer to all the shareholders of the said listed company to purchase all of or part of the shares of the listed company.
It shall be stipulated in a tender offer as issued to a listed company that, where the amount of shares the shareholders of the target company promise to sell exceeds the scheduled amount of stocks for purchase, the purchaser shall carry out the acquisition in proportion.

Article 89 Before any tender offer is issued pursuant to the provisions in the preceding article, the relevant purchaser shall submit a report on the acquisition of a listed company to the securities regulatory authority under the State Council beforehand, which shall indicate the following items:
(1) The name and domicile of the purchaser;
(2) The decision of the purchaser on acquisition;

(3) The name of the target listed company;
(4) The purpose of acquisition;
(5) The detailed description of the shares to be purchased and the amount of shares scheduled to be purchased in schedule;
(6) The term and price of the acquisition;
(7) The amount and warranty of the funds as required by the acquisition; and
(8) The proportion of the amount of shares of the target company as held by the purchaser in the total amount of shares issued by the target company, when the report on the acquisition of the listed company is reported.
A purchaser shall concurrently submit to the stock exchange a report on the acquisition of the relevant company.

Article 90 A purchaser shall, 15 days after the report on the acquisition of a listed company is submitted pursuant to the preceding article, announce its tender offer. Within the aforesaid term, where the securities regulatory authority under the State Council finds that the acquisition report of the listed company fails to meet the provisions of the relevant laws and administrative regulations, it shall notify the relevant purchaser in a timely manner, and the relevant purchaser shall not announce its tender offer.
The term for acquisition as stipulated in a tender offer shall be no less than 30 days but no more than 60 days.

Article 91 Within the term for acceptance as prescribed in the tender offer, no purchaser may revoke its tender offer. Where a purchaser requests for altering its tender offer, it shall submit a report to the securities regulatory authority under the State Council and the stock exchange in advance and announce the alteration upon their approval.

Article 92 All the terms and conditions of acquisition as stipulated in a tender offer shall apply to all the shareholders of a target company.

Article 93 In the case of an acquisition by tender offer, a purchaser shall not, within the term for acquisition, sell any share of the target company, nor shall it buy any share of the target company by any other means that hasn't been stipulated bin its tender offer or that go beyond the terms and conditions as stipulated in its tender offer.

Article 94 In the case of an agreement-based acquisition, a purchaser may carry out share transfer with the shareholders of the target company by means of agreement according to the provisions of the relevant laws and administrative regulations.
In the case of an acquisition of a listed company by agreement, a purchaser shall, within three days after the acquisition agreement is reached, submit a written report on the acquisition agreement to the securities regulatory authority under the State Council and the stock exchange, and shall announce it to the general public.
No acquisition agreement may be performed before the relevant announcement is made.

Article 95 In the case of an agreement-based acquisition, both parties to the agreement may temporarily entrust a securities registration and clearing institution to keep the stocks as transferred and deposit the relevant funds in a designated bank.

Article 96 In the case of an agreement-based acquisition, where a purchaser has purchased, held individually or with any other person 30% of the shares as issued by a listed company through agreement or any other arrangement and if the acquisition continues, the purchaser shall issue an offer to all of the shareholders of the target listed company for purchasing all of or part of the company's shares, unless it is exempted from making a tender offer by the securities regulatory authority under the State Council.
A purchaser that purchases the shares of a listed company by means of tender offer according to the provisions of the preceding paragraph herein shall observe the provisions of Articles 89 through 93 of the present Law.

Article 97 Upon the expiration of a term for acquisition, where the share distribution of an target company fails to meet the requirements of listing, the listing of stocks of the said listed company shall be terminated by the stock exchange

according to law. The shareholders that still hold the shares of the target company have the right to sell their shares in light of the equal terms as stipulated in the relevant tender offer, and the purchaser shall make the purchase.
When an acquisition is concluded, if a target company fails to meet the requirements for remaining a joint stock limited company any more, its form of enterprise shall be altered according to law.

Article 98 In the acquisition of a listed company, the stocks of the target company held by a purchaser shall not be transferred within 12 months after the acquisition is concluded.

Article 99 When an acquisition is concluded, if the purchaser merges with the target company by dissolving the target company, the original shares of the dissolved company shall be exchanged by the purchaser according to law.

Article 100 Where an acquisition is concluded, a purchaser shall, within 15 days, report the acquisition to the securities regulatory authority under the State Council and the stock exchange, and shall make an announcement for it.

Article 101 The purchase of the shares of a listed company as held by an organization that has been authorized by the state for investment shall be subject to the approval of the relevant administrative departments according to the provisions of the State Council.
The securities regulatory authority under the State Council shall formulate specific measures for the acquisition of listed companies according to the principles of the present Law.

Chapter V Stock Exchanges

Article 102 The term "stock exchange" refers to a legal person that provides the relevant place and facilities for concentrated securities trading, organizes and supervises the securities trading and applies a self-regulated administration.
The establishment and dissolution of a stock exchange shall be subject to the decision of the State Council.

Article 103 A constitution shall be formulated for the establishment of a stock exchange.
The formulation and revision of the constitution of a stock exchange shall be subject to the approval of the securities regulatory authority under the State Council.

Article 104 The words "stock exchange" shall be indicated in the name of a stock exchange. No other entity or individual may use the words "stock exchange" or its like in its or his name.

Article 105 The income at the discretion of a stock exchange which is generated from various commissions shall first be used to guarantee the normal operation of the place and facilities of the stock exchange as well as the gradual improvement thereof.
The gains as accumulated by a stock exchange that adopts a membership system shall belong to its members. The rights and interests of the stock exchange shall be jointly shared by its members. No accumulated gains of a stock exchange may be distributed to any member within its existence.

Article 106 A stock exchange shall have a council.

Article 107 A stock exchange shall have a general manager, who shall be subject to the appointment and dismissal of the securities regulatory authority under the State Council.

Article 108 Anyone, who is under the circumstance as prescribed in Article 147 of the Corporation Law of the People's Republic of China or any of the following circumstances, shall not assume the post of person-in-charge of a stock exchange:
(1) Where the person-in-charge of a stock exchange or securities registration and clearing institution or any director, supervisor or senior manager of a securities company who has been removed from his post for his irregularity or disciplinary breach and 5 years have not elapsed as of the day when he was removed from his post; or

(2) Where a professional of a law firm, accounting firm, or investment consulting organization, financial advising organization, credit rating institution, asset appraisal institution or asset verification institution who has been disqualified for his irregularity or disciplinary breach and 5 years have not elapsed as of the day when he was removed from his post.

Article 109 A practitioner of a stock exchange, securities registration and clearing institution, securities trading service organization or securities company or any functionary of the state organ, who has been dismissed for his irregularity or disciplinary breach, shall not be employed as a practitioner of any stock exchange.

Article 110 Anyone who enters into a stock exchange to engage in the centralized trading of securities must be a member of the stock exchange.

Article 111 An investor shall conclude an entrustment agreement with a securities company on securities trading, open a securities trading account in a securities company and entrust the securities company, in written form, by telephone or any other means, to purchase or sell securities on its behalf.

Article 112 A securities company shall, based on the entrustment of its investors, declare for securities dealings and engage in the centralized trading at a stock exchange according to the rules of securities trading and shall, on the basis of trading results, bear the relevant liabilities of settlement and delivery. A securities registration and clearing institution shall, on the basis of trading results and according to the rules of settlement and delivery, conduct settlement and delivery of securities and capital with the relevant securities company, and handle the formalities of transfer registration of securities for the clients of the relevant securities company.

Article 113 A stock exchange shall guarantee a fair centralized trading, announce up-to-the-minute quotations of securities trading, formulate the quotation tables of the securities market on the basis of trading days, and make announcements for it.
Without permission of the stock exchange, no entity or individual may announce any up-to-the-minute quotations of securities trading.

Article 114 Where any normal trading of securities is disturbed by an emergency, a stock exchange may take the measures of a technical suspension of trading. In the case of an emergency of force majeure or for the purpose of preserving the normal order of securities trading, a stock exchange may decide a temporary speed bump.
Where a stock exchange adopts the measure of technical suspension of trading or decides on a temporary speed bump, it shall report it to the securities regulatory authority under the State Council in a timely manner.

Article 115 A stock exchange shall exercise a real-time monitoring of securities trading and shall, according to the requirements of the securities regulatory authority under the State Council, report any abnormal trading thereto.
A stock exchange shall carry out supervision over the information as disclosed by the listed companies or the relevant obligor of information disclosure, supervise and urge them to disclose information in a timely and accurate manner according to law.
A stock exchange may, when it so requires, restrict the trading through a securities account where there is any major abnormal trading and shall report it to the securities regulatory authority under the State Council for archival filing.

Article 116 A stock exchange shall withdraw a certain proportion of funds from the transaction fees, membership fees and seat fees it has charged to establish a risk fund. The risk fund shall be subject to the administration of the council of the stock exchange.
The specific withdrawal proportion and use of the risk fund shall be provided for by the securities regulatory authority under the State Council in collaboration with the fiscal department of the State Council.

Article 117 A stock exchange shall deposit its risk fund into a special account of its opening bank and shall not unlawfully use it.

Article 118 A stock exchange shall, pursuant to the laws and administrative regulations on securities, formulate rules on listing, trading and membership administration as well as any other relevant rules, and shall report them to the securities regulatory authority under the State Council for approval.

Article 119 Where any person-in-charge and any other practitioner of a stock exchange has any interest relationship or any of his relatives has any interest relationship with the performance of his duties relating to securities trading, he shall withdraw.

Article 120 Any trading result of a transaction, which has been conducted in accordance with the trading rules as formulated according to law, shall not be altered. A trader who has conducted any rule-breaking trading shall not be exempted from civil liabilities. The proceeds as generated from the rule-breaking trading shall be dealt with pursuant to the relevant regulations.

Article 121 Where any staff member of a stock exchange who engages in securities trading violates any trading rule of the stock exchange, the stock exchange shall impose upon him a disciplinary sanction. Under any serious circumstances, the qualification thereof shall be revoked and the violator shall be prohibited from entering into the stock exchange to engage in any securities trading.

Chapter VI Securities Companies

Article 122 The establishment of a securities company shall be subject to the examination and approval of the securities regulatory authority under the State Council. No entity or individual may engage in any securities operations without the approval of the securities regulatory authority under the State Council.

Article 123 The term "securities company" as mentioned in the present Law refers to a limited- liability company or joint stock limited company that is established and engages in the business operation of securities according to the Corporation Law of the People’s Republic of China as well as the provisions of the present Law.

Article 124 The establishment of a securities company shall meet the following requirements:
(1) Having a corporation constitution that meets the relevant laws and administrative regulations;
(2) The major shareholders having the ability to make profits continuously, enjoying good credit standing, and having no irregular or rule-breaking record over the latest 3 years, and its net asset being no less than 0.2 billion yuan.
(3) Having a registered capital that meets the provisions of the present Law;
(4) The directors, supervisors and senior managers thereof having the qualification for assuming such posts and its practitioners having the qualification to engage in the securities business;
(5) Having a complete risk management system as well as an internal control system;
(6) Having a qualified business place and facilities for operations; and
(7) Meeting any other requirement as prescribed by laws and administrative regulations as well as the provisions of the securities regulatory authority under the State Council, which have been approved by the State Council.

Article 125 A securities company may undertake some or all of the following business operations upon the approval of the securities regulatory authority under the State Council:
(1) Securities brokerage;
(2) Securities Investment consultation;
(3) Financial advising relating to the activities of securities trading or securities investment;
(4) Underwriting and recommendation of securities;
(5) Self-operations of securities;
(6) Securities asset management; and
(7) Any other business operations concerning securities.

Article 126 A securities company shall indicate the words "limited-liability securities company" or "joint stock limited securities company" in its name.

Article 127 Where a securities company engages in the business operation as prescribed in item (1), (2) or (3) of Article 125 of the present Law, its registered capital shall be RMB 50 million yuan at the least. Where a securities company engages in any of the business operations as prescribed in item (4), (5), (6) or (7) therein, its bottom-line registered capital shall be RMB 100 million yuan; Where a securities company engages in two or more business operations as prescribed in item (4), (5), (6) or (7) therein, its bottom-line registered capital shall be 500 million yuan. The registered capital of a securities company shall be paid-in capital.
The securities regulatory authority under the State Council may, according to the principle of prudent supervision and in light of the risk rating of all business operations, adjust the requirement of minimum amount of registered capital, which shall be no less than the minimum amount as prescribed in the preceding paragraph herein.

Article 128 The securities regulatory authority under the State Council shall, within 6 months as of accepting an application for establishing a securities company, carry out an examination according to the statutory requirements and procedures and on the basis of the principle of prudent supervision, make a decision on approval or disapproval, and thereafter notify the relevant applicant. In the case of disapproval, an explanation shall be given.
Where an application for establishing a securities company has been approved, an applicant shall, within the prescribed period, apply for registration of establishment with the organ in charge of corporation registration and collect its business license therefrom.
A securities company shall, within 15 days as of collecting its business license, apply for a Securities Business Permit with the securities regulatory authority under the State Council. Without a Securities Business Permit, a securities company shall not engage in any business operation of securities.

Article 129 Where a securities company establishes, purchases or cancels a branch, alters its business scope or registered capital, alters its shareholders who hold more than 5% of its stock rights or the actual controller, alters any important article of its constitution, has any merger or spilt-up, alters its form of corporation, suspends its business operations, goes through dissolution or bankruptcy procedures, it shall be subject to the approval of the securities regulatory authority under the State Council.
Where a securities company establishes or purchases a securities operation institution abroad or purchases the shares of any securities operational institution abroad, it shall be subject to the approval of the securities regulatory authority under the State Council.

Article 130 The securities regulatory authority under the State Council shall formulate provisions on the risk control indicators of a securities company such as net capital, the ratio between net capital and liabilities, the ratio between net capital and net assets, the ratio between net capital and operational scale of self-operation, underwriting and asset management, the ratio between liabilities and net asset, as well as the ratio between current assets and current liabilities.
A securities company shall not provide any financing or guaranty for its shareholders or any related person thereof.

Article 131 The directors, supervisors and senior managers of a securities company shall be honest and upright, have good morals, be familiar with the laws and administrative regulations on securities, and have the ability of operation and management as required by the performance of their functions and duties, and shall have obtained the post-holding qualification as verified by the securities regulatory authority under the State Council before assuming their posts.
Anyone who is under any circumstance as prescribed in Article 147 of the Corporation Law of the People's Republic of China or is under any of the following circumstances shall not hold the post of director, supervisor or senior manager of a securities company:
(1) Where a person-in-charge of a stock exchange or securities registration and clearing institution or a director, supervisor or senior manager of a securities company has been removed from his post for his irregularity or disciplinary

breach and 5 years have not elapsed as of the day when he is removed from his post; and
(2) Where a professional of a law firm, accounting firm or investment consulting organization, financial advising organization, credit rating institution, asset appraisal institution or asset verification institution has been disqualified for his irregularity or disciplinary breach and 5 years have not elapsed as of the day when he is removed from his post.

Article 132 A practitioner of a stock exchange, securities registration and clearing institution, securities trading service institution or securities company or any functionary of the state organ, who has been dismissed for his irregularity or disciplinary breach, shall not be employed as a practitioner of a stock exchange.

Article 133 A functionary of any state organ and any other personnel as prohibited by any law or administrative regulation from taking any part-time job in a company shall not take any job in a securities company on a part-time basis.

Article 134 The state shall establish a securities investor protection fund. The securities investor protection fund shall be composed of the capital paid by securities companies and any other capital lawfully raised. The specific measures for financing, administration and use of the foregoing fund shall be formulated by the State Council.

Article 135 A securities company shall withdraw a trading risk reserve from its annual after-tax profits to cover any possible loss from securities trading. The specific proportion for withdrawal shall be prescribed by the securities regulatory authority under the State Council.

Article 136 A securities company shall establish and improve an internal control system, adopt effective measures of separation so as to prevent any interest conflict between the company and its clients or between different clients thereof.
A securities company shall undertake its operations of securities brokerage, underwriting, self-operation and asset management in a separate manner and may not mix them up.

Article 137 A securities company shall undertake its self-operations in its own name and shall not do so in the name of any other person or in any individual's name.
A securities company shall undertake its self-operations by using its own capital and funds it has lawfully raised.
A securities company shall not lend its self-operation account to any other person.

Article 138 A securities company may enjoy its right of independent management according to law and its legal operations shall not be interfered.

Article 139 The trading settlement funds of the clients of a securities company shall be deposited in a commercial bank and be managed through the separate accounts as opened in the name of each client. The specific measures and implementation procedures shall be formulated by the State Council.
A securities company shall not incorporate any trading settlement funds or securities of its clients into its own assets. Any entity or individual is prohibited from misusing any trading settlement funds or securities of its/his clients in any form.
Where a securities company goes through bankruptcy procedures or is under liquidation, the trading settlement funds or securities of its client shall not be defined as its insolvent assets or liquidation assets. Under any other circumstance as irrelevant to the liabilities of its clients or under any other circumstance as prescribed by law, the trading settlement funds or securities of its clients shall not be sealed-up, frozen, deducted or enforced compulsorily.

Article 140 Where a securities company engages in any brokerage business, it shall arrange for a uniformly formulated power of attorney of securities trading for the entrusting party. Where any other means of entrustment is adopted, the relevant entrustment records shall be made.
For an entrustment of securities trading as made by a client, disregard whether the trading is concluded or not, the entrustment records shall be kept in the relevant securities company within the prescribed period.

Article 141 Upon accepting an entrustment for securities trading, a securities company shall, on the basis of the description of the securities, trading volume, method of quoting, price band, etc. as indicated in the power of attorney,

undertake securities trading as an agent according to the trading rules and make trading faithful records. After a transaction is concluded, a securities company shall, according to the relevant regulations, formulate a transaction report and deliver it to the relevant clients.
The statements in check sheet made for confirming trading acts against the results of securities trading shall be authentic. Such statements shall be subject to the examination of an examiner other than the relevant transaction handler himself, on a transaction-by-transaction basis, so as to guarantee the consistency between the balance of securities in book account and the securities as actually held.

Article 142 Where a securities company provides any service of securities financing through securities trading for its client, it shall meet the provisions of the State Council and shall be subject to the approval of the securities regulatory authority under the State Council.

Article 143 A securities company that engages in brokerage operations shall not decide any purchase or sale of securities, class selection of securities, trading volume or trading price on the basis of full entrustment of its client.

Article 144 A securities company shall not make any promise to its clients on the proceeds as generated from securities trading or on compensating the loss as incurred from securities trading by any means.

Article 145 A securities company and the practitioners thereof shall not privately accept any entrustment of its client for securities trading beyond its business place as established according to law.

Article 146 Where any practitioner of a securities company violates the trading rules by implementing the instructions of his securities company or taking advantage of his post in any securities trading, the relevant securities company shall bear all the liabilities as incurred therefrom.

Article 147 A securities company shall keep the materials of its clients regarding account opening, entrustment records, trading records and internal management as well as its business operations in a proper manner. No one may conceal, forge, alter or damage any of the aforesaid materials. The term for keeping the aforesaid materials shall be no less than 20 years.

Article 148 A securities company shall, according to the relevant provisions, report the information and materials regarding its operations and management such as its business operations and financial status to the securities regulatory authority under the State Council. The securities regulatory authority under the State Council is empowered to require the securities company as well as the shareholders and actual controllers thereof to provide the relevant information and materials within a prescribed period.
The information and materials as reported or provided by the securities company and the shareholders and actual controllers thereof to the securities regulatory authority under the State Council shall be authentic, accurate and complete.

Article 149 The securities regulatory authority under the State Council may, when believing it is necessary, entrust an accounting firm or an asset appraisal institution to carry out an auditing or appraisal on the financial status, internal control as well as asset value of any securities company. The specific measures thereof shall be formulated by the securities regulatory authority under the State Council in collaboration with the relevant administrative departments.

Article 150 Where the net capital or any other indicator of risk control of a securities company fails to satisfy the relevant provisions, the securities regulatory authority under the State Council shall order it to correct in a prescribed period. Where a securities company fails to correct within the prescribed period or any act thereof has injured the sound operation of the securities company or has damaged the legitimate rights and interests of its clients, the securities regulatory authority under the State Council may take the following measures in light of different circumstances:
(1) Restricting its business operations, ordering it to suspend some business operations and stopping the approval of any new operations thereof;

(2) Stopping the approval for establishing or taking over any business branch;
(3) Restricting its distribution of dividends, restricting the payment of remunerations to or provision of welfare for its directors, supervisors or senior managers;
(4) Restricting any transfer of property or the setting of any other right to its property;
(5) Ordering it to alter its directors, supervisors and senior managers or restricting the right thereof;
(6) Ordering the controlling shareholders to transfer their stock rights or restricting its shareholders from exercising the shareholders' rights; and
(7) Revoking the relevant business license.
A securities company shall, upon rectification, submit a report to the securities regulatory authority under the State Council. The securities regulatory authority under the State Council shall lift the relevant measures as prescribed in the preceding paragraph herein within 3 days as of concluding the relevant examination and acceptance of the securities company that has met the requirements of risk control indicators upon examination and acceptance.

Article 151 Where a shareholder of a securities company makes any fake capital contribution or spirits away registered capital, the securities regulatory authority under the State Council shall order him to correct within a prescribed period and may order him to transfer the stock rights of the securities company it holds.
Before a shareholder as prescribed in the preceding paragraph herein corrects his irregularity and transfers the stock right of the securities company it holds according to the relevant requirements, the securities regulatory authority under the State Council may restrict the shareholders' rights thereof.

Article 152 Where any director, supervisor or senior manager of a securities company fails to fulfill his fiduciary duties and thus incurs any major irregularity or rule-breaking act or major risk to his securities company, the securities regulatory authority under the State Council may revoke the post-holding qualification thereof and order his company to remove him from his post and replace him with a new one.

Article 153 Where any illegal operation of a securities company or any major risk thereof seriously disturbs the order of the securities market or injures the interests of the relevant investors, the securities regulatory authority under the State Council may take such supervisory measures as suspending its business for rectification, designating any other institution for trusteeship, take-over or cancellation.

Article 154 During a period when a securities company is ordered to suspend its business for rectification, or is designated for trusteeship, or is being taken over or liquidated, or where any major risk occurs, the following measures may be adopted to the directors, supervisors, senior managers or any other person of the securities company as held to be directly responsible, upon the approval of the securities regulatory authority under the State Council:
(1) Notifying the exit administrative organ to prevent him from exiting the Chinese territory; and
(2) Requesting the judicial organ to prohibit him from moving, transferring his properties or disposing of his properties by any other means, or setting any other right to his properties.

Chapter VII Securities Registration and Clearing Institutions

Article 155 A securities registration and clearing institution is a non-profit legal person that provides centralized registration, custody and settlement services for securities trading.
The establishment of a securities registration and clearing institution shall be subject to the approval of the securities regulatory authority under the State Council.

Article 156 The establishment of a securities registration and clearing institution shall meet the following requirements:
(1) Its self-owned capital shall be no less than 0.2 billion yuan;
(2) It shall have a place and the facilities as required by the services of securities registration, custody and settlement;
(3) Its major managers and practitioners shall have the securities practice qualification; and

(4) It shall meet any other requirement as prescribed by the securities regulatory authority under the State Council.
The words "securities registration and clearing" shall be indicated in the name of a securities registration and clearing institution.

Article 157 A securities registration and clearing institution shall perform the following functions:
(1) The establishment of securities accounts and settlement accounts;
(2) The custody and transfer of securities;
(3) The registration of roster of securities holders;
(4) The settlement and delivery for listed securities trading of a stock exchange;
(5) The distribution of securities rights and interests on the basis of the entrustment of issuers;
(6) The handling of any inquiry relating to the aforesaid business operations; and
(7) Any other business operations as approved by the securities regulatory authority under the State Council.

Article 158 The way of nationally centralized and unified operations shall be adopted for the registration and settlement of securities.
The constitution and operational rules of a securities registration and clearing institution shall be formulated according to law and shall be subject to the approval of the securities regulatory authority under the State Council.

Article 159 The securities as held by the relevant holders shall all be put under the custody of a securities registration and clearing institution in a listed trading.
A securities registration and clearing institution shall not misappropriate any securities of its clients.

Article 160 A securities registration and clearing institution shall provide the roster of securities holders as well as the relevant materials to a securities issuer.
A securities registration and clearing institution shall, according to the result of securities registration and settlement, affirm the fact that a securities holder holds the relevant securities and provide the relevant registration materials to the securities holder.
A securities registration and clearing institution shall guarantee the authenticity, accuracy and integrity of the roster of securities holders as well as records of transfer registration, and shall not conceal, forge, alter or damage any of the aforesaid materials.

Article 161 A securities registration and clearing institution shall take the following measures to guarantee the sound operation of its business:
(1) Having the necessary service equipment and complete data protection measures;
(2) Having established complete management systems concerning operation, finance and security protection; and
(3) Having established a complete risk control system.

Article 162 A securities registration and clearing institution shall keep the original voucher of registration, custody and settlement as well as the relevant documents and materials in a proper manner. The term for keeping the aforesaid materials shall be no less than 20 years.

Article 163 A securities registration and clearing institution shall establish a clearing risk fund so as to pay in advance or make up any loss of the securities registration and clearing institution as incurred from default delivery, technical malfunction, operational fault or force majeure.
The securities clearing risk fund shall be withdrawn from the business incomes and proceeds of the securities registration and clearing institution and may be paid by clearing participants according to a specified percentage of securities trading volume.
The measures for raising and managing the securities clearing risk fund shall be formulated by the securities regulatory authority under the State Council in collaboration with the fiscal department of the State Council.

Article 164 The securities clearing risk fund shall be deposited into a special account of a designated bank and shall be subject to special management.
Where a securities registration and clearing institution makes any compensation by using the securities clearing risk fund, it may recourse the payment to the relevant person who is held responsible.

Article 165 An application for dissolving a securities registration and clearing institution shall be subject to the approval of the securities regulatory authority under the State Council.

Article 166 An investor who entrusts a securities company to undertake any securities trading shall apply for opening a securities account. A securities registration and clearing institution shall, according to the relevant provisions, open a securities account for the investor in his own name.
An investor who applies for opening an account shall hold the legitimate certificates certifying his identity of a Chinese citizen or its qualification of a Chinese legal person, unless it is otherwise provided for by the state.

Article 167 A securities registration and clearing institution shall, when providing netting service for a stock exchange, require the relevant clearing participant to deliver securities and funds in full amount and provide guaranty of delivery according to the principles of delivery versus payment (DVP).
Before a delivery is concluded, nobody may use the securities, funds or collaterals as involved in the delivery.
Where a clearing participant fails to perform the duty of delivery according to the schedule, a securities registration and clearing institution has the right to dispose of the properties as prescribed in the preceding paragraph herein according to the operational rules.

Article 168 The clearing funds and securities as collected by a securities registration and clearing institution according to the operational rules shall be deposited into a special account for settlement and delivery. The settlement and delivery that can only be applied to the securities trading as concluded according to the operational rules and shall not be enforced compulsorily.

Chapter VIII Securities Trading Service Institutions

Article 169 Where an investment consulting institution, financial advising institution, credit rating institution, asset appraisal institution, or accounting firm engages in any securities trading service, it shall be subject to the approval of the securities regulatory authority under the State Council and the relevant administrative departments.
The measures for the administration of examination and approval of the practice of securities trading services by the investment consulting institutions, financial advising institutions, credit rating institutions, asset appraisal institutions and accounting firms shall be formulated by the securities regulatory authority under the State Council and the relevant administrative departments.

Article 170 The staff of an investment consulting institution, financial advising institution or credit rating institution who engage in securities trading services shall have the special knowledge of securities as well as work experience in the securities business or securities trading services for more than 2 years. The standards for recognizing the securities practice qualification and the measures for administration thereof shall be formulated by the securities regulatory authority under the State Council.

Article 171 An investment consulting institution as well as its practitioners that engage in securities trading services shall not have any of the following acts:
(1) Engaging in any securities investment as an agent on behalf of its entrusting party;
(2) Concluding any agreement with any entrusting party on sharing the gains of securities investment or bearing the loss of securities investment;
(3) Purchasing or selling any stock of a listed company, for which the consulting institution provides services;
(4) Providing or disseminating any false or misleading information to investors through media or by any other means; or

(5) Having any other act as prohibited by any law or administrative regulation.
Any institution or person that has any of the acts as prescribed in the preceding paragraph herein and thus incurs any loss to investors shall bear the liabilities of compensation.

Article 172 An investment consulting institution or credit rating institution that engages in securities trading services shall charge commissions for the services it provides according to the rates of or measures for fee charging as formulated by the relevant administrative department of the State Council.

Article 173 Where a securities trading service institution formulates and issues any auditing report, asset appraisal report, financial advising report, credit rating report or legal opinions for the issuance, listing and trading of securities, it shall be assiduous and dutiful by carrying out examination and verification for the authenticity, accuracy and integrity of the contents of the documents applied as the base. In the case of any false record, misleading statement or major omission in the documents it has formulated or issued, which incurs any loss to any other person, the relevant securities trading service institution shall bear several and joint liabilities together with the relevant issuer and listed company, unless a securities trading service institution has the ability to prove its faultlessness.

Chapter IX Securities Industrial Associations

Article 174 A securities industrial association is a self-disciplinary organization for the securities industry and is a public organization with the status of a legal person.
A securities company shall join a securities industrial association.
The organ of power of a securities industrial association is the general assembly of its members.

Article 175 The constitution of a securities industrial association shall be formulated by the general assembly of its members and shall be reported to the securities regulatory authority under the State Council for archival filing.

Article 176 A securities industrial association shall perform the following functions and duties:
(1) Educating and organizing its members to observe the laws and administrative regulations on securities;
(2) Safeguarding the legitimate rights and interests of its members and reporting the suggestions and demands of its members to the securities regulatory body;
(3) Collecting and sorting out the securities information and providing services for its members;
(4) Formulating the rules that shall be observed by its members, organizing the vocational training for the practitioners of its member entities and carrying out vocational exchanges between its members;
(5) Holding mediation over any dispute regarding securities operation between its members or between its members and clients;
(6) Organizing its members to do research on the development, operation, etc. of the securities industry;
(7) Supervising and examining the acts of its members and, according to the relevant provisions, giving a disciplinary sanction to any member that violates any law or administrative regulation or the constitution of the association; and
(8) Performing any other functions and duties as stipulated by the constitution of the industrial association.

Article 177 A council shall be established within the securities industrial association. The members of the council shall be selected through election according to the provisions of the constitution.

Chapter X Securities Regulatory Bodies

Article 178 The securities regulatory authority under the State Council shall carry out supervision and administration of the securities market according to law so as to preserve the order of the securities market and guarantee the legitimate operations thereof.

Article 179 The securities regulatory authority under the State Council shall perform the following functions and duties regarding the supervision and administration of the securities market:

(1) Formulating the relevant rules and regulations on the supervision and administration of the securities market and exercising the power of examination or verification according to law;
(2) Carrying out the supervision and administration of the issuance, listing, trading, registration, custody and settlement of securities according to law;
(3) Carrying out supervision and administration of the securities activities of the securities issuers, listed companies, stock exchanges, securities companies, securities registration and clearing institutions, securities investment fund management companies and securities trading service institutions according to law;
(4) Formulating the standards for securities practice qualification and code of conduct and carrying out supervision and implementation according to law;
(5) Carrying out supervision and examination of information disclosure regarding the issuance, listing and trading of securities;
(6) Offering guidance for and carrying out supervision of the activities of the securities industrial associations according to law;
(7) Investigating into and punishing any violation of any law or administrative regulation on the supervision and administration of the securities market according to law; and
(8) Performing any other functions and duties as prescribed by any law or administrative regulation.
The securities regulatory authority under the State council may establish a cooperative mechanism of supervision and administration in collaboration with the securities regulatory bodies of other countries and regions and conducts trans-border supervision and administration.

Article 180 Where the securities regulatory authority under the State Council performs its duties and functions, it has the power to take the following measures:
(1) Carrying an on-the-spot examination to a securities issuer, listing company, securities company, securities investment fund management company, securities trading service company, stock exchange or securities registration and clearing institution;
(2) Making investigation and collecting evidence in a place where any suspected irregularity has happened;
(3) Consulting the parties concerned or any entity or individual relating to a case under investigation and requiring the relevant entity or person to give explanations on the matters relating to a case under investigation;
(4) Referring to and photocopying such materials as the registration of property right and the communication records relating to the case under investigation;
(5) Referring to and photocopying the securities trading records, transfer registration records, financial statements as well as any other relevant documents and materials of any entity or individual relating to a case under investigation; sealing up any document or material that may be transferred, concealed or damaged;
(6) Consulting the capital account, security account or bank account of any relevant party concerned in or any entity or individual relating to a case under investigation; in the case of any evidence certifying that any property as involved in a case, such as illegal proceeds or securities, has been or may be transferred or concealed; or where any important evidence has been or may be concealed, forged or damaged, freezing or sealing up the foregoing properties or evidence upon the approval of the principal of the securities regulatory authority under the State Council;
(7) When investigating into any major securities irregularity such as manipulation of the securities market or insider trading, upon the approval of the principal of the securities regulatory authority under the State Council, restricting the securities trading of the parties concerned in a case under investigation, whereby the restriction term shall not exceed 15 trading days; under any complicated circumstance, the restriction term may be extended for another 15 trading day.

Article 181 Where the securities regulatory authority under the State Council performs its functions and duties of supervision or examination or investigation, there shall be no less than two people carrying out the supervision and examination, who shall show their legitimate certificates and the notice of supervision and examination as well as investigation. Where there are less than two people carrying out the supervision and examination or investigation or they

fail to show their legitimate certificates and the notice of supervision and examination or investigation, the entity under examination and investigation has the right to refuse.

Article 182 The functionary of the securities regulatory authority under the State Council shall be duteous, impartial and clean, and handle matters according to law, and shall not take advantage of his post to seek any unjust interests or divulge any commercial secret of the relevant entity or individual it has access to in his performance of duty.

Article 183 Where the securities regulatory authority under the State Council performs its functions and duties according to law, the entity or individual under examination and investigation shall offer assistance, provide the relevant documents and materials in a faithful manner and shall not refuse any legitimate requirement, obstruct the performance of duties and functions or conceal any document or material concerned.

Article 184 The regulations, rules as well as the working system of supervision and administration as formulated by the securities regulatory authority under the State Council according to law shall be publicized to the general public.
The securities regulatory authority under the State Council shall, according to the results of investigation, decide the punishment on any securities irregularity, which shall be publicized to the general public.

Article 185 The securities regulatory authority under the State Council shall establish an information pooling mechanism for supervision and administration in collaboration with any other financial regulatory authority under the State Council. Where the securities regulatory authority under the State Council performs its functions and duties of supervision and examination or investigation according to law, the relevant departments shall show cooperation.

Article 186 Where the securities regulatory authority under the State Council finds any securities irregularity as involved in a suspected crime when performing its functions and duties according to law, it shall transfer the case to the judicial organ for handling.

Article 187 The functionary of the securities regulatory authority under the State Council shall not hold any post in any organization under its supervision.

Chapter XII Legal Liabilities

Article 188 Where any company unlawfully makes any public issuance of securities or does so in any disguised form without the examination and approval of the statutory organ, it shall be ordered to cease the issuance, return the funds it has raised plus a deposit interest as calculated at the interest rate of the bank for the corresponding period of time and be imposed a fine of 1% up to 5% of the funds it has illegally raised. A company that has been established through any unlawful public issuance of securities or through any unlawful public issuance of securities in any disguised form shall be revoked by the organ or department that performs the functions and duties of supervision and administration in collaboration with the local people’s government at or above the county level. The person-in-charge or any other person as held to be directly responsible shall be given a warning and be fined 30, 000 yuan up to 300, 000 yuan.

Article 189 Where an issuer fails to meet the requirements of issuance and cheats for the verification for issuance by any fraudulent means, if the relevant securities haven’t been issued, it shall be fined 300, 000 yuan up to 600, 000 yuan; if the relevant securities have been issued, it shall be fined 1% up to 5% of the illegal proceeds it has unlawfully raised. The person-in-charge and any other person as held to be directly responsible shall be fined 30, 000 yuan up to 300, 000 yuan. Any controlling shareholder or actual controller of an issuer that instigates any irregularity as prescribed in the preceding paragraph herein shall be subject to the punishments as prescribed in the preceding paragraph.

Article 190 Where a securities company underwrites or purchases or sells, as an agent, any securities which have been unlawfully issued in a public manner without examination and approval, it shall be ordered to stop its entrusted underwriting or purchase or sale. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times its illegal proceeds shall be imposed. Where there is no illegal proceeds or its illegal proceeds is less than 300, 000 yuan, a fine of 300, 000

yuan up to 60, 000 yuan shall be imposed. Where any loss has been incurred to any investor, the securities company shall bear several and joint liabilities of compensation together with the issuer. The person-in-charge and any other person as held to be directly responsible shall be given a warning and fined 30, 000 yuan up to 300, 000 yuan, and the post-holding qualification or securities practice qualification thereof shall be revoked.

Article 191 Where a securities company that engages in securities underwriting is under any of the following circumstances, it shall be ordered to correct and be given a warning. The illegal proceeds shall be confiscated and a fine of 30, 000 yuan up to 600, 000 yuan may be imposed concurrently. Under any serious circumstances, the relevant business license thereof shall be suspended or revoked. Where any loss has been incurred to any other securities underwriting institution or investor, it shall be subject to the liabilities of compensation according to law. The person-in-charge and any other person as held to be directly responsible shall be given a warning and may be concurrently fined 30, 000 yuan up to 300, 000 yuan. Under any serious circumstances, the post-holding qualification or securities practice qualification thereof shall be revoked:
(1) Conducting any advertising or any other publicity for recommendation, which is false or may mislead investors;
(2) Canvassing any underwriting business by any means of unjust competition; or
(3) Having any other irregularity in violation of the relevant provisions on securities underwriting.

Article 192 Where a recommender produces a recommendation letter with any false record, misleading statement or major omission, or fails to perform any other statutory functions and duties, it shall be ordered to correct and be given a warning. Its business income shall be confiscated and a fine of 1 up to 5 times its business income shall be imposed. Under any serious circumstances, the relevant business license shall be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be fined 30, 000 yuan up to 300, 000 yuan. Under any serious circumstances, the post-holding qualification or securities practice qualification thereof shall be revoked.

Article 193 Where an issuer, a listed company or any other obligor of information disclosure fails to disclose information according to the relevant provisions or where there is any false record, misleading or major omission in the information it has disclosed, it shall be ordered to correct, given a warning and imposed a fine of 300, 000 yuan up to 600, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.
Where an issuer, a listed company or any other obligor of information disclosure fails to submit relevant reports or where there is any false record, misleading or major omission in any report it has submitted, it shall ordered to correct, given a warning and imposed a fine of 300, 000 yuan up to 600, 000 yuan. The person-in-charge and any other person-in-charge as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.
The controlling shareholder or actual controller of any issuer, listed company or any other obligor of information disclosure instigates any irregularity as prescribed in the preceding 2 paragraphs herein shall be subject to the punishments as prescribed in the preceding 2 paragraphs.

Article 194 Where any issuer or listed company unlawfully alters the purpose of use of funds as raised through public issuance of securities, it shall be ordered to correct. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.
The controlling shareholder or actual controller of any issuer or listed company who instigates any irregularity as prescribed in the preceding paragraph herein shall be given a warning and be imposed a fine of 300, 000 yuan up to 600, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be subject to the punishment according to the provisions of the preceding paragraph.

Article 195 Where any director, supervisor, or senior manager of a listed company or a shareholder who holds more than 5% of the shares of a listed company violates the provisions of Article 47 of the present Law by buying or purchasing any stock of the listed company, he shall be given a warning and be concurrently imposed a fine of 30,000 yuan up to 100, 000

yuan.

Article 196 Any stock exchange as illegally established shall be banned by the people's government above the county level. Its illegal proceeds shall be confiscated and a fine of 1 up to 5 times its illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 500, 000 yuan shall be imposed, The person-in-charge and an other as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 197 Any securities company that is unlawfully established or that unlawfully undertakes any securities operation without approval shall be banned by the securities regulatory body, the illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 300, 000 yuan, a fine of 300, 000 yuan up to 600, 000 yuan shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 198 Where any personnel without a post-holding qualification or securities practice qualification is unlawfully employed as in violation of the provisions of the present Law, the securities regulatory body shall order it to correct, give it a warning and impose upon it a fine of 100, 000 yuan up to 300, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan.

Article 199 Where any person who is prohibited by any law or administrative regulation from engaging in securities trading holds or purchases or sells any stock directly or in an assumed name or in the name of any other person, he shall be ordered to dispose of the stocks he unlawfully holds according to law. The illegal proceeds shall be confiscated and a fine of no more than the equivalent value of the stocks traded shall be imposed. In the case of any functionary of the state, an administrative sanction shall be given according to law.

Article 200 Where any practitioner of a stock exchange, securities company, securities registration and clearing institution or any functionary of any securities industrial association provides any false material or conceals, forges, alters or damages any trading record for the purpose of inducing investors to purchase or sell securities, the securities practice qualification thereof shall be revoked and a fine of 30, 000 yuan up to 100, 000 yuan shall be imposed. In the case of any functionary of the state, an administrative sanction shall be given according to law.

Article 201 Where a securities trading service institution and its staffs that produce any auditing report, asset appraisal report or legal opinions for the issuance of stocks violate the provisions of Article 45 of the present Law by purchasing or selling any stock, it shall be ordered to dispose of the stocks it or illegally holds according to law. The illegal proceeds shall be confiscated and a fine of no more than the equivalent value of the stocks traded shall be imposed.

Article 202 Where an insider who has access to insider information of securities trading or any person who has obtained any insider information purchases or sells the securities, divulges relevant information or advises any other person to purchase or sell securities before the information regarding the issuance or trading of securities or any other information that may have any big impact on the price of the securities is publicized, he shall be ordered to dispose of the securities he illegally holds according to law. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 30, 000 yuan up to 600, 000 yuan shall be imposed. Where an entity is involved in any insider trading, the person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan. Any functionary of the securities regulatory body that conducts any insider trading shall be given a heavier punishment.

Article 203 Where anyone violates the present Law by manipulating the securities market, he shall be ordered to dispose of the securities he illegally holds according to law. The illegal proceeds shall be confiscated and a fine of a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30,

000 yuan, a fine of 300, 000 yuan up to 3,000, 000 yuan shall be imposed. Where an entity manipulates the securities market, the person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 100,000 yuan up to 600, 000 yuan as well.

Article 204 Where anyone violates the relevant laws by purchasing or selling any securities during a period when the transfer of such securities is prohibited, he shall be ordered to correct, be given a warning and be imposed a fine of no more than the equivalent value of the securities as traded. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 205 Where a securities company violates the present Law by providing any securities financing, the illegal proceeds shall be confiscated, the relevant business license shall be suspended or revoked, and a fine of no more than the equivalent value of the funds as raised through securities financing shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 206 Where anyone violates the provisions of paragraph 1 or 3 of Article 78 of the present Law by disturbing the securities market, the securities regulatory body shall order it to correct. The illegal proceeds shall be revoked and a fine of 1 up to 5 times of the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 30, 000 yuan up to 200, 000 yuan shall be imposed.

Article 207 Anyone who violates Paragraph 2 of Article 78 of the present Law by making false statements or providing misleading information in securities dealings shall be ordered to correct, and be fined 30,000 yuan up to 200,000 yuan. If the violator is a state functionary, he shall be given an administrative sanction, in addition.

Article 208 Where any legal person violates the present Law by opening any account in any other person’s name or making use of any other person’s account to purchase or sell any securities, it shall be ordered to correct and be imposed a fine of 1 up to 5 times the illegal proceeds. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 30, 000 yuan up to 300, 000 yuan shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan.
Where a securities company provides any securities trading account of its own or of any other person for any irregularity as prescribed in the preceding paragraph herein, he shall not only be subject to the punishments as prescribed in the preceding paragraph, the post-holding qualification or securities practice qualification of the person-in-charge or any other person as held to be directly responsible shall be revoked as well.

Article 209 Where a securities company violates the present Law by engaging in the self-operation of securities by assuming any other’s name or any individual’s name, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 30, 000 yuan, a fine of 300, 000 yuan up to 600, 000 yuan shall be imposed. Under any serious circumstances, the business license of securities self-operation shall be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 210 Where a securities company purchases or sells any securities or carries out any trading in violation of the entrustment of its clients or handles any other non-trading matter in violation of the true intension as expressed by its clients, it shall be ordered to correct and be imposed a fine of 10, 000 yuan up to 100, 000 yuan. Where any loss has been incurred to its client, it shall be subject to the liabilities of compensation according to law.

Article 211 Where a securities company or securities registration and clearing institution misappropriates any fund or securities of its client, or unlawfully purchases or sells any securities for its client without any entrustment, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be

imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 600, 000 yuan shall be imposed. Under any serious circumstances, it shall be ordered to close or the relevant business license thereof shall be revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan and the relevant post-holding qualification or securities practice qualification thereof shall be revoked.

Article 212 Where a securities company undertakes any brokerage business, accepts the full entrustment of any client to purchase or sell any securities or makes any promise on the proceeds as generated from securities trading or on the compensation of any loss as incurred from securities trading, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 50, 000 yuan up to 200, 000 yuan shall be imposed. The relevant business license may be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan. The relevant post-holding qualification or securities practice qualification thereof may be revoked.

Article 213 Where a purchaser fails to perform its obligations of announcing the acquisition of a listed company, issuing a tender offer or submitting an acquisition report of a listed company or unlawfully altering its tender offer, etc. according to the present Law, it shall be ordered to correct, given a warning and be imposed a fine of 100, 000 yuan up to 300, 000 yuan. Before making any correction, for the stocks a purchaser holds individually or with any other person through an agreement or any other arrangement, the voting right thereof shall not be exercised. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 214 Where a purchaser or the controlling shareholder of any purchaser takes advantage of the acquisition of any listed company to injure the legitimate rights and interests of the target company as well as the shareholders thereof, it shall be ordered to correct and be given a warning. Under any serious circumstances, a fine of 100, 000 yuan up to 600, 000 yuan shall be imposed. Where any loss is incurred to the target company or the shareholders thereof, it shall be subject to the liabilities of compensation according to law. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 300, 000 yuan.

Article 215 Where a securities company or any of its practitioners violates the present Law by privately accepting the entrustment of purchasing or selling securities from any client, it shall be ordered to correct and be given a warning. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 300, 000 yuan shall be imposed.

Article 216 Where a securities company violates the relevant provisions by undertaking any trading of unlisted securities without approval, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed.

Article 217 Where a securities company fails to start its business operations 3 months after establishment without any justifiable reason, or suspends its business operations for a consecutive 3 months, the organ in charge of corporation registration shall revoke the business license of the company.

Article 218 Where any securities company violates the provisions of Article 129 of the present Law by unlawfully establishing, purchasing or revoking any branch, or unlawfully going through any merge, split-up, business suspension, dissolution or bankruptcy, or establishing, purchasing a securities operation institution abroad or purchasing the shares of any securities operation institution abroad, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 600, 000 yuan shall be imposed. The person-in-charge and any

other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan.
Where any securities company violates the provisions of Article 129 of the present Law by altering any of the relevant items, it shall be ordered to correct and be imposed a fine of 100, 000 yuan up to 300, 000 yuan. The person-in-charge and any other person as held to be directly responsible shall be given a warning and imposed a fine of no more than 50, 000 yuan.

Article 219 Where a securities company violates the present Law by engaging in any securities operation beyond its permitted business scope, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 1 up to 5 times the illegal proceeds shall be imposed. Where there is no illegal proceeds or the illegal proceeds is less than 300, 000 yuan, a fine of 300, 000 yuan up to 600, 000 yuan shall be imposed. Under any serious circumstances, it shall be ordered to close down. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 220 Where a securities company fails to carry out its securities operation of brokerage, underwriting, self-operation or asset management in a separate manner according to law but mixes its own securities operation with other operations, it shall be ordered to correct. The illegal proceeds shall be confiscated and a fine of 300, 000 yuan up to 600, 000 yuan shall be imposed. Under any serious circumstances, the relevant business license shall be revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan. Under any serious circumstances, the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 221 Where a securities company submits any false document of certification or adopts any other fraudulent means to conceal any major fact so as to cheat for the securities business license or a securities company has any severe irregularity in the securities trading and thus, fails to meet the requirements of business operation any more, the securities regulatory body shall revoke its securities business license.

Article 222 Where a securities company or its shareholder or actual controller violates the relevant provisions by refusing to report or provide information or materials regarding its business and management to the securities regulatory body or in the case of any false record, misleading statement or major omission in the aforesaid information or materials as reported or submitted, it shall be ordered to correct, be given a warning and be fined 30, 000 yuan up to 300, 000 yuan. The relevant business license of the securities company may be suspended or revoked. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be fined no more than 30,000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.
Where a securities company provides financing or guaranty for its shareholder or any person related to its shareholder, it shall be ordered to correct, be given a warning and be imposed a fine of 100, 000 yuan up to 300, 000. The person-in-charge and any other person as held to be directly responsible shall be imposed a fine of 30, 000 yuan up to 100, 000 yuan. Where a shareholder has any fault, the securities regulatory authority under the State Council may restrict his shareholders' right before he makes the correction according to the relevant requirements. Where anyone refuses to correct, he may be ordered to transfer the stock right of the securities company he holds.

Article 223 Where a securities trading service institution fails to fulfill its accountability in a diligent and dutiful manner so that any document it formulated or produced has any false record, misleading statement or major omission, it shall be ordered to correct. The proceeds as generated from its business shall be confiscated. Its securities business license shall be suspended or revoked. A fine of 1 up to 5 times its business income shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be given a warning and be imposed a fine of 30,000 yuan up to 100, 000 yuan, and the relevant post-holding qualification or securities practice qualification shall be revoked.

Article 224 Anyone that violates the present Law by issuing or underwriting any corporate bond shall be given a punishment by the department as authorized by the State Council according to the relevant provisions of the present Law.

Article 225 Where a listed company, securities company, stock exchange, securities registration and clearing institution, or securities trading service institution fails to keep the relevant documents and materials according to the relevant provisions, it shall be ordered to correct, be given a warning and be imposed a fine of 30, 000 yuan up to 300, 000 yuan. Where any relevant document or material is concealed, forged, altered or damaged, the violator shall be given a warning and be imposed a fine of 300, 000 yuan up to 600, 000 yuan.

Article 226 Where a securities registration and clearing institution is unlawfully established without approval of the State Council, it shall be cancelled by the securities regulatory body, its illegal proceeds shall be confiscated, and a fine of 1 up to 5 times of the illegal proceeds shall be imposed upon it.
Where an investment consulting institution, financial advising institution, credit rating institution, asset appraisal institution or accounting firm undertakes any securities trading service without the relevant approval, it shall be ordered to correct. The illegal proceeds shall be confiscated, and a fine of 1 up to 5 times of the illegal proceeds shall be imposed upon it.
Where a securities registration and clearing institution or a securities service trading institution violates the present Law or any operational rules it has formulated according to law, the securities regulatory body shall order it to correct, confiscate the illegal proceeds, and impose upon it a fine of 1 up to 5 times the illegal proceeds. Where there is no illegal proceeds or the illegal proceeds is less than 100, 000 yuan, a fine of 100, 000 yuan up to 300, 000 yuan shall be imposed. Under any serious circumstances, it shall be ordered to close down or its securities business license shall be revoked.

Article 227 Where the securities regulatory authority under the State Council or the department as authorized by the State Council is under any of the following circumstances, the person-in-charge and any other person as held to be directly responsible shall be given an administrative sanction according to law:
(1) Verifying or approving an application for issuing securities or for establishing a securities company, which fails to comply with the present Law;
(2) Taking such measures as on-the-spot examination, investigation and evidence collection, consultation, freeze-up or seal-up as in violation of the provisions of Article 180 of the present Law;
(3) Giving any administrative sanction to the relevant institution or personnel as in violation of the relevant provisions; or
(4) Performing any other functions and duties in an unlawful manner.

Article 228 Where any functionary of the securities regulatory body or any member of the issuance examination committee fails to perform the duties and functions as prescribed in the present Law, abuses his power, neglects his duty, takes advantage of his post to seek any unjust interests or divulges any commercial secret of the relevant entity or individual as accessible in his performance, he shall be subject to legal liabilities.

Article 229 Where a stock exchange grants any approval to an application for securities listing that fails to meet the requirements as prescribed in the present Law, it shall be given a warning. Its business income shall be confiscated and a fine of 1 up to 5 times its business income shall be imposed. The person-in-charge and any other person as held to be directly responsible shall be imposed a fine of 30, 000 yuan up to 300, 000 yuan.

Article 230 Where anyone refuses or obstructs the securities regulatory body and its functionary in its or his performance of the functions and duties of supervision, examination and investigation by means of violence or threat, he shall be given an administrative sanction of public security according to law.

Article 231 Anyone who violates the present Law and constitutes a crime shall be subject to criminal liabilities according to law.

Article 232 Where anyone violates the present Law and shall be subject to civil liabilities of compensation and payment of fines and penalties, and if his properties are not sufficient to cover all the payment at the same time, he shall bear civil

liabilities.

Article 233 Where anyone violates the relevant laws and administrative regulations or the relevant provisions of the securities regulatory authority under the State Council and is under any serious circumstances, the securities regulatory authority under the State Council may take measures to prohibit the relevant persons as held to be responsible from entering into the securities market.
The term "prohibition from entering into the securities market" as mentioned in the preceding paragraph refers to a system, whereby a person shall not undertake any securities practice or hold the post of director, supervisor or senior manager of a listed company within a prescribed term or for life.

Article 234 The fines as collected and the illegal proceeds as confiscated shall be all turned over into the State Treasury.

Article 235 Any party concerned that is dissatisfied with a decision of the securities regulatory body or a department as authorized by the State Council on punishment may apply for an administrative review or file a litigation with the people's court.

Chapter XII Supplementary Provisions

Article 236 The securities that have been approved for listed trading in a stock exchange according to the relevant administrative regulations before the present Law comes into force may continue to be traded according to law.
The securities operation institutions that have been approved for establishment according to the relevant administrative regulations and the provisions of the administrative department of finance of the State Council before the present Law comes into force but fails to completely comply with the provisions of the present Law shall meet the requirements as prescribed by the present Law within a prescribed term. The specific measures for implementation shall be separately prescribed by the State Council.

Article 237 An issuer that applies for verifying the public issuance of any stocks or corporate bonds shall pay the expenses for examination according to the relevant provisions.

Article 238 Where a domestic enterprise directly or indirectly goes abroad to issue any securities abroad or whose securities are listed abroad for trading, it shall be subject to the approval of the securities regulatory authority under the State Council according to the relevant provisions of the State Council.

Article 239 As to any subscription or trading of stocks of a domestic company in a foreign currency, the specific measures shall be separately formulated by the State Council.

Article 240 The present Measures shall come into force as of January 1, 2006.

中华人民共和国主席令

第　四十三　号

《中华人民共和国证券法》已由中华人民共和国第十届全国人民代表大会常务委员会第十八次会议于2005年10月27日修订通过，现将修订后的《中华人民共和国证券法》公布，自2006年1月1日起施行。

中华人民共和国主席　胡锦涛

2005年10月27日

中华人民共和国证券法

（1998年12月29日第九届全国人民代表大会常务委员会第六次会议通过　根据2004年8月28日第十届全国人民代表大会常务委员会第十一次会议《关于修改〈中华人民共和国证券法〉的决定》修正　2005年10月27日第十届全国人民代表大会常务委员会第十八次会议修订）

目　　录

第一章　总　　则

第一条　为了规范证券发行和交易行为，保护投资者的合法权益，维护社会经济秩序和社会公共利益，促进社会主义市场经济的发展，制定本法。

第二条　在中华人民共和国境内，股票、公司债券和国务院依法认定的其他证券的发行和交易，适用本法；本法未规定的，适用《中华人民共和国公司法》和其他法律、行政法规的规定。

政府债券、证券投资基金份额的上市交易，适用本法；其他法律、行政法规另有规定的，适用其规定。

证券衍生品种发行、交易的管理办法，由国务院依照本法的原则规定。

第三条　证券的发行、交易活动，必须实行公开、公平、公正的原则。

第四条　证券发行、交易活动的当事人具有平等的法律地位，应当遵守自愿、有偿、诚实信用的原则。

第五条　证券的发行、交易活动，必须遵守法律、行政法规；禁止欺诈、内幕交易和操纵证券市场的行为。

第六条　证券业和银行业、信托业、保险业实行分业经营、分业管理，证券公司与银行、信托、保险业务机构分别设立。国家另有规定的除外。

第七条 国务院证券监督管理机构依法对全国证券市场实行集中统一监督管理。

国务院证券监督管理机构根据需要可以设立派出机构，按照授权履行监督管理职责。

第八条 在国家对证券发行、交易活动实行集中统一监督管理的前提下，依法设立证券业协会，实行自律性管理。

第九条 国家审计机关依法对证券交易所、证券公司、证券登记结算机构、证券监督管理机构进行审计监督。

第二章 证券发行

第十条 公开发行证券，必须符合法律、行政法规规定的条件，并依法报经国务院证券监督管理机构或者国务院授权的部门核准；未经依法核准，任何单位和个人不得公开发行证券。

有下列情形之一的，为公开发行：

（一）向不特定对象发行证券的；

（二）向特定对象发行证券累计超过二百人的；

（三）法律、行政法规规定的其他发行行为。

非公开发行证券，不得采用广告、公开劝诱和变相公开方式。

第十一条 发行人申请公开发行股票、可转换为股票的公司债券，依法采取承销方式的，或者公开发行法律、行政法规规定实行保荐制度的其他证券的，应当聘请具有保荐资格的机构担任保荐人。

保荐人应当遵守业务规则和行业规范，诚实守信，勤勉尽责，对发行人的申请文件和信息披露资料进行审慎核查，督导发行人规范运作。

保荐人的资格及其管理办法由国务院证券监督管理机构规定。

第十二条 设立股份有限公司公开发行股票，应当符合《中华人民共和国公司法》规定的条件和经国务院批准的国务院证券监督管理机构规定的其他条件，向国务院证券监督管理机构报送募股申请和下列文件：

（一）公司章程；

（二）发起人协议；

（三）发起人姓名或者名称，发起人认购的股份数、出资种类及验资证明；

（四）招股说明书；

（五）代收股款银行的名称及地址；

（六）承销机构名称及有关的协议。

依照本法规定聘请保荐人的，还应当报送保荐人出具的发行保荐书。

法律、行政法规规定设立公司必须报经批准的，还应当提交相应的批准文件。

第十三条 公司公开发行新股，应当符合下列条件：

（一）具备健全且运行良好的组织机构；

（二）具有持续盈利能力，财务状况良好；

（三）最近三年财务会计文件无虚假记载，无其他重大违法行为；

（四）经国务院批准的国务院证券监督管理机构规定的其他条件。

上市公司非公开发行新股，应当符合经国务院批准的国务院证券监督管理机构规定的条件，并报国务院证券监督管理机构核准。

第十四条 公司公开发行新股，应当向国务院证券监督管理机构报送募股申请和下列文件：

（一）公司营业执照；

（二）公司章程；

（三）股东大会决议；

（四）招股说明书；

（五）财务会计报告；

（六）代收股款银行的名称及地址；

（七）承销机构名称及有关的协议。

依照本法规定聘请保荐人的，还应当报送保荐人出具的发行保荐书。

第十五条 公司对公开发行股票所募集资金，必须按照招股说明书所列资金用途使用。改变招股说明书所列资金用途，必须经股东大会作出决议。擅自改变用途而未作纠正的，或者未经股东大会认可的，不得公开发行新股。

第十六条 公开发行公司债券，应当符合下列条件：

（一）股份有限公司的净资产不低于人民币三千万元，有限责任公司的净资产不低于人民币六千万元；

（二）累计债券余额不超过公司净资产的百分之四十；

（三）最近三年平均可分配利润足以支付公司债券一年的利息；

（四）筹集的资金投向符合国家产业政策；

（五）债券的利率不超过国务院限定的利率水平；

（六）国务院规定的其他条件。

公开发行公司债券筹集的资金，必须用于核准的用途，不得用于弥补亏损和非生产性支出。

上市公司发行可转换为股票的公司债券，除应当符合第一款规定的条件外，还应当符合本法关于公开发行股票的条件，并报国务院证券监督管理机构核准。

第十七条 申请公开发行公司债券，应当向国务院授权的部门或者国务院证券监督管理机构报送下列文件：

（一）公司营业执照；

（二）公司章程；

（三）公司债券募集办法；

（四）资产评估报告和验资报告；

（五）国务院授权的部门或者国务院证券监督管理机构规定的其他文件。

依照本法规定聘请保荐人的，还应当报送保荐人出具的发行保荐书。

第十八条 有下列情形之一的，不得再次公开发行公司债券：

（一）前一次公开发行的公司债券尚未募足；

（二）对已公开发行的公司债券或者其他债务有违约或者延迟支付本息的事实，仍处于继续状态；

（三）违反本法规定，改变公开发行公司债券所募资金的用途。

第十九条 发行人依法申请核准发行证券所报送的申请文件的格式、报送方式，由依法负责核准的机构或者部门规定。

第二十条 发行人向国务院证券监督管理机构或者国务院授权的部门报送的证券发行申请文件，必须真实、准确、完整。

为证券发行出具有关文件的证券服务机构和人员，必须严格履行法定职责，保证其所出具文件的真实性、准确性和完整性。

第二十一条 发行人申请首次公开发行股票的，在提交申请文件后，应当按照国务院证券监督管理机构的规定预先披露有关申请文件。

第二十二条 国务院证券监督管理机构设发行审核委员会，依法审核股票发行申请。

发行审核委员会由国务院证券监督管理机构的专业人员和所聘请的该机构外的有关专家组成，以投票方式对股票发行申请进行表决，提出审核意见。

发行审核委员会的具体组成办法、组成人员任期、工作程序，由国务院证券监督管理机构规定。

第二十三条 国务院证券监督管理机构依照法定条件负责核准股票发行申请。核准程序应当公开，依法接受监督。

参与审核和核准股票发行申请的人员，不得与发行申请人有利害关系，不得直接或者间接接受发行申请人的馈赠，不得持有所核准的发行申请的股票，不得私下与发行申请人进行接触。

国务院授权的部门对公司债券发行申请的核准，参照前两款的规定执行。

第二十四条 国务院证券监督管理机构或者国务院授权的部门应当自受理证券发行申请文件之日起三个月内，依照法定条件和法定程序作出予以核准或者不予核准的决定，发行人根据要求补充、修改发行申请文件的时间不计算在内；不予核准的，应当说明理由。

第二十五条 证券发行申请经核准，发行人应当依照法律、行政法规的规定，在证券公开发行前，公告公开发行募集文件，并将该文件置备于指定场所供公众查阅。

发行证券的信息依法公开前，任何知情人不得公开或者泄露该信息。

发行人不得在公告公开发行募集文件前发行证券。

第二十六条 国务院证券监督管理机构或者国务院授权的部门对已作出的核准证券发行的决定，发现不符合法定条件或者法定程序，尚未发行证券的，应当予以撤销，停止发行。已经发行尚未上市的，撤销发行核准决定，发行人应当按照发行价并加算银行同期存款利息返还证券持有人；保荐人应

当与发行人承担连带责任，但是能够证明自己没有过错的除外；发行人的控股股东、实际控制人有过错的，应当与发行人承担连带责任。

第二十七条 股票依法发行后，发行人经营与收益的变化，由发行人自行负责；由此变化引致的投资风险，由投资者自行负责。

第二十八条 发行人向不特定对象发行的证券，法律、行政法规规定应当由证券公司承销的，发行人应当同证券公司签订承销协议。证券承销业务采取代销或者包销方式。

证券代销是指证券公司代发行人发售证券，在承销期结束时，将未售出的证券全部退还给发行人的承销方式。

证券包销是指证券公司将发行人的证券按照协议全部购入或者在承销期结束时将售后剩余证券全部自行购入的承销方式。

第二十九条 公开发行证券的发行人有权依法自主选择承销的证券公司。证券公司不得以不正当竞争手段招揽证券承销业务。

第三十条 证券公司承销证券，应当同发行人签订代销或者包销协议，载明下列事项：

（一）当事人的名称、住所及法定代表人姓名；

（二）代销、包销证券的种类、数量、金额及发行价格；

（三）代销、包销的期限及起止日期；

（四）代销、包销的付款方式及日期；

（五）代销、包销的费用和结算办法；

（六）违约责任；

（七）国务院证券监督管理机构规定的其他事项。

第三十一条 证券公司承销证券，应当对公开发行募集文件的真实性、准确性、完整性进行核查；发现有虚假记载、误导性陈述或者重大遗漏的，不得进行销售活动；已经销售的，必须立即停止销售活动，并采取纠正措施。

第三十二条 向不特定对象发行的证券票面总值超过人民币五千万元的，应当由承销团承销。承销团应当由主承销和参与承销的证券公司组成。

第三十三条 证券的代销、包销期限最长不得超过九十日。

证券公司在代销、包销期内，对所代销、包销的证券应当保证先行出售给认购人，证券公司不得为本公司预留所代销的证券和预先购入并留存所包销的证券。

第三十四条 股票发行采取溢价发行的，其发行价格由发行人与承销的证券公司协商确定。

第三十五条 股票发行采用代销方式，代销期限届满，向投资者出售的股票数量未达到拟公开发行股票数量百分之七十的，为发行失败。发行人应当按照发行价并加算银行同期存款利息返还股票认购人。

第三十六条 公开发行股票，代销、包销期限届满，发行人应当在规定的期限内将股票发行情况报国务院证券监督管理机构备案。

第三章 证券交易

第一节 一般规定

第三十七条 证券交易当事人依法买卖的证券，必须是依法发行并交付的证券。

非依法发行的证券，不得买卖。

第三十八条 依法发行的股票、公司债券及其他证券，法律对其转让期限有限制性规定的，在限定的期限内不得买卖。

第三十九条 依法公开发行的股票、公司债券及其他证券，应当在依法设立的证券交易所上市交易或者在国务院批准的其他证券交易场所转让。

第四十条 证券在证券交易所上市交易，应当采用公开的集中交易方式或者国务院证券监督管理机构批准的其他方式。

第四十一条 证券交易当事人买卖的证券可以采用纸面形式或者国务院证券监督管理机构规定的其他形式。

第四十二条 证券交易以现货和国务院规定的其他方式进行交易。

第四十三条 证券交易所、证券公司和证券登记结算机构的从业人员、证券监督管理机构的工作

人员以及法律、行政法规禁止参与股票交易的其他人员，在任期或者法定限期内，不得直接或者以化名、借他人名义持有、买卖股票，也不得收受他人赠送的股票。

任何人在成为前款所列人员时，其原已持有的股票，必须依法转让。

第四十四条 证券交易所、证券公司、证券登记结算机构必须依法为客户开立的账户保密。

第四十五条 为股票发行出具审计报告、资产评估报告或者法律意见书等文件的证券服务机构和人员，在该股票承销期内和期满后六个月内，不得买卖该种股票。

除前款规定外，为上市公司出具审计报告、资产评估报告或者法律意见书等文件的证券服务机构和人员，自接受上市公司委托之日起至上述文件公开后五日内，不得买卖该种股票。

第四十六条 证券交易的收费必须合理，并公开收费项目、收费标准和收费办法。

证券交易的收费项目、收费标准和管理办法由国务院有关主管部门统一规定。

第四十七条 上市公司董事、监事、高级管理人员、持有上市公司股份百分之五以上的股东，将其持有的该公司的股票在买入后六个月内卖出，或者在卖出后六个月内又买入，由此所得收益归该公司所有，公司董事会应当收回其所得收益。但是，证券公司因包销购入售后剩余股票而持有百分之五以上股份的，卖出该股票不受六个月时间限制。

公司董事会不按照前款规定执行的，股东有权要求董事会在三十日内执行。公司董事会未在上述期限内执行的，股东有权为了公司的利益以自己的名义直接向人民法院提起诉讼。

公司董事会不按照第一款的规定执行的，负有责任的董事依法承担连带责任。

第二节 证券上市

第四十八条 申请证券上市交易，应当向证券交易所提出申请，由证券交易所依法审核同意，并由双方签订上市协议。

证券交易所根据国务院授权的部门的决定安排政府债券上市交易。

第四十九条 申请股票、可转换为股票的公司债券或者法律、行政法规规定实行保荐制度的其他证券上市交易，应当聘请具有保荐资格的机构担任保荐人。

本法第十一条第二款、第三款的规定适用于上市保荐人。

第五十条 股份有限公司申请股票上市，应当符合下列条件：

（一）股票经国务院证券监督管理机构核准已公开发行；

（二）公司股本总额不少于人民币三千万元；

（三）公开发行的股份达到公司股份总数的百分之二十五以上；公司股本总额超过人民币四亿元的，公开发行股份的比例为百分之十以上；

（四）公司最近三年无重大违法行为，财务会计报告无虚假记载。

证券交易所可以规定高于前款规定的上市条件，并报国务院证券监督管理机构批准。

第五十一条 国家鼓励符合产业政策并符合上市条件的公司股票上市交易。

第五十二条 申请股票上市交易，应当向证券交易所报送下列文件：

（一）上市报告书；

（二）申请股票上市的股东大会决议；

（三）公司章程；

（四）公司营业执照；

（五）依法经会计师事务所审计的公司最近三年的财务会计报告；

（六）法律意见书和上市保荐书；

（七）最近一次的招股说明书；

（八）证券交易所上市规则规定的其他文件。

第五十三条 股票上市交易申请经证券交易所审核同意后，签订上市协议的公司应当在规定的期限内公告股票上市的有关文件，并将该文件置备于指定场所供公众查阅。

第五十四条 签订上市协议的公司除公告前条规定的文件外，还应当公告下列事项：

（一）股票获准在证券交易所交易的日期；

（二）持有公司股份最多的前十名股东的名单和持股数额；

（三）公司的实际控制人；

（四）董事、监事、高级管理人员的姓名及其持有本公司股票和债券的情况。

第五十五条 上市公司有下列情形之一的，由证券交易所决定暂停其股票上市交易：

（一）公司股本总额、股权分布等发生变化不再具备上市条件；

（二）公司不按照规定公开其财务状况，或者对财务会计报告作虚假记载，可能误导投资者；

（三）公司有重大违法行为；

（四）公司最近三年连续亏损；

（五）证券交易所上市规则规定的其他情形。

第五十六条 上市公司有下列情形之一的，由证券交易所决定终止其股票上市交易：

（一）公司股本总额、股权分布等发生变化不再具备上市条件，在证券交易所规定的期限内仍不能达到上市条件；

（二）公司不按照规定公开其财务状况，或者对财务会计报告作虚假记载，且拒绝纠正；

（三）公司最近三年连续亏损，在其后一个年度内未能恢复盈利；

（四）公司解散或者被宣告破产；

（五）证券交易所上市规则规定的其他情形。

第五十七条 公司申请公司债券上市交易，应当符合下列条件：

（一）公司债券的期限为一年以上；

（二）公司债券实际发行额不少于人民币五千万元；

（三）公司申请债券上市时仍符合法定的公司债券发行条件。

第五十八条 申请公司债券上市交易，应当向证券交易所报送下列文件：

（一）上市报告书；

（二）申请公司债券上市的董事会决议；

（三）公司章程；

（四）公司营业执照；

（五）公司债券募集办法；

（六）公司债券的实际发行数额；

（七）证券交易所上市规则规定的其他文件。

申请可转换为股票的公司债券上市交易，还应当报送保荐人出具的上市保荐书。

第五十九条 公司债券上市交易申请经证券交易所审核同意后，签订上市协议的公司应当在规定的期限内公告公司债券上市文件及有关文件，并将其申请文件置备于指定场所供公众查阅。

第六十条 公司债券上市交易后，公司有下列情形之一的，由证券交易所决定暂停其公司债券上市交易：

（一）公司有重大违法行为；

（二）公司情况发生重大变化不符合公司债券上市条件；

（三）发行公司债券所募集的资金不按照核准的用途使用；

（四）未按照公司债券募集办法履行义务；

（五）公司最近二年连续亏损。

第六十一条 公司有前条第（一）项、第（四）项所列情形之一经查实后果严重的，或者有前条第（二）项、第（三）项、第（五）项所列情形之一，在限期内未能消除的，由证券交易所决定终止其公司债券上市交易。

公司解散或者被宣告破产的，由证券交易所终止其公司债券上市交易。

第六十二条 对证券交易所作出的不予上市、暂停上市、终止上市决定不服的，可以向证券交易所设立的复核机构申请复核。

第三节 持续信息公开

第六十三条 发行人、上市公司依法披露的信息，必须真实、准确、完整，不得有虚假记载、误导性陈述或者重大遗漏。

第六十四条 经国务院证券监督管理机构核准依法公开发行股票，或者经国务院授权的部门核准依法公开发行公司债券，应当公告招股说明书、公司债券募集办法。依法公开发行新股或者公司债券的，还应当公告财务会计报告。

第六十五条 上市公司和公司债券上市交易的公司，应当在每一会计年度的上半年结束之日起二个月内，向国务院证券监督管理机构和证券交易所报送记载以下内容的中期报告，并予公告：

（一）公司财务会计报告和经营情况；

（二）涉及公司的重大诉讼事项；

（三）已发行的股票、公司债券变动情况；

（四）提交股东大会审议的重要事项；

（五）国务院证券监督管理机构规定的其他事项。

第六十六条 上市公司和公司债券上市交易的公司，应当在每一会计年度结束之日起四个月内，向国务院证券监督管理机构和证券交易所报送记载以下内容的年度报告，并予公告：

（一）公司概况；

（二）公司财务会计报告和经营情况；

（三）董事、监事、高级管理人员简介及其持股情况；

（四）已发行的股票、公司债券情况，包括持有公司股份最多的前十名股东的名单和持股数额；

（五）公司的实际控制人；

（六）国务院证券监督管理机构规定的其他事项。

第六十七条 发生可能对上市公司股票交易价格产生较大影响的重大事件，投资者尚未得知时，上市公司应当立即将有关该重大事件的情况向国务院证券监督管理机构和证券交易所报送临时报告，并予公告，说明事件的起因、目前的状态和可能产生的法律后果。

下列情况为前款所称重大事件：

（一）公司的经营方针和经营范围的重大变化；

（二）公司的重大投资行为和重大的购置财产的决定；

（三）公司订立重要合同，可能对公司的资产、负债、权益和经营成果产生重要影响；

（四）公司发生重大债务和未能清偿到期重大债务的违约情况；

（五）公司发生重大亏损或者重大损失；

（六）公司生产经营的外部条件发生的重大变化；

（七）公司的董事、三分之一以上监事或者经理发生变动；

（八）持有公司百分之五以上股份的股东或者实际控制人，其持有股份或者控制公司的情况发生较大变化；

（九）公司减资、合并、分立、解散及申请破产的决定；

（十）涉及公司的重大诉讼，股东大会、董事会决议被依法撤销或者宣告无效；

（十一）公司涉嫌犯罪被司法机关立案调查，公司董事、监事、高级管理人员涉嫌犯罪被司法机关采取强制措施；

（十二）国务院证券监督管理机构规定的其他事项。

第六十八条 上市公司董事、高级管理人员应当对公司定期报告签署书面确认意见。

上市公司监事会应当对董事会编制的公司定期报告进行审核并提出书面审核意见。

上市公司董事、监事、高级管理人员应当保证上市公司所披露的信息真实、准确、完整。

第六十九条 发行人、上市公司公告的招股说明书、公司债券募集办法、财务会计报告、上市报告文件、年度报告、中期报告、临时报告以及其他信息披露资料，有虚假记载、误导性陈述或者重大遗漏，致使投资者在证券交易中遭受损失的，发行人、上市公司应当承担赔偿责任；发行人、上市公司的董事、监事、高级管理人员和其他直接责任人员以及保荐人、承销的证券公司，应当与发行人、上市公司承担连带赔偿责任，但是能够证明自己没有过错的除外；发行人、上市公司的控股股东、实际控制人有过错的，应当与发行人、上市公司承担连带赔偿责任。

第七十条 依法必须披露的信息，应当在国务院证券监督管理机构指定的媒体发布，同时将其置备于公司住所、证券交易所，供社会公众查阅。

第七十一条 国务院证券监督管理机构对上市公司年度报告、中期报告、临时报告以及公告的情况进行监督，对上市公司分派或者配售新股的情况进行监督，对上市公司控股股东和信息披露义务人的行为进行监督。

证券监督管理机构、证券交易所、保荐人、承销的证券公司及有关人员，对公司依照法律、行政法规规定必须作出的公告，在公告前不得泄露其内容。

第七十二条 证券交易所决定暂停或者终止证券上市交易的，应当及时公告，并报国务院证券监督管理机构备案。

第四节 禁止的交易行为

第七十三条 禁止证券交易内幕信息的知情人和非法获取内幕信息的人利用内幕信息从事证券交易活动。

第七十四条 证券交易内幕信息的知情人包括：

（一）发行人的董事、监事、高级管理人员；

（二）持有公司百分之五以上股份的股东及其董事、监事、高级管理人员，公司的实际控制人及其董事、监事、高级管理人员；

（三）发行人控股的公司及其董事、监事、高级管理人员；

（四）由于所任公司职务可以获取公司有关内幕信息的人员；

（五）证券监督管理机构工作人员以及由于法定职责对证券的发行、交易进行管理的其他人员；

（六）保荐人、承销的证券公司、证券交易所、证券登记结算机构、证券服务机构的有关人员；

（七）国务院证券监督管理机构规定的其他人。

第七十五条 证券交易活动中，涉及公司的经营、财务或者对该公司证券的市场价格有重大影响的尚未公开的信息，为内幕信息。

下列信息皆属内幕信息：

（一）本法第六十七条第二款所列重大事件；

（二）公司分配股利或者增资的计划；

（三）公司股权结构的重大变化；

（四）公司债务担保的重大变更；

（五）公司营业用主要资产的抵押、出售或者报废一次超过该资产的百分之三十；

（六）公司的董事、监事、高级管理人员的行为可能依法承担重大损害赔偿责任；

（七）上市公司收购的有关方案；

（八）国务院证券监督管理机构认定的对证券交易价格有显著影响的其他重要信息。

第七十六条 证券交易内幕信息的知情人和非法获取内幕信息的人，在内幕信息公开前，不得买卖该公司的证券，或者泄露该信息，或者建议他人买卖该证券。

持有或者通过协议、其他安排与他人共同持有公司百分之五以上股份的自然人、法人、其他组织

收购上市公司的股份，本法另有规定的，适用其规定。

内幕交易行为给投资者造成损失的，行为人应当依法承担赔偿责任。

第七十七条 禁止任何人以下列手段操纵证券市场：

（一）单独或者通过合谋，集中资金优势、持股优势或者利用信息优势联合或者连续买卖，操纵证券交易价格或者证券交易量；

（二）与他人串通，以事先约定的时间、价格和方式相互进行证券交易，影响证券交易价格或者证券交易量；

（三）在自己实际控制的账户之间进行证券交易，影响证券交易价格或者证券交易量；

（四）以其他手段操纵证券市场。

操纵证券市场行为给投资者造成损失的，行为人应当依法承担赔偿责任。

第七十八条 禁止国家工作人员、传播媒介从业人员和有关人员编造、传播虚假信息，扰乱证券市场。

禁止证券交易所、证券公司、证券登记结算机构、证券服务机构及其从业人员，证券业协会、证券监督管理机构及其工作人员，在证券交易活动中作出虚假陈述或者信息误导。

各种传播媒介传播证券市场信息必须真实、客观，禁止误导。

第七十九条 禁止证券公司及其从业人员从事下列损害客户利益的欺诈行为：

（一）违背客户的委托为其买卖证券；

（二）不在规定时间内向客户提供交易的书面确认文件；

（三）挪用客户所委托买卖的证券或者客户账户上的资金；

（四）未经客户的委托，擅自为客户买卖证券，或者假借客户的名义买卖证券；

（五）为牟取佣金收入，诱使客户进行不必要的证券买卖；

（六）利用传播媒介或者通过其他方式提供、传播虚假或者误导投资者的信息；

（七）其他违背客户真实意思表示，损害客户利益的行为。

欺诈客户行为给客户造成损失的，行为人应当依法承担赔偿责任。

第八十条 禁止法人非法利用他人账户从事证券交易；禁止法人出借自己或者他人的证券账户。

第八十一条 依法拓宽资金入市渠道，禁止资金违规流入股市。

第八十二条 禁止任何人挪用公款买卖证券。

第八十三条 国有企业和国有资产控股的企业买卖上市交易的股票，必须遵守国家有关规定。

第八十四条 证券交易所、证券公司、证券登记结算机构、证券服务机构及其从业人员对证券交易中发现的禁止的交易行为，应当及时向证券监督管理机构报告。

第四章 上市公司的收购

第八十五条 投资者可以采取要约收购、协议收购及其他合法方式收购上市公司。

第八十六条 通过证券交易所的证券交易，投资者持有或者通过协议、其他安排与他人共同持有一个上市公司已发行的股份达到百分之五时，应当在该事实发生之日起三日内，向国务院证券监督管理机构、证券交易所作出书面报告，通知该上市公司，并予公告；在上述期限内，不得再行买卖该上市公司的股票。

投资者持有或者通过协议、其他安排与他人共同持有一个上市公司已发行的股份达到百分之五后，其所持该上市公司已发行的股份比例每增加或者减少百分之五，应当依照前款规定进行报告和公告。在报告期限内和作出报告、公告后二日内，不得再行买卖该上市公司的股票。

第八十七条 依照前条规定所作的书面报告和公告，应当包括下列内容：

（一）持股人的名称、住所；

（二）持有的股票的名称、数额；

（三）持股达到法定比例或者持股增减变化达到法定比例的日期。

第八十八条 通过证券交易所的证券交易，投资者持有或者通过协议、其他安排与他人共同持有一个上市公司已发行的股份达到百分之三十时，继续进行收购的，应当依法向该上市公司所有股东发出收购上市公司全部或者部分股份的要约。

收购上市公司部分股份的收购要约应当约定，被收购公司股东承诺出售的股份数额超过预定收购的股份数额的，收购人按比例进行收购。

第八十九条 依照前条规定发出收购要约，收购人必须事先向国务院证券监督管理机构报送上市

公司收购报告书，并载明下列事项：

（一）收购人的名称、住所；

（二）收购人关于收购的决定；

（三）被收购的上市公司名称；

（四）收购目的；

（五）收购股份的详细名称和预定收购的股份数额；

（六）收购期限、收购价格；

（七）收购所需资金额及资金保证；

（八）报送上市公司收购报告书时持有被收购公司股份数占该公司已发行的股份总数的比例。

收购人还应当将上市公司收购报告书同时提交证券交易所。

第九十条 收购人在依照前条规定报送上市公司收购报告书之日起十五日后，公告其收购要约。在上述期限内，国务院证券监督管理机构发现上市公司收购报告书不符合法律、行政法规规定的，应当及时告知收购人，收购人不得公告其收购要约。

收购要约约定的收购期限不得少于三十日，并不得超过六十日。

第九十一条 在收购要约确定的承诺期限内，收购人不得撤销其收购要约。收购人需要变更收购要约的，必须事先向国务院证券监督管理机构及证券交易所提出报告，经批准后，予以公告。

第九十二条 收购要约提出的各项收购条件，适用于被收购公司的所有股东。

第九十三条 采取要约收购方式的，收购人在收购期限内，不得卖出被收购公司的股票，也不得采取要约规定以外的形式和超出要约的条件买入被收购公司的股票。

第九十四条 采取协议收购方式的，收购人可以依照法律、行政法规的规定同被收购公司的股东以协议方式进行股份转让。

以协议方式收购上市公司时，达成协议后，收购人必须在三日内将该收购协议向国务院证券监督管理机构及证券交易所作出书面报告，并予公告。

在公告前不得履行收购协议。

第九十五条 采取协议收购方式的，协议双方可以临时委托证券登记结算机构保管协议转让的股

票，并将资金存放于指定的银行。

第九十六条 采取协议收购方式的，收购人收购或者通过协议、其他安排与他人共同收购一个上市公司已发行的股份达到百分之三十时，继续进行收购的，应当向该上市公司所有股东发出收购上市公司全部或者部分股份的要约。但是，经国务院证券监督管理机构免除发出要约的除外。

收购人依照前款规定以要约方式收购上市公司股份，应当遵守本法第八十九条至第九十三条的规定。

第九十七条 收购期限届满，被收购公司股权分布不符合上市条件的，该上市公司的股票应当由证券交易所依法终止上市交易；其余仍持有被收购公司股票的股东，有权向收购人以收购要约的同等条件出售其股票，收购人应当收购。

收购行为完成后，被收购公司不再具备股份有限公司条件的，应当依法变更企业形式。

第九十八条 在上市公司收购中，收购人持有的被收购的上市公司的股票，在收购行为完成后的十二个月内不得转让。

第九十九条 收购行为完成后，收购人与被收购公司合并，并将该公司解散的，被解散公司的原有股票由收购人依法更换。

第一百条 收购行为完成后，收购人应当在十五日内将收购情况报告国务院证券监督管理机构和证券交易所，并予公告。

第一百零一条 收购上市公司中由国家授权投资的机构持有的股份，应当按照国务院的规定，经有关主管部门批准。

国务院证券监督管理机构应当依照本法的原则制定上市公司收购的具体办法。

第五章 证券交易所

第一百零二条 证券交易所是为证券集中交易提供场所和设施，组织和监督证券交易，实行自律管理的法人。

证券交易所的设立和解散，由国务院决定。

第一百零三条 设立证券交易所必须制定章程。

证券交易所章程的制定和修改，必须经国务院证券监督管理机构批准。

第一百零四条 证券交易所必须在其名称中标明证券交易所字样。其他任何单位或者个人不得使用证券交易所或者近似的名称。

第一百零五条 证券交易所可以自行支配的各项费用收入，应当首先用于保证其证券交易场所和设施的正常运行并逐步改善。

实行会员制的证券交易所的财产积累归会员所有，其权益由会员共同享有，在其存续期间，不得将其财产积累分配给会员。

第一百零六条 证券交易所设理事会。

第一百零七条 证券交易所设总经理一人，由国务院证券监督管理机构任免。

第一百零八条 有《中华人民共和国公司法》第一百四十七条规定的情形或者下列情形之一的，不得担任证券交易所的负责人：

（一）因违法行为或者违纪行为被解除职务的证券交易所、证券登记结算机构的负责人或者证券公司的董事、监事、高级管理人员，自被解除职务之日起未逾五年；

（二）因违法行为或者违纪行为被撤销资格的律师、注册会计师或者投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、验证机构的专业人员，自被撤销资格之日起未逾五年。

第一百零九条 因违法行为或者违纪行为被开除的证券交易所、证券登记结算机构、证券服务机构、证券公司的从业人员和被开除的国家机关工作人员，不得招聘为证券交易所的从业人员。

第一百一十条 进入证券交易所参与集中交易的，必须是证券交易所的会员。

第一百一十一条 投资者应当与证券公司签订证券交易委托协议，并在证券公司开立证券交易账户，以书面、电话以及其他方式，委托该证券公司代其买卖证券。

第一百一十二条 证券公司根据投资者的委托，按照证券交易规则提出交易申报，参与证券交易所场内的集中交易，并根据成交结果承担相应的清算交收责任；证券登记结算机构根据成交结果，按照清算交收规则，与证券公司进行证券和资金的清算交收，并为证券公司客户办理证券的登记过户手续。

第一百一十三条 证券交易所应当为组织公平的集中交易提供保障，公布证券交易即时行情，并

按交易日制作证券市场行情表，予以公布。

未经证券交易所许可，任何单位和个人不得发布证券交易即时行情。

第一百一十四条 因突发性事件而影响证券交易的正常进行时，证券交易所可以采取技术性停牌的措施；因不可抗力的突发性事件或者为维护证券交易的正常秩序，证券交易所可以决定临时停市。

证券交易所采取技术性停牌或者决定临时停市，必须及时报告国务院证券监督管理机构。

第一百一十五条 证券交易所对证券交易实行实时监控，并按照国务院证券监督管理机构的要求，对异常的交易情况提出报告。

证券交易所应当对上市公司及相关信息披露义务人披露信息进行监督，督促其依法及时、准确地披露信息。

证券交易所根据需要，可以对出现重大异常交易情况的证券账户限制交易，并报国务院证券监督管理机构备案。

第一百一十六条 证券交易所应当从其收取的交易费用和会员费、席位费中提取一定比例的金额设立风险基金。风险基金由证券交易所理事会管理。

风险基金提取的具体比例和使用办法，由国务院证券监督管理机构会同国务院财政部门规定。

第一百一十七条 证券交易所应当将收存的风险基金存入开户银行专门账户，不得擅自使用。

第一百一十八条 证券交易所依照证券法律、行政法规制定上市规则、交易规则、会员管理规则和其他有关规则，并报国务院证券监督管理机构批准。

第一百一十九条 证券交易所的负责人和其他从业人员在执行与证券交易有关的职务时，与其本人或者其亲属有利害关系的，应当回避。

第一百二十条 按照依法制定的交易规则进行的交易，不得改变其交易结果。对交易中违规交易者应负的民事责任不得免除；在违规交易中所获利益，依照有关规定处理。

第一百二十一条 在证券交易所内从事证券交易的人员，违反证券交易所有关交易规则的，由证券交易所给予纪律处分；对情节严重的，撤销其资格，禁止其入场进行证券交易。

第六章 证券公司

第一百二十二条 设立证券公司，必须经国务院证券监督管理机构审查批准。未经国务院证券监督管理机构批准，任何单位和个人不得经营证券业务。

第一百二十三条 本法所称证券公司是指依照《中华人民共和国公司法》和本法规定设立的经营证券业务的有限责任公司或者股份有限公司。

第一百二十四条 设立证券公司，应当具备下列条件：

（一）有符合法律、行政法规规定的公司章程；

（二）主要股东具有持续盈利能力，信誉良好，最近三年无重大违法违规记录，净资产不低于人民币二亿元；

（三）有符合本法规定的注册资本；

（四）董事、监事、高级管理人员具备任职资格，从业人员具有证券从业资格；

（五）有完善的风险管理与内部控制制度；

（六）有合格的经营场所和业务设施；

（七）法律、行政法规规定的和经国务院批准的国务院证券监督管理机构规定的其他条件。

第一百二十五条 经国务院证券监督管理机构批准，证券公司可以经营下列部分或者全部业务：

（一）证券经纪；

（二）证券投资咨询；

（三）与证券交易、证券投资活动有关的财务顾问；

（四）证券承销与保荐；

（五）证券自营；

（六）证券资产管理；

（七）其他证券业务。

第一百二十六条 证券公司必须在其名称中标明证券有限责任公司或者证券股份有限公司字样。

第一百二十七条 证券公司经营本法第一百二十五条第（一）项至第（三）项业务的，注册资本最低限额为人民币五千万元；经营第（四）项至第（七）项业务之一的，注册资本最低限额为人民币一亿元；经营第（四）项至第（七）项业务中两项以上的，注册资本最低限额为人民币五亿元。证券

公司的注册资本应当是实缴资本。

国务院证券监督管理机构根据审慎监管原则和各项业务的风险程度，可以调整注册资本最低限额，但不得少于前款规定的限额。

第一百二十八条 国务院证券监督管理机构应当自受理证券公司设立申请之日起六个月内，依照法定条件和法定程序并根据审慎监管原则进行审查，作出批准或者不予批准的决定，并通知申请人；不予批准的，应当说明理由。

证券公司设立申请获得批准的，申请人应当在规定的期限内向公司登记机关申请设立登记，领取营业执照。

证券公司应当自领取营业执照之日起十五日内，向国务院证券监督管理机构申请经营证券业务许可证。未取得经营证券业务许可证，证券公司不得经营证券业务。

第一百二十九条 证券公司设立、收购或者撤销分支机构，变更业务范围或者注册资本，变更持有百分之五以上股权的股东、实际控制人，变更公司章程中的重要条款，合并、分立、变更公司形式、停业、解散、破产，必须经国务院证券监督管理机构批准。

证券公司在境外设立、收购或者参股证券经营机构，必须经国务院证券监督管理机构批准。

第一百三十条 国务院证券监督管理机构应当对证券公司的净资本，净资本与负债的比例，净资本与净资产的比例，净资本与自营、承销、资产管理等业务规模的比例，负债与净资产的比例，以及流动资产与流动负债的比例等风险控制指标作出规定。

证券公司不得为其股东或者股东的关联人提供融资或者担保。

第一百三十一条 证券公司的董事、监事、高级管理人员，应当正直诚实，品行良好，熟悉证券法律、行政法规，具有履行职责所需的经营管理能力，并在任职前取得国务院证券监督管理机构核准的任职资格。

有《中华人民共和国公司法》第一百四十七条规定的情形或者下列情形之一的，不得担任证券公司的董事、监事、高级管理人员：

（一）因违法行为或者违纪行为被解除职务的证券交易所、证券登记结算机构的负责人或者证券公司的董事、监事、高级管理人员，自被解除职务之日起未逾五年；

（二）因违法行为或者违纪行为被撤销资格的律师、注册会计师或者投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、验证机构的专业人员，自被撤销资格之日起未逾五年。

第一百三十二条 因违法行为或者违纪行为被开除的证券交易所、证券登记结算机构、证券服务机构、证券公司的从业人员和被开除的国家机关工作人员，不得招聘为证券公司的从业人员。

第一百三十三条 国家机关工作人员和法律、行政法规规定的禁止在公司中兼职的其他人员，不得在证券公司中兼任职务。

第一百三十四条 国家设立证券投资者保护基金。证券投资者保护基金由证券公司缴纳的资金及其他依法筹集的资金组成，其筹集、管理和使用的具体办法由国务院规定。

第一百三十五条 证券公司从每年的税后利润中提取交易风险准备金，用于弥补证券交易的损失，其提取的具体比例由国务院证券监督管理机构规定。

第一百三十六条 证券公司应当建立健全内部控制制度，采取有效隔离措施，防范公司与客户之间、不同客户之间的利益冲突。

证券公司必须将其证券经纪业务、证券承销业务、证券自营业务和证券资产管理业务分开办理，不得混合操作。

第一百三十七条 证券公司的自营业务必须以自己的名义进行，不得假借他人名义或者以个人名义进行。

证券公司的自营业务必须使用自有资金和依法筹集的资金。

证券公司不得将其自营账户借给他人使用。

第一百三十八条 证券公司依法享有自主经营的权利，其合法经营不受干涉。

第一百三十九条 证券公司客户的交易结算资金应当存放在商业银行，以每个客户的名义单独立户管理。具体办法和实施步骤由国务院规定。

证券公司不得将客户的交易结算资金和证券归入其自有财产。禁止任何单位或者个人以任何形式挪用客户的交易结算资金和证券。证券公司破产或者清算时，客户的交易结算资金和证券不属于其破产财产或者清算财产。非因客户本身的债务或者法律规定的其他情形，不得查封、冻结、扣划或者强制执行客户的交易结算资金和证券。

第一百四十条 证券公司办理经纪业务，应当置备统一制定的证券买卖委托书，供委托人使用。采取其他委托方式的，必须作出委托记录。

客户的证券买卖委托，不论是否成交，其委托记录应当按照规定的期限，保存于证券公司。

第一百四十一条 证券公司接受证券买卖的委托，应当根据委托书载明的证券名称、买卖数量、出价方式、价格幅度等，按照交易规则代理买卖证券，如实进行交易记录；买卖成交后，应当按照规定制作买卖成交报告单交付客户。

证券交易中确认交易行为及其交易结果的对账单必须真实，并由交易经办人员以外的审核人员逐笔审核，保证账面证券余额与实际持有的证券相一致。

第一百四十二条 证券公司为客户买卖证券提供融资融券服务，应当按照国务院的规定并经国务院证券监督管理机构批准。

第一百四十三条 证券公司办理经纪业务，不得接受客户的全权委托而决定证券买卖、选择证券种类、决定买卖数量或者买卖价格。

第一百四十四条 证券公司不得以任何方式对客户证券买卖的收益或者赔偿证券买卖的损失作出承诺。

第一百四十五条 证券公司及其从业人员不得未经过其依法设立的营业场所私下接受客户委托买卖证券。

第一百四十六条 证券公司的从业人员在证券交易活动中，执行所属的证券公司的指令或者利用职务违反交易规则的，由所属的证券公司承担全部责任。

第一百四十七条 证券公司应当妥善保存客户开户资料、委托记录、交易记录和与内部管理、业务经营有关的各项资料，任何人不得隐匿、伪造、篡改或者毁损。上述资料的保存期限不得少于二十年。

第一百四十八条 证券公司应当按照规定向国务院证券监督管理机构报送业务、财务等经营管理信息和资料。国务院证券监督管理机构有权要求证券公司及其股东、实际控制人在指定的期限内提供有关信息、资料。

证券公司及其股东、实际控制人向国务院证券监督管理机构报送或者提供的信息、资料，必须真

实、准确、完整。

第一百四十九条 国务院证券监督管理机构认为有必要时，可以委托会计师事务所、资产评估机构对证券公司的财务状况、内部控制状况、资产价值进行审计或者评估。具体办法由国务院证券监督管理机构会同有关主管部门制定。

第一百五十条 证券公司的净资本或者其他风险控制指标不符合规定的，国务院证券监督管理机构应当责令其限期改正；逾期未改正，或者其行为严重危及该证券公司的稳健运行、损害客户合法权益的，国务院证券监督管理机构可以区别情形，对其采取下列措施：

（一）限制业务活动，责令暂停部分业务，停止批准新业务；

（二）停止批准增设、收购营业性分支机构；

（三）限制分配红利，限制向董事、监事、高级管理人员支付报酬、提供福利；

（四）限制转让财产或者在财产上设定其他权利；

（五）责令更换董事、监事、高级管理人员或者限制其权利；

（六）责令控股股东转让股权或者限制有关股东行使股东权利；

（七）撤销有关业务许可。

证券公司整改后，应当向国务院证券监督管理机构提交报告。国务院证券监督管理机构经验收，符合有关风险控制指标的，应当自验收完毕之日起三日内解除对其采取的前款规定的有关措施。

第一百五十一条 证券公司的股东有虚假出资、抽逃出资行为的，国务院证券监督管理机构应当责令其限期改正，并可责令其转让所持证券公司的股权。

在前款规定的股东按照要求改正违法行为、转让所持证券公司的股权前，国务院证券监督管理机构可以限制其股东权利。

第一百五十二条 证券公司的董事、监事、高级管理人员未能勤勉尽责，致使证券公司存在重大违法违规行为或者重大风险的，国务院证券监督管理机构可以撤销其任职资格，并责令公司予以更换。

第一百五十三条 证券公司违法经营或者出现重大风险，严重危害证券市场秩序、损害投资者利益的，国务院证券监督管理机构可以对该证券公司采取责令停业整顿、指定其他机构托管、接管或者撤销等监管措施。

第一百五十四条 在证券公司被责令停业整顿、被依法指定托管、接管或者清算期间，或者出现重大风险时，经国务院证券监督管理机构批准，可以对该证券公司直接负责的董事、监事、高级管理人员和其他直接责任人员采取以下措施：

（一）通知出境管理机关依法阻止其出境；

（二）申请司法机关禁止其转移、转让或者以其他方式处分财产，或者在财产上设定其他权利。

第七章 证券登记结算机构

第一百五十五条 证券登记结算机构是为证券交易提供集中登记、存管与结算服务，不以营利为目的的法人。

设立证券登记结算机构必须经国务院证券监督管理机构批准。

第一百五十六条 设立证券登记结算机构，应当具备下列条件：

（一）自有资金不少于人民币二亿元；

（二）具有证券登记、存管和结算服务所必须的场所和设施；

（三）主要管理人员和从业人员必须具有证券从业资格；

（四）国务院证券监督管理机构规定的其他条件。

证券登记结算机构的名称中应当标明证券登记结算字样。

第一百五十七条 证券登记结算机构履行下列职能：

（一）证券账户、结算账户的设立；

（二）证券的存管和过户；

（三）证券持有人名册登记；

（四）证券交易所上市证券交易的清算和交收；

（五）受发行人的委托派发证券权益；

（六）办理与上述业务有关的查询；

（七）国务院证券监督管理机构批准的其他业务。

第一百五十八条 证券登记结算采取全国集中统一的运营方式。

证券登记结算机构章程、业务规则应当依法制定，并经国务院证券监督管理机构批准。

第一百五十九条 证券持有人持有的证券，在上市交易时，应当全部存管在证券登记结算机构。

证券登记结算机构不得挪用客户的证券。

第一百六十条 证券登记结算机构应当向证券发行人提供证券持有人名册及其有关资料。

证券登记结算机构应当根据证券登记结算的结果，确认证券持有人持有证券的事实，提供证券持有人登记资料。

证券登记结算机构应当保证证券持有人名册和登记过户记录真实、准确、完整，不得隐匿、伪造、篡改或者毁损。

第一百六十一条 证券登记结算机构应当采取下列措施保证业务的正常进行：

（一）具有必备的服务设备和完善的数据安全保护措施；

（二）建立完善的业务、财务和安全防范等管理制度；

（三）建立完善的风险管理系统。

第一百六十二条 证券登记结算机构应当妥善保存登记、存管和结算的原始凭证及有关文件和资料。其保存期限不得少于二十年。

第一百六十三条 证券登记结算机构应当设立证券结算风险基金，用于垫付或者弥补因违约交收、技术故障、操作失误、不可抗力造成的证券登记结算机构的损失。

证券结算风险基金从证券登记结算机构的业务收入和收益中提取，并可以由结算参与人按照证券交易业务量的一定比例缴纳。

证券结算风险基金的筹集、管理办法，由国务院证券监督管理机构会同国务院财政部门规定。

第一百六十四条 证券结算风险基金应当存入指定银行的专门账户，实行专项管理。

证券登记结算机构以证券结算风险基金赔偿后，应当向有关责任人追偿。

第一百六十五条 证券登记结算机构申请解散，应当经国务院证券监督管理机构批准。

第一百六十六条 投资者委托证券公司进行证券交易，应当申请开立证券账户。证券登记结算机构应当按照规定以投资者本人的名义为投资者开立证券账户。

投资者申请开立账户，必须持有证明中国公民身份或者中国法人资格的合法证件。国家另有规定

的除外。

第一百六十七条 证券登记结算机构为证券交易提供净额结算服务时，应当要求结算参与人按照货银对付的原则，足额交付证券和资金，并提供交收担保。

在交收完成之前，任何人不得动用用于交收的证券、资金和担保物。

结算参与人未按时履行交收义务的，证券登记结算机构有权按照业务规则处理前款所述财产。

第一百六十八条 证券登记结算机构按照业务规则收取的各类结算资金和证券，必须存放于专门的清算交收账户，只能按业务规则用于已成交的证券交易的清算交收，不得被强制执行。

第八章 证券服务机构

第一百六十九条 投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所从事证券服务业务，必须经国务院证券监督管理机构和有关主管部门批准。

投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所从事证券服务业务的审批管理办法，由国务院证券监督管理机构和有关主管部门制定。

第一百七十条 投资咨询机构、财务顾问机构、资信评级机构从事证券服务业务的人员，必须具备证券专业知识和从事证券业务或者证券服务业务二年以上经验。认定其证券从业资格的标准和管理办法，由国务院证券监督管理机构制定。

第一百七十一条 投资咨询机构及其从业人员从事证券服务业务不得有下列行为：

（一）代理委托人从事证券投资；

（二）与委托人约定分享证券投资收益或者分担证券投资损失；

（三）买卖本咨询机构提供服务的上市公司股票；

（四）利用传播媒介或者通过其他方式提供、传播虚假或者误导投资者的信息；

（五）法律、行政法规禁止的其他行为。

有前款所列行为之一，给投资者造成损失的，依法承担赔偿责任。

第一百七十二条 从事证券服务业务的投资咨询机构和资信评级机构，应当按照国务院有关主管部门规定的标准或者收费办法收取服务费用。

第一百七十三条 证券服务机构为证券的发行、上市、交易等证券业务活动制作、出具审计报告、资产评估报告、财务顾问报告、资信评级报告或者法律意见书等文件，应当勤勉尽责，对所依据的文件资料内容的真实性、准确性、完整性进行核查和验证。其制作、出具的文件有虚假记载、误导性陈述或者重大遗漏，给他人造成损失的，应当与发行人、上市公司承担连带赔偿责任，但是能够证明自己没有过错的除外。

第九章 证券业协会

第一百七十四条 证券业协会是证券业的自律性组织，是社会团体法人。

证券公司应当加入证券业协会。

证券业协会的权力机构为全体会员组成的会员大会。

第一百七十五条 证券业协会章程由会员大会制定，并报国务院证券监督管理机构备案。

第一百七十六条 证券业协会履行下列职责：

（一）教育和组织会员遵守证券法律、行政法规；

（二）依法维护会员的合法权益，向证券监督管理机构反映会员的建议和要求；

（三）收集整理证券信息，为会员提供服务；

（四）制定会员应遵守的规则，组织会员单位的从业人员的业务培训，开展会员间的业务交流；

（五）对会员之间、会员与客户之间发生的证券业务纠纷进行调解；

（六）组织会员就证券业的发展、运作及有关内容进行研究；

（七）监督、检查会员行为，对违反法律、行政法规或者协会章程的，按照规定给予纪律处分；

（八）证券业协会章程规定的其他职责。

第一百七十七条 证券业协会设理事会。理事会成员依章程的规定由选举产生。

第十章 证券监督管理机构

第一百七十八条 国务院证券监督管理机构依法对证券市场实行监督管理，维护证券市场秩序，保障其合法运行。

第一百七十九条 国务院证券监督管理机构在对证券市场实施监督管理中履行下列职责：

（一）依法制定有关证券市场监督管理的规章、规则，并依法行使审批或者核准权；

（二）依法对证券的发行、上市、交易、登记、存管、结算，进行监督管理；

（三）依法对证券发行人、上市公司、证券公司、证券投资基金管理公司、证券服务机构、证券交易所、证券登记结算机构的证券业务活动，进行监督管理；

（四）依法制定从事证券业务人员的资格标准和行为准则，并监督实施；

（五）依法监督检查证券发行、上市和交易的信息公开情况；

（六）依法对证券业协会的活动进行指导和监督；

（七）依法对违反证券市场监督管理法律、行政法规的行为进行查处；

（八）法律、行政法规规定的其他职责。

国务院证券监督管理机构可以和其他国家或者地区的证券监督管理机构建立监督管理合作机制，实施跨境监督管理。

第一百八十条 国务院证券监督管理机构依法履行职责，有权采取下列措施：

（一）对证券发行人、上市公司、证券公司、证券投资基金管理公司、证券服务机构、证券交易所、证券登记结算机构进行现场检查；

（二）进入涉嫌违法行为发生场所调查取证；

（三）询问当事人和与被调查事件有关的单位和个人，要求其对与被调查事件有关的事项作出说明；

（四）查阅、复制与被调查事件有关的财产权登记、通讯记录等资料；

（五）查阅、复制当事人和与被调查事件有关的单位和个人的证券交易记录、登记过户记录、财务会计资料及其他相关文件和资料；对可能被转移、隐匿或者毁损的文件和资料，可以予以封存；

（六）查询当事人和与被调查事件有关的单位和个人的资金账户、证券账户和银行账户；对有证据证明已经或者可能转移或者隐匿违法资金、证券等涉案财产或者隐匿、伪造、毁损重要证据的，经国务院证券监督管理机构主要负责人批准，可以冻结或者查封；

（七）在调查操纵证券市场、内幕交易等重大证券违法行为时，经国务院证券监督管理机构主要

负责人批准，可以限制被调查事件当事人的证券买卖，但限制的期限不得超过十五个交易日；案情复杂的，可以延长十五个交易日。

第一百八十一条 国务院证券监督管理机构依法履行职责，进行监督检查或者调查，其监督检查、调查的人员不得少于二人，并应当出示合法证件和监督检查、调查通知书。监督检查、调查的人员少于二人或者未出示合法证件和监督检查、调查通知书的，被检查、调查的单位有权拒绝。

第一百八十二条 国务院证券监督管理机构工作人员必须忠于职守，依法办事，公正廉洁，不得利用职务便利牟取不正当利益，不得泄露所知悉的有关单位和个人的商业秘密。

第一百八十三条 国务院证券监督管理机构依法履行职责，被检查、调查的单位和个人应当配合，如实提供有关文件和资料，不得拒绝、阻碍和隐瞒。

第一百八十四条 国务院证券监督管理机构依法制定的规章、规则和监督管理工作制度应当公开。

国务院证券监督管理机构依据调查结果，对证券违法行为作出的处罚决定，应当公开。

第一百八十五条 国务院证券监督管理机构应当与国务院其他金融监督管理机构建立监督管理信息共享机制。

国务院证券监督管理机构依法履行职责，进行监督检查或者调查时，有关部门应当予以配合。

第一百八十六条 国务院证券监督管理机构依法履行职责，发现证券违法行为涉嫌犯罪的，应当将案件移送司法机关处理。

第一百八十七条 国务院证券监督管理机构的人员不得在被监管的机构中任职。

第十一章 法律责任

第一百八十八条 未经法定机关核准，擅自公开或者变相公开发行证券的，责令停止发行，退还所募资金并加算银行同期存款利息，处以非法所募资金金额百分之一以上百分之五以下的罚款；对擅自公开或者变相公开发行证券设立的公司，由依法履行监督管理职责的机构或者部门会同县级以上地方人民政府予以取缔。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第一百八十九条 发行人不符合发行条件，以欺骗手段骗取发行核准，尚未发行证券的，处以三十万元以上六十万元以下的罚款；已经发行证券的，处以非法所募资金金额百分之一以上百分之五以下的罚款。对直接负责的主管人员和其他直接责任人员处以三万元以上三十万元以下的罚款。

发行人的控股股东、实际控制人指使从事前款违法行为的，依照前款的规定处罚。

第一百九十条 证券公司承销或者代理买卖未经核准擅自公开发行的证券的，责令停止承销或者代理买卖，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下的罚款。给投资者造成损失的，应当与发行人承担连带赔偿责任。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上三十万元以下的罚款。

第一百九十一条 证券公司承销证券，有下列行为之一的，责令改正，给予警告，没收违法所得，可以并处三十万元以上六十万元以下的罚款；情节严重的，暂停或者撤销相关业务许可。给其他证券承销机构或者投资者造成损失的，依法承担赔偿责任。对直接负责的主管人员和其他直接责任人员给予警告，可以并处三万元以上三十万元以下的罚款；情节严重的，撤销任职资格或者证券从业资格：

（一）进行虚假的或者误导投资者的广告或者其他宣传推介活动；

（二）以不正当竞争手段招揽承销业务；

（三）其他违反证券承销业务规定的行为。

第一百九十二条 保荐人出具有虚假记载、误导性陈述或者重大遗漏的保荐书，或者不履行其他法定职责的，责令改正，给予警告，没收业务收入，并处以业务收入一倍以上五倍以下的罚款；情节严重的，暂停或者撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款；情节严重的，撤销任职资格或者证券从业资格。

第一百九十三条 发行人、上市公司或者其他信息披露义务人未按照规定披露信息，或者所披露的信息有虚假记载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

发行人、上市公司或者其他信息披露义务人未按照规定报送有关报告，或者报送的报告有虚假记

载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

发行人、上市公司或者其他信息披露义务人的控股股东、实际控制人指使从事前两款违法行为的，依照前两款的规定处罚。

第一百九十四条 发行人、上市公司擅自改变公开发行证券所募集资金的用途的，责令改正，对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

发行人、上市公司的控股股东、实际控制人指使从事前款违法行为的，给予警告，并处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员依照前款的规定处罚。

第一百九十五条 上市公司的董事、监事、高级管理人员、持有上市公司股份百分之五以上的股东，违反本法第四十七条的规定买卖本公司股票的，给予警告，可以并处三万元以上十万元以下的罚款。

第一百九十六条 非法开设证券交易场所的，由县级以上人民政府予以取缔，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上五十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第一百九十七条 未经批准，擅自设立证券公司或者非法经营证券业务的，由证券监督管理机构予以取缔，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第一百九十八条 违反本法规定，聘任不具有任职资格、证券从业资格的人员的，由证券监督管理机构责令改正，给予警告，可以并处十万元以上三十万元以下的罚款；对直接负责的主管人员给予警告，可以并处三万元以上十万元以下的罚款。

第一百九十九条 法律、行政法规规定禁止参与股票交易的人员，直接或者以化名、借他人名义持有、买卖股票的，责令依法处理非法持有的股票，没收违法所得，并处以买卖股票等值以下的罚款；属于国家工作人员的，还应当依法给予行政处分。

第二百条 证券交易所、证券公司、证券登记结算机构、证券服务机构的从业人员或者证券业协会的工作人员，故意提供虚假资料，隐匿、伪造、篡改或者毁损交易记录，诱骗投资者买卖证券的，撤销证券从业资格，并处以三万元以上十万元以下的罚款；属于国家工作人员的，还应当依法给予行政处分。

第二百零一条 为股票的发行、上市、交易出具审计报告、资产评估报告或者法律意见书等文件的证券服务机构和人员，违反本法第四十五条的规定买卖股票的，责令依法处理非法持有的股票，没收违法所得，并处以买卖股票等值以下的罚款。

第二百零二条 证券交易内幕信息的知情人或者非法获取内幕信息的人，在涉及证券的发行、交易或者其他对证券的价格有重大影响的信息公开前，买卖该证券，或者泄露该信息，或者建议他人买卖该证券的，责令依法处理非法持有的证券，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三万元的，处以三万元以上六十万元以下的罚款。单位从事内幕交易的，还应当对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。证券监督管理机构工作人员进行内幕交易的，从重处罚。

第二百零三条 违反本法规定，操纵证券市场的，责令依法处理非法持有的证券，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上三百万元以下的罚款。单位操纵证券市场的，还应当对直接负责的主管人员和其他直接责任人员给予警告，并处以十万元以上六十万元以下的罚款。

第二百零四条 违反法律规定，在限制转让期限内买卖证券的，责令改正，给予警告，并处以买卖证券等值以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百零五条 证券公司违反本法规定，为客户买卖证券提供融资融券的，没收违法所得，暂停或者撤销相关业务许可，并处以非法融资融券等值以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上三十万元以下的罚款。

第二百零六条 违反本法第七十八条第一款、第三款的规定，扰乱证券市场的，由证券监督管理机构责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所

得不足三万元的，处以三万元以上二十万元以下的罚款。

第二百零七条 违反本法第七十八条第二款的规定，在证券交易活动中作出虚假陈述或者信息误导的，责令改正，处以三万元以上二十万元以下的罚款；属于国家工作人员的，还应当依法给予行政处分。

第二百零八条 违反本法规定，法人以他人名义设立账户或者利用他人账户买卖证券的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三万元的，处以三万元以上三十万元以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上十万元以下的罚款。

证券公司为前款规定的违法行为提供自己或者他人的证券交易账户的，除依照前款的规定处罚外，还应当撤销直接负责的主管人员和其他直接责任人员的任职资格或者证券从业资格。

第二百零九条 证券公司违反本法规定，假借他人名义或者以个人名义从事证券自营业务的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下的罚款；情节严重的，暂停或者撤销证券自营业务许可。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上十万元以下的罚款。

第二百一十条 证券公司违背客户的委托买卖证券、办理交易事项，或者违背客户真实意思表示，办理交易以外的其他事项的，责令改正，处以一万元以上十万元以下的罚款。给客户造成损失的，依法承担赔偿责任。

第二百一十一条 证券公司、证券登记结算机构挪用客户的资金或者证券，或者未经客户的委托，擅自为客户买卖证券的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上六十万元以下的罚款；情节严重的，责令关闭或者撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上三十万元以下的罚款。

第二百一十二条 证券公司办理经纪业务，接受客户的全权委托买卖证券的，或者证券公司对客户买卖证券的收益或者赔偿证券买卖的损失作出承诺的，责令改正，没收违法所得，并处以五万元以

上二十万元以下的罚款，可以暂停或者撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上十万元以下的罚款，可以撤销任职资格或者证券从业资格。

第二百一十三条 收购人未按照本法规定履行上市公司收购的公告、发出收购要约、报送上市公司收购报告书等义务或者擅自变更收购要约的，责令改正，给予警告，并处以十万元以上三十万元以下的罚款；在改正前，收购人对其收购或者通过协议、其他安排与他人共同收购的股份不得行使表决权。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百一十四条 收购人或者收购人的控股股东，利用上市公司收购，损害被收购公司及其股东的合法权益的，责令改正，给予警告；情节严重的，并处以十万元以上六十万元以下的罚款。给被收购公司及其股东造成损失的，依法承担赔偿责任。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百一十五条 证券公司及其从业人员违反本法规定，私下接受客户委托买卖证券的，责令改正，给予警告，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上三十万元以下的罚款。

第二百一十六条 证券公司违反规定，未经批准经营非上市证券的交易的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款。

第二百一十七条 证券公司成立后，无正当理由超过三个月未开始营业的，或者开业后自行停业连续三个月以上的，由公司登记机关吊销其公司营业执照。

第二百一十八条 证券公司违反本法第一百二十九条的规定，擅自设立、收购、撤销分支机构，或者合并、分立、停业、解散、破产，或者在境外设立、收购、参股证券经营机构的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上六十万元以下的罚款。对直接负责的主管人员给予警告，并处以三万元以上十万元以下的罚款。

证券公司违反本法第一百二十九条的规定，擅自变更有关事项的，责令改正，并处以十万元以上三十万元以下的罚款。对直接负责的主管人员给予警告，并处以五万元以下的罚款。

第二百一十九条 证券公司违反本法规定，超出业务许可范围经营证券业务的，责令改正，没收

违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足三十万元的，处以三十万元以上六十万元以下罚款；情节严重的，责令关闭。对直接负责的主管人员和其他直接责任人员给予警告，撤销任职资格或者证券从业资格，并处以三万元以上十万元以下的罚款。

第二百二十条 证券公司对其证券经纪业务、证券承销业务、证券自营业务、证券资产管理业务，不依法分开办理，混合操作的，责令改正，没收违法所得，并处以三十万元以上六十万元以下的罚款；情节严重的，撤销相关业务许可。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上十万元以下的罚款；情节严重的，撤销任职资格或者证券从业资格。

第二百二十一条 提交虚假证明文件或者采取其他欺诈手段隐瞒重要事实骗取证券业务许可的，或者证券公司在证券交易中有严重违法行为，不再具备经营资格的，由证券监督管理机构撤销证券业务许可。

第二百二十二条 证券公司或者其股东、实际控制人违反规定，拒不向证券监督管理机构报送或者提供经营管理信息和资料，或者报送、提供的经营管理信息和资料有虚假记载、误导性陈述或者重大遗漏的，责令改正，给予警告，并处以三万元以上三十万元以下的罚款，可以暂停或者撤销证券公司相关业务许可。对直接负责的主管人员和其他直接责任人员，给予警告，并处以三万元以下的罚款，可以撤销任职资格或者证券从业资格。

证券公司为其股东或者股东的关联人提供融资或者担保的，责令改正，给予警告，并处以十万元以上三十万元以下的罚款。对直接负责的主管人员和其他直接责任人员，处以三万元以上十万元以下的罚款。股东有过错的，在按照要求改正前，国务院证券监督管理机构可以限制其股东权利；拒不改正的，可以责令其转让所持证券公司股权。

第二百二十三条 证券服务机构未勤勉尽责，所制作、出具的文件有虚假记载、误导性陈述或者重大遗漏的，责令改正，没收业务收入，暂停或者撤销证券服务业务许可，并处以业务收入一倍以上五倍以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，撤销证券从业资格，并处以三万元以上十万元以下的罚款。

第二百二十四条 违反本法规定，发行、承销公司债券的，由国务院授权的部门依照本法有关规定予以处罚。

第二百二十五条 上市公司、证券公司、证券交易所、证券登记结算机构、证券服务机构，未按照有关规定保存有关文件和资料的，责令改正，给予警告，并处以三万元以上三十万元以下的罚款；隐匿、伪造、篡改或者毁损有关文件和资料的，给予警告，并处以三十万元以上六十万元以下的罚款。

第二百二十六条 未经国务院证券监督管理机构批准，擅自设立证券登记结算机构的，由证券监督管理机构予以取缔，没收违法所得，并处以违法所得一倍以上五倍以下的罚款。

投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所未经批准，擅自从事证券服务业务的，责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款。

证券登记结算机构、证券服务机构违反本法规定或者依法制定的业务规则的，由证券监督管理机构责令改正，没收违法所得，并处以违法所得一倍以上五倍以下的罚款；没有违法所得或者违法所得不足十万元的，处以十万元以上三十万元以下的罚款；情节严重的，责令关闭或者撤销证券服务业务许可。

第二百二十七条 国务院证券监督管理机构或者国务院授权的部门有下列情形之一的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分：

（一）对不符合本法规定的发行证券、设立证券公司等申请予以核准、批准的；

（二）违反规定采取本法第一百八十条规定的现场检查、调查取证、查询、冻结或者查封等措施的；

（三）违反规定对有关机构和人员实施行政处罚的；

（四）其他不依法履行职责的行为。

第二百二十八条 证券监督管理机构的工作人员和发行审核委员会的组成人员，不履行本法规定的职责，滥用职权、玩忽职守，利用职务便利牟取不正当利益，或者泄露所知悉的有关单位和个人的商业秘密的，依法追究法律责任。

第二百二十九条 证券交易所对不符合本法规定条件的证券上市申请予以审核同意的，给予警告，没收业务收入，并处以业务收入一倍以上五倍以下的罚款。对直接负责的主管人员和其他直接责任人员给予警告，并处以三万元以上三十万元以下的罚款。

第二百三十条 拒绝、阻碍证券监督管理机构及其工作人员依法行使监督检查、调查职权未使用

暴力、威胁方法的，依法给予治安管理处罚。

第二百三十一条 违反本法规定，构成犯罪的，依法追究刑事责任。

第二百三十二条 违反本法规定，应当承担民事赔偿责任和缴纳罚款、罚金，其财产不足以同时支付时，先承担民事赔偿责任。

第二百三十三条 违反法律、行政法规或者国务院证券监督管理机构的有关规定，情节严重的，国务院证券监督管理机构可以对有关责任人员采取证券市场禁入的措施。

前款所称证券市场禁入，是指在一定期限内直至终身不得从事证券业务或者不得担任上市公司董事、监事、高级管理人员的制度。

第二百三十四条 依照本法收缴的罚款和没收的违法所得，全部上缴国库。

第二百三十五条 当事人对证券监督管理机构或者国务院授权的部门的处罚决定不服的，可以依法申请行政复议，或者依法直接向人民法院提起诉讼。

第十二章 附 则

第二百三十六条 本法施行前依照行政法规已批准在证券交易所上市交易的证券继续依法进行交易。

本法施行前依照行政法规和国务院金融行政管理部门的规定经批准设立的证券经营机构，不完全符合本法规定的，应当在规定的限期内达到本法规定的要求。具体实施办法，由国务院另行规定。

第二百三十七条 发行人申请核准公开发行股票、公司债券，应当按照规定缴纳审核费用。

第二百三十八条 境内企业直接或者间接到境外发行证券或者将其证券在境外上市交易，必须经国务院证券监督管理机构依照国务院的规定批准。

第二百三十九条 境内公司股票以外币认购和交易的，具体办法由国务院另行规定。

第二百四十条 本法自 2006 年 1 月 1 日起施行。

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)**

CONTENTS:

Section 4 Methods of Bearing Civil Liability

CHAPTER VII Limitation of Action

CHAPTER VIII Application of Law in Civil Relations with Foreigners

CHAPTER IX Supplementary Provisions

CHAPTER I Basic Principles

Article 1. This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2. The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3. Parties to a civil activity shall have equal status.

Article 4. In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5. The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6. Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7. civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

Article 8. The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

CHAPTER II Citizen (Natural Person)

Section I Capacity for Civil Rights and Capacity for Civil Conduct

Article 9. A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10. All citizens are equal as regards their capacity for civil rights.

Article 11. A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labor shall be regarded as a person with full capacity for civil conduct.

Article 12. A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13. A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14. The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15. The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

Section II Guardianship

Article 16. The parents of a minor shall be his guardians.

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

(1) paternal or maternal grandparent;

(2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighborhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighborhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this article is available to be the guardian, the units of the minor's parents, the neighborhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17. A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

(1) spouse;
(2) parent;

(3) adult child;

(4) any other near relative;

(5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighborhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighborhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighborhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18. A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardians's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19. A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

Section III Declarations of Missing Persons and Death

Article 20. If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21. A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

Article 22. In the event that a person who has been declared missing reappears or his whereabouts are ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23. Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

(1) if the citizen's whereabouts have been unknown for four years or
(2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24. In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25. A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items no longer exist. Section IV Individual Businesses and Lease-holding Farm Households

Article 26. "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27. "Lease-holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28. The legitimate rights and interests of individual businesses and lease-holding farm households shall be protected by law.

Article 29. The debts of an individual business or a lease-holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family. Section V Individual Partnership

Article 30. "Individual partnership" refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31. Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32. The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33. An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and

registered.

Article 34. The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35. A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

CHAPTER III Legal Persons

Section I General Stipulations

Article 36. A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.

A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37. A legal person shall have the following qualifications:

(1) establishment in accordance with the law;
(2) possession of the necessary property or funds;

(3) possession of its own name, organization and premises; and

(4) ability to independently bear civil liability.

Article 38. In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.

Article 39. A legal person's domicile shall be the place where its main administrative office is located.

Article 40. When a legal person terminates, it shall go into liquidation in accordance with the law

and discontinue all other activities.

Section II Enterprise as Legal Person

Article 41. An enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the state; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority.

A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42. An enterprise as legal person shall conduct operations within the range approved and registered.

Article 43. An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44. If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it.

When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45. An enterprise as legal person shall terminate for any of the following reasons:

(1) if it is dissolved by law;
(2) if it is disbanded;

(3) if it is declared bankrupt in accordance with the law; or

(4) for other reasons.

Article 46. When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47. When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48. An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49. Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

(1) conducting illegal operations beyond the range approved and registered by the registration authority;
(2) concealing facts from the registration and tax authorities and practicing fraud;

(3) secretly withdrawing funds or hiding property to evade repayment of debts;

(4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;

(5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;

(6) Engaging in other activities prohibited by law, damaging the interests of the state or the public interest.

Section III Official Organ, Institution and Social Organization as Legal Person
Article 50. An independently funded official organ shall be qualified as a legal person on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

Section IV Economic Association

Article 51. If a new economic entity is formed by enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52. If the enterprises or an enterprise and an institution that engage in economic

association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53. If the contract for economic association of enterprises of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

CHAPTER IV Civil Juristic Acts and Agency

Section I Civil Juristic Acts

Article 54. A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55. A civil juristic act shall meet the following requirements:

(1) the actor has relevant capacity for civil conduct;
(2) the intention expressed is genuine; and

(3) the act does not violate the law or the public interest.

Article 56. A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57. A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58. Civil acts in the following categories shall be null and void:

(1) those performed by a person without capacity for civil conduct;
(2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;

(3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;

(4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;

(5) those that violate the law or the public interest;

(6) economic contracts that violate the state's mandatory plans; and

(7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59. A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

(1) those performed by an actor who seriously misunderstood the contents of the acts;
(2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60. If part of a civil act is null and void, it shall not affect the validity of other parts.

Article 61. After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party.

Article 62. A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met. Section II Agency

Article 63. Citizens and legal persons may perform civil juristic acts through agents.

An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency.

Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64. Agency shall include entrusted agency, statutory agency and appointed agency.

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65. A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal.

If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66. The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. if a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given.

An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal.

If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable.

If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67. If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68. If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69. An entrusted agency shall end under any of the following circumstances:

(1) when the period of agency expires or when the tasks entrusted are completed;
(2) when the principal rescinds the entrustment or the agent declines the entrustment;

(3) when the agent dies;

(4) when the principal loses his capacity for civil conduct; or

(5) when the principal or the agent ceases to be a legal person.

Article 70. A statutory or appointed agency shall end under any of the following circumstances:

(1) When the principal gains or recovers capacity for civil conduct;
(2) When the principal or the agent dies;

(3) When the agent loses capacity for civil conduct;

(4) When the people's court or the unit that appointed the agent rescinds the appointment; or

(5) When the guardian relationship between the principal and the agent ends for other reasons.

CHAPTER V Civil Rights

Section I Property Ownership and Related Property Rights

Article 71. "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72. Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

Article 73. State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74. Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

(1) Land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;
(2) Property of collective economic organizations;

(3) Collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific,

cultural, health, sports and other facilities; and

(4) Other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villager' committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants of the township (town).

Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 75. A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects d'art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property.

A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 76. Citizens shall have the right of inheritance under the law.

Article 77. The lawful property of social organziations, including religious organizations, shall be protected by law.

Article 78. Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property.

Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal.

Article 79. If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80. State-owned land may be used according to law by units under ownership by the whole

people; it may also be lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land.

The right of citizens and collectives to contract for management of land under collective ownership or of state-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81. State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by unit under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are lawfully owned by collective may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82. Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Article 83. In the spirit of helping production, making things convenient for people's lives, enhancing unity and mutual assistance, and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damage to his neighbor, shall stop the infringement, eliminate the obstruction and compensate for the damage.

Section II Creditors' Rights

Article 84. A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The

party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions. Article 85. A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86. When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87. When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88. The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) if quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.
(2) if the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) if the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) if the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements.

Article 89. In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.
(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90. Legitimate loan relationships shall be protected by law.

Article 91. If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92. If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93. If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

Section III Intellectual Property Rights

Article 94. Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law.

Article 95. The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96. The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97. Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological research shall have the right to apply for and receive certificates of honor, bonuses or other awards.

Section IV Personal Rights

Article 98. Citizens shall enjoy the rights of life and health.

Article 99. Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited.

Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100. Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profit without his consent shall be prohibited.

Article 101. Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102. Citizens and legal persons shall enjoy the right of honor. It shall prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103. Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104. Marriage, the family, old people, mothers and children shall be protected by law.

The lawful rights and interests of the handicapped shall be protected by law.

Article 105. Women shall enjoy equal civil rights with men.

CHAPTER VI Civil Liability

Section I General Stipulations

Article 106. Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107. Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108. Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by instalments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109. If a person suffers damages from preventing or stopping encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110. Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

Section II Civil Liability for Breach of Contract

Article 111. If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112. The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it shall pay the other

party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

Article 113. If both parties breach the contract, each party shall bear its respective civil liability.

Article 114. If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115. A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116. If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

Section III Civil Liability for Infringement of Rights

Article 117. Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price.

Anyone who damages the property of the state, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well.

Article 118. If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119. Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120. If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses.

The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor.

Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil liability.

Article 122. If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123. If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124. Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125. Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damage to others shall bear civil liability.

Article 126. If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damage to others, its owner or manager shall bear civil liability, unless he can prove himself not at fault.

Article 127. If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128. A person who causes harm in exercising justifiable defense shall not bear civil liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129. If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130. If two or more persons jointly infringe upon another person's rights and cause him

damage, they shall bear joint liability. Article 131. If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced.

Article 132. If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances.

Article 133. If a person without or with limited capacity for civil conduct causes damage to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit. Section IV Methods of Bearing Civil Liability

Article 134. The main methods of bearing civil liability shall be:

(1) cessation of infringements;
(2) removal of obstacles;

(3) elimination of dangers;

(4) return of property;

(5) restoration of original condition;

(6) repair, reworking or replacement;

(7) compensation for losses;

(8) payment of breach of contract damages;

(9) elimination of ill effects and rehabilitation of reputation; and

(10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently.

When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

CHAPTER VII Limitation of Action

Article 135. Except as otherwise stipulated by law, the limitation of action regarding applications to people's court for protection of civil rights shall be two years.

Article 136. The limitation of action shall be one year in cases concerning the following:

(1) Claims for compensation for bodily injuries;
(2) Sales of substandard goods without proper notice to that effect;

(3) Delays in paying rent or refusal to pay rent; or

(4) Loss of or damage to property left in the care of another person.

Article 137. A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may extend the limitation of action.

Article 138. If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139. A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140. A limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141. If the law has other stipulations concerning limitation of action, those stipulations shall apply.

CHAPTER VIII Application of Law in Civil Relations with Foreigners

Article 142. The application of law in civil relations with foreigners shall be determined by the provisions in this chapter.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Article 143. If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144. The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145. The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146. The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.

An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147. The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148. Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149. In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150. The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

CHAPTER IX Supplementary Provisions

Article 151. The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing

Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152. If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically quality as a legal person without having to re-register as such.

Article 153. For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154. Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours.

When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day.

If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day.

The last day shall end at 24: 00 hours. If business hours are applicable, the last day shall end at closing time.

Article 155. In this Law, the terms "not less than," "not more than," "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure.

Article 156. This Law shall come into force on January 1, 1987.

中华人民共和国民法通则

（一九八六年四月十二日第六届全国人民代表大会第四次会议通过）

目　录

第一章　基本原则

第一条　为了保障公民、 法人的合法的民事权益， 正确调整民事关系，适应社会主义现代化建设事业发展的需要，根据宪法和我国实际情况，总结民事活动的实践经验，制定本法。

第二条　中华人民共和国民法调整平等主体的公民之间、 法人之间、 公民和法人之间的财产关系和人身关系。

第三条　当事人在民事活动中的地位平等。

第四条　民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

第五条　公民、法人的合法的民事权益受法律保护，任何组织和个人不得侵犯。

第六条　民事活动必须遵守法律，法律没有规定的，应当遵守国家政策。

第七条　民事活动应当尊重社会公德，不得损害社会公共利益，破坏国家经济计划，扰乱社会经济秩序。

第八条　在中华人民共和国领域内的民事活动，适用中华人民共和国法律，法律另有规定的除外。

本法关于公民的规定，适用于在中华人民共和国领域内的外国人、无国籍人，法律另有规定的除外。

第二章　公 民（自然人）

第一节　民事权利能力和民事行为能力

第九条　公民从出生时起到死亡时止，具有民事权利能力，依法享有民事权利，承担民事义务。

第十条　公民的民事权利能力一律平等。

第十一条　十八周岁以上的公民是成年人，具有完全民事行为能力，可以独立进行民事活动，是完全民事行为能力人。

十六周岁以上不满十八周岁的公民，以自己的劳动收入为主要生活来源的，视为完全民事行为能力人。

第十二条　十周岁以上的未成年人是限制民事行为能力人，可以进行与他的年龄、智力相适应的民事活动； 其他民事活动由他的法定代理人代理， 或者征得他的法定代理人的同意。

不满十周岁的未成年人是无民事行为能力人，由他的法定代理人代理民事活动。

第十三条　不能辨认自己行为的精神病人是无民事行为能力人 ， 由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人，可以进行与他的精神健康状况相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

第十四条　无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。

第十五条　公民以他的户籍所在地的居住地为住所 ，经常居住地与住所不一致的，经常居住地视为住所。

第二节　监　　护

第十六条　未成年人的父母是未成年人的监护人。

未成年人的父母已经死亡或者没有监护能力的，由下列人员中有监护能力的人担任监护人：

（一）祖父母、外祖父母；

（二）兄、姐；

（三）关系密切的其他亲属、朋友愿意承担监护责任， 经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款、第二款规定的监护人的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十七条　无民事行为能力或者限制民事行为能力的精神病人 ，由下列人员担任监护人：

（一） 配偶；

（二） 父母；

（三） 成年子女；

（四） 其他近亲属；

（五） 关系密切的其他亲属、朋友愿意承担监护责任，经精神病人的所在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款规定的监护人的，由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十八条　监护人应当履行监护职责 ， 保护被监护人的人身、财产及其他合法权益，除为被监护人的利益外，不得处理被监护人的财产。

监护人依法履行监护的权利，受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的，应当承担责任；给被监护人造成财产损失的，应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请，撤销监护人的资格。

第十九条　精神病人的利害关系人 ，可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的，根据他健康恢复的状况，经本人或者利害关系人申请，人民法院可以宣告他为限制民事行为能力人或者完全民事行为能力人。

第三节　宣告失踪和宣告死亡

第二十条　公民下落不明满二年的，利害关系人可以向人民法院申请宣告他为失踪人.

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十一条　失踪人的财产由他的配偶 、父母 、成年子女或者关系密切的其他亲属、朋友代管。代管有争议的，没有以上规定的人或者以上规定的人无能力代管的，由人民法院指定的人代管。

失踪人所欠税款、债务和应付的其他费用，由代管人从失踪人的财产中支付。

第二十二条　被宣告失踪的人重新出现或者确知他的下落 ，经本人或者利害关系人申请，人民法院应当撤销对他的失踪宣告。

第二十三条　公民有下列情形之一的，利害关系人可以向人民法院申请宣告他死亡：

（一）　下落不明满四年的；

（二）　因意外事故下落不明，从事故发生之日起满二年的。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十四条　被宣告死亡的人重新出现或者确知他没有死亡 ，经本人或者利害关系人申请，人民法院应当撤销对他的死亡宣告。

有民事行为能力人在被宣告死亡期间实施的民事法律行为有效。

第二十五条　被撤销死亡宣告的人有权请求返还财产。 依照继承法取得他的财产的公民或者组织，应当返还原物；原物不存在的，给予适当补偿。

第四节　个体工商户，农村承包经营户

第二十六条　公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

第二十七条　农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

第二十八条　个体工商户，农村承包经营户的合法权益，受法律保护。

第二十九条　个体工商户，农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

第五节　个 人 合 伙

第三十条　个人合伙是指两个以上公民按照协议，各自提供资金、实物、技术等，合伙经营、共同劳动。

第三十一条　合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项，订立书面协议。

第三十二条　合伙人投入的财产，由合伙人统一管理和使用。

合伙经营积累的财产，归合伙人共有。

第三十三条　个人合伙可以起字号，依法经核准登记，在核准登记的经营范围内从事经营。

第三十四条　个人合伙的经营活动，由合伙人共同决定，合伙人有执行或监督的权利。

合伙人可以推举负责人。合伙负责人和其他人员的经营活动，由全体合伙人承担民事责任。

第三十五条　合伙的债务，由合伙人按照出资比例或者协议的约定，以各自的财产承担清偿责任。

合伙人对合伙的债务承担连带责任，法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人，有权向其他合伙人追偿。

第三章　法　　人

第一节　一般规定

第三十六条 法人是具有民事权利能力和民事行为能力，依法独立享有民事权利和承担民事义务的组织。

法人的民事权利能力和民事行为能力，从法人成立时产生，到法人终止时消灭。

第三十七条　法人应当具备下列条件：

（一）依法成立；

（二） 有必要的财产或者经费；

（三） 有自己的名称、组织机构和场所；

（四） 能够独立承担民事责任。

第三十八条 依照法律或者法人组织章程规定 ，代表法人行使职权的负责人 ，是法人的法定代表人。

第三十九条 法人以它的主要办事机构所在地为住所。

第四十条 法人终止，应当依法进行清算，停止清算范围外的活动。

第二节 企 业 法 人

第四十一条 全民所有制企业、 集体所有制企业有符合国家规定的资金数额，有组织章程、组织机构和场所，能够独立承担民事责任，经主管机关核准登记，取得法人资格。

在中华人民共和国领域内设立的中外合资经营企业，中外合作经营企业和外资企业，具备法人条件的，依法经工商行政管理机关核准登记，取得中国法人资格。

第四十二条 企业法人应当在核准登记的经营范围内从事经营。

第四十三条 企业法人对它的法定代表人和其他工作人员的经营活动，承担民事责任。

第四十四条　企业法人分立、合并上或有其他重要事项变更，应当向登记机关办理登记并公告。

企业法人分立、合并，它的权利和义务由变更后的法人享有和承担。

第四十五条　企业法人由于下列原因之一终止：

（一）　依法被撤销；

（二）　解散；

（三）　依法宣告破产；

（四）　其他原因。

第四十六条　企业法人终止，应当向登记机关办理注销登记并公告。

第四十七条　企业法人解散，应当成立清算组织， 进行清算。 企业法人被撤销、被宣告破产的，应当由主管机关或者人民法院组织有关机关和有关人员成立清算组织，进行清算。

第四十八条　全民所有制企业法人以国家授予它经营管理的财产承担民事责任。集体所有制企业法人以企业所有的财产承担民事责任。中外合资经营企业法人、中外合作经营企业法人和外资企业法人以企业所有的财产承担民事责任，法律另有规定的除外。

第四十九条　企业法人有下列情形之一的 ，除法人承担责任外， 对法定代表人可以给予行政处分、罚款，构成犯罪的，依法追究刑事责任：

（一）　超出登记机关核准登记的经营范围从事非法经营的；

（二） 向登记机关、税务机关隐瞒真实情况、弄虚作假的；

（三） 抽逃资金、隐匿财产逃避债务的；

（四） 解散、被撤销、被宣告破产后，擅自处理财产的；

（五） 变更、终止时不及时申请办理登记和公告，使利害关系人遭受重大损失的；

（六） 从事法律禁止的其他活动，损害国家利益或者社会公共利益的。

第三节 机关、事业单位和社会团体法人

第五十条 有独立经费的机关从成立之日起，具有法人资格。

具备法人条件的事业单位、社会团体，依法不需要办理法人登记的，从成立之日起，具有法人资格；依法需要办理法人登记的，经核准登记，取得法人资格。

第四节 联 营

第五十一条 企业之间或者企业 、事业单位之间联营，组成新的经济实体，独立承担民事责任，具备法人条件的，经主管机关核准登记，取得法人资格。

第五十二条　企业之间或者企业、事业单位之间联营，共同经营、不具备法人条件的，由联营各方按照出资比例或者协议的约定，以各自所有的或者经营管理的财产承担民事责任。依照法律的规定或者协议的约定负连带责任的，承担连带责任。

第五十三条　企业之间或者企业、事业单位之间联营，按照合同的约定各自独立经营的，它的权利和义务由合同约定，各自承担民事责任。

第四章　民事法律行为和代理

第一节　民事法律行为

第五十四条　民事法律行为是公民或者法人设立、变更、终止民事权利和民事义务的合法行为。

第五十五条　民事法律行为应当具备下列条件：

（一）　行为人具有相应的民事行为能力；

（二）　意思表示真实；

（三）　不违反法律或者社会公共利益。

第五十六条　民事法律行为可以采用书面形式、口头形式或者其他形式。法律规定用特定形式的，应当依照法律规定。

第五十七条　民事法律行为从成立时起具有法律约束力 。行为人非依法律规定或者取得对方同意，不得擅自变更或者解除。

第五十八条　下列民事行为无效：

（一） 无民事行为能力人实施的；

（二） 限制民事行为能力人依法不能独立实施的；

（三） 一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下所为的；

（四） 恶意串通，损害国家、集体或者第三人利益的；

（五） 违反法律或者社会公共利益的；

（六） 经济合同违反国家指令性计划的；

（七） 以合法形式掩盖非法目的的；

无效的民事行为，从行为开始起就没有法律约束力。

第五十九条　下列民事行为，一方有权请求人民法院或者仲裁机关予以变更或者撤销：

（一） 行为人对行为内容有重大误解的；

（二） 显失公平的。

被撤销的民事行为从行为开始起无效。

第六十条　民事行为部分无效，不影响其他部分的效力的，其他部分仍然有效。

第六十一条　民事行为被确认为无效或者被撤销后，　当事人因该行为取得的财产，　应当返还给受损失的一方。有过错的一方应当赔偿对方因此所受的损失，双方都有过错的，应当各自承担相应的责任。

双方恶意串通，实施民事行为损害国家的、集体的或者第三人的利益的，应当追缴双方取得的财产，收归国家、集体所有或者返还第三人。

第六十二条　民事法律行为可以附条件　，附条件的民事法律行为在符合所附条件时生效。

第二节　代　　理

第六十三条　公民、法人可以通过代理人实施民事法律行为。

代理人在代理权限内，以被代理人的名义实施民事法律行为。被代理人对代理人的代理行为，承担民事责任。

依照法律规定或者按照双方当事人约定，应当由本人实施的民事法律行为，不得代理。

第六十四条　代理包括委托代理、法定代理和指定代理。

委托代理人按照被代理人的委托行使代理权，法定代理人依照法律的规定行使代理权，指定代理人按照人民法院或者指定单位的指定行使代理权。

第六十五条　民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。

书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或盖章。

委托书授权不明的，被代理人应当向第三人承担民事责任，代理人负连带责任。

第六十六条　没有代理权、超越代理权或者代理权终止后的行为，只有经过被代理人的追认，被代理人才承担民事责任。未经追认的行为，由行为人承担民事责任。本人知道他人以本人名义实施民事行为而不作否认表示的，视为同意。

代理人不履行职责而给被代理人造成损害的，应当承担民事责任。

代理人和第三人串通、损害被代理人的利益的，由代理人和第三人负连带责任。

第三人知道行为人没有代理权、超越代理权或者代理权已终止还与行为人实施民事行为给他人造成损害的，由第三人和行为人负连带责任。

第六十七条　代理人知道被委托代理的事项违法仍然进行代理活动的，或者被代理人知道代理人的代理行为违法不表示反对的，由被代理人和代理人负连带责任。

第六十八条　委托代理人为被代理人的利益需要转托他人代理的，应当事先取得被代理人的同意。事先没有取得被代理人同意的，应当在事后及时告诉被代理人，如果被代理人不同意，由代理人对自己所转托的人的行为负民事责任，但在紧急情况下，为了保护被代理人的利益而转托他人代理的除外。

第六十九条　有下列情形之一的，委托代理终止：

（一）　代理期间届满或者代理事务完成；

（二）　被代理人取消委托或者代理人辞去委托；

（三）　代理人死亡；

（四）　代理人丧失民事行为能力；

（五）　作为被代理人或者代理人的法人终止。

第七十条　有下列情形之一的，法定代理或者指定代理终止：

（一）　被代理人取得或者恢复民事行为能力；

（二）　被代理人或者代理人死亡；

（三）　代理人丧失民事行为能力；

（四）　指定代理的人民法院或者指定单位取消指定；

（五）　由其他原因引起的被代理人和代理人之间的监护关系消灭。

第五章　民事权利

第一节　财产所有权和与财产所有权有关的财产权

第七十一条　财产所有权是指所有人依法对自己的财产享有占有、 使用、收益和处分的权利。

第七十二条　财产所有权的取得，不得违反法律规定。按照合同或者其他合法方式取得财产的，财产所有权从财产交付时起转移，法律另有规定或者当事人另有约定的除外。

第七十三条　国家财产属于全民所有。

国家财产神圣不可侵犯，禁止任何组织或者个人侵占、哄抢、私分、截留、破怀。

第七十四条　劳动群众集体组织的财产属于劳动群众集体所有，包括：

（一）　法律规定为集体所有的土地和森林、山岭、草原、荒地、滩涂等；

（二）　集体经济组织的财产；

（三）　集体所有的建筑物、水库、农田水利设施和教育、科学、文化、卫生、体育等设施；

（四）　集体所有的其他财产。

集体所有的土地依照法律属于村农民集体所有，由村农业生产合作社等农业集体经济组织或者村民委员会经营、管理。已经属于乡（镇）农民集体经济组织所有的，可以属于乡（镇）农民集体所有。

集体所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、破怀或者非法查封、扣押、冻结、没收。

第七十五条　公民的个人财产，包括公民的合法收入、房屋、储蓄、生活用品、文物、图书资料、林木、牲畜和法律允许公民所有的生产资料以及其他合法财产。

公民的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破怀或者非法查封、扣押、冻结、没收。

第七十六条　公民依法享有财产继承权。

第七十七条　社会团体包括宗教团体的合法财产受法律保护。

第七十八条　财产可以由两个以上的公民、法人共有。

共有分为按份共有和共同共有。按份共有人按照各自的份额，对共有财产分享权利，分担义务。共同共有人对共有财产享有权利，承担义务。

按份共有财产的每个共有人有权要求将自己的份额分出或者转让。但在出售时，其他共有人在同等条件下，有优先购买的权利。

第七十九条　所有人不明的埋藏物、隐藏物，归国家所有。接收单位应当对上缴的单位或者个人，给予表扬或者物质奖励。

拾得遗失物、漂流物或者失散的饲养动物，应当归还失主，因此而支出的费用由失主偿还。

第八十条　国家所有的土地，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

公民、集体依法对集体所有的或者国家所有由集体使用的土地的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

土地不得买卖、出租、抵押或者以其他形式非法转让。

第八十一条　国家所有的森林、山岭、草原、荒地、滩涂、水面等自然资源，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

国家所有的矿藏，可以依法由全民所有制单位和集体所有制单位开采，也可以依法由公民采挖。国家保护合法的采矿权。

公民、集体依法对集体所有的或者国家所有由集体使用森林、山岭、草原、荒地、滩涂、水面的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

国家所有的矿藏、水流，国家所有的和法律规定属于集体所有的林地、山岭、草原,荒地、滩涂不得买卖、出租、抵押或者以其他形式非法转让。

第八十二条　全民所有制企业对国家授予它经营管理的财产依法享有经营权，受法律保护。

第八十三条　不动产的相邻各方，应当按照有利生产、方便生活、团结互助、公平合理的精神，正确处理截水、排水、通行、通风、采光等方面的相邻关系。给相邻方造成妨碍或者损失的，应当停止侵害，排除妨碍，赔偿损失。

第二节　债　　权

第八十四条　债是按照合同的约定或者依照法律的规定 ，在当事人之间产生的特定的权利和义务关系。享有权利的人是债权人，负有义务的人是债务人。

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

第八十五条　合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。

第八十六条　债权人为二人以上的，按照确定的份额分享权利。债务人为二人以上的，按照确定的份额分担义务。

第八十七条　债权人或者债务人一方人数为二人以上的 ，依照法律的规定或者当事人的约定，享有连带权利的每个债权人，都有权要求债务人履行义务；负有连带义务的每个债务人，都负有清偿全部债务的义务，履行了义务的人，有权要求其他负有连带义务的人偿付他应当承担的份额。

第八十八条　合同的当事人应当按照合同的约定，全部履行自己的义务。

合同中有关质量 、期限 、地点或者价款约定不明确，按照合同有关条款内容不能确定，当事人又不能通过协商达成协议的，适用下列规定：

（一） 质量要求不明确的，按照国家质量标准履行，没有国家质量标准的，按照通常标准履行。

（二） 履行期限不明确的，债务人可以随时向债权人履行义务，债权人也可以随时要求债务人履行义务，但应当给对方必要的准备时间。

（三） 履行地点不明确，给付货币的，在接受给付一方的所在地履行，其他标的在履行义务一方的所在地履行。

（四） 价格约定不明确，按照国家规定的价格履行；没有国家规定价格的，参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的，完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的，当事人都有使用的权利。

第八十九条 依照法律的规定或者按照当事人的约定 ，可以采用下列方式担保债务的履行：

（一） 保证人向债权人保证债务人履行债务，债务人不履行债务的，按照约定由保证人履行或者承担连带责任；保证人履行债务后，有权向债务人追偿。

（二） 债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的，债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

（三） 当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行债务的，无权要求返还定金；接受定金的一方不履行债务的，应当双倍返还定金。

（四） 按照合同约定一方占有对方的财产，对方不按照合同给付应付款项超过约定期限的，占有人有权留置该财产，依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

第九十条　合法的借贷关系受法律保护。

第九十一条　合同一方将合同的权利、义务全部或者部分转让给第三人的，应当取得合同另一方的同意，并不得牟利。依照法律规定应当由国家批准的合同，需经原批准机关批准。但是，法律另有规定或者原合同另有约定的除外。

第九十二条　没有合法根据， 取得不当利益， 造成他人损失的，应当将取得的不当利益返还受损失的人。

第九十三条　没有法定的或者约定的义务 ，为避免他人利益受损失进行管理或者服务的，有权要求受益人偿付由此而支付的必要费用。

第三节　知 识 产 权

第九十四条 公民、法人享有著作权 （ 版权 ），依法有署名、发表、出版、获得报酬等权利。

第九十五条　公民、法人依法取得的专利权受法律保护。

第九十六条　法人、个体工商户、个人合伙依法取得商标专用权受法律保护。

第九十七条　公民对自己的发现享有发现权。 发现人有权申请领取发现证书 、奖金或者其他奖励。

公民对自己的发明或者其他科技成果，有权申请领取荣誉证书、奖金或者其他奖励。

第四节　人　身　权

第九十八条　公民享有生命健康权。

第九十九条　公民享有姓名权、 有权决定、 使用和依照规定改变自己的姓名，禁止他人干涉、盗用、假冒。

法人、个体工商户、个人合伙享有名称权。企业法人、个体工商户、个人合伙有权使用、依法转让自己的名称。

第一百条　公民享有肖像权，未经本人同意，不得以营利为目的使用公民的肖像。

第一百零一条　公民、法人享有名誉权，公民的人格尊严受法律保护，禁止用侮辱、诽谤等方式损害公民、法人的名誉。

第一百零二条　公民、法人享有荣誉权，禁止非法剥夺公民、法人的荣誉称号。

第一百零三条　公民享有婚姻自主权，禁止买卖、包办婚姻和其他干涉婚姻自由的行为。

第一百零四条　婚姻、家庭、老人、母亲和儿童受法律保护。

残疾人的合法权益受法律保护。

第一百零五条　妇女享有同男子平等的民事权利。

第六章　民事责任

第一节　一般规定

第一百零六条　公民、法人违反合同或者不履行其他义务的，应当承担民事责任。

公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的应当承担民事责任。

没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

第一百零七条　因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

第一百零八条　债务应当清偿。暂时无力偿还的，经债权人同意或者人民法院裁决，可以由债务人分期偿还。有能力偿还拒不偿还的，由人民法院判决强制偿还。

第一百零九条　因防止、制止国家的、集体的财产或者他人的财产、人身遭受侵害而使自己受到损害的，由侵害人承担赔偿责任，受益人也可以给予适当的补偿。

第一百一十条　对承担民事责任的公民、法人需要追究行政责任的，应当追究行政责任；构成犯罪的，对公民、法人的法定代表人应当依法追究刑事责任。

第二节　违反合同的民事责任

第一百一十一条　当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

第一百一十二条　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。

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；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

第一百一十三条　当事人双方都违反合同的，应当分别承担各自应负的民事责任。

第一百一十四条　当事人一方因另一方违反合同受到损失的 ，应当及时采取措施防止损失的扩大；没有及时采取措施致使损失扩大的，无权就扩大的损失要求赔偿。

第一百一十五条　合同的变更或者解除，不影响当事人要求赔偿损失的权利。

第一百一十六条　当事人一方由于上级机关的原因，不能履行合同义务的，应当按照合同约定向另一方赔偿损失或者采取其补救措施，再由上级机关对它因此受到的损失负责处理。

第三节　侵权的民事责任

第一百一十七条　侵占国家的 、集体的财产或者他人财产的 ，应当返还财产，不能返还财产的，应当折价赔偿。

损坏国家的、集体的财产或者他人财产的，应当恢复原状或者折价赔偿。

受害人因此遭受其他重大损失的，侵害人并应当赔偿损失。

第一百一十八条　公民、法人的著作权（ 版权 ），专利权、商标专用权、发现权、发明权和其他科技成果权受到剽窃、篡改、假冒等侵害的，有权要求停止侵害，消除影响，赔偿损失。

第一百一十九条　侵害公民身体造成伤害的，应当赔偿医疗费、因误工减少的收入、残废者生活补助费等费用；造成死亡的，并应当支付丧葬费、死者生前扶养的人必要的生活费等费用。

第一百二十条　公民的姓名权、 肖像权、 名誉权、荣誉权受到侵害的，有权要求停止侵害，恢复名誉，消除影响，赔礼道歉，并可以要求赔偿损失。

法人的名称权、名誉权、荣誉权受到侵害的，适用前款规定。

第一百二十一条　国家机关或者国家机关工作人员在执行职务，侵犯公民、法人的合法权益造成损害的，应当承担民事责任。

第一百二十二条　因产品质量不合格造成他人财产、 人身损害的， 产品制造者、销售者应当依法承担民事责任。运输者仓储者对此负有责任的，产品制造者、销售者有权要求赔偿损失。

第一百二十三条　从事高空 、高压 、易燃、易爆、剧毒、放射性、高速运输工具等对周围环境有高度危险的作业造成他人损害的，应当承担民事责任；如果能够证明损害是由受害人故意造成的，不承担民事责任。

第一百二十四条　违反国家保护环境防止污染的规定， 污染环境造成他人损害
的， 应当依法承担民事责任。

第一百二十五条　在公共场所、 道旁或者通道上挖坑、 修缮安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担民事责任。

第一百二十六条　建筑物或者其他设施以及建筑物上的搁置物、 悬挂物发生倒塌、 脱落、坠落造成他人损害的，它的所有人或者管理人应当承担民事责任，但能够证明自己没有过错的除外。

第一百二十七条　饲养的动物造成他人损害的 ，动物饲养人或者管理人应当承担民事责任；由于受害人的过错造成损害的，动物饲养人或者管理人不承担民事责任；由于第三人的过错造成损害的，第三人应当承担民事责任。

第一百二十八条　因正当防卫造成损害的， 不承担民事责任。 正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的民事责任。

第一百二十九条　因紧急避险造成损害的， 由引起险情发生的人承担民事责任。 如果危险是由自然原因引起的，紧急避险人不承担民事责任或者承担适当的民事责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

第一百三十条　二人以上共同侵权造成他人损害的，应当承担连带责任。

第一百三十一条　受害人对于损害的发生也有过错的，可以减轻侵害人的民事责任。

第一百三十二条　当事人对造成损害都没有过错的，可以根据实际情况，由当事人分担民事责任。

第一百三十三条　无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担民事责任。监护人尽了监护责任的，可以适当减轻他的民事责任。

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用。不足部分，由监护人适当赔偿，但单位担任监护人的除外。

第四节　承担民事责任的方式

第一百三十四条　承担民事责任的方式主要有：

（一）　停止侵害；

（二）　排除妨碍；

（三）　消除危险；

（四）　返还财产；

（五）　恢复原状；

（六）　修理、重作、更换；

（七）　赔偿损失；

（八）　支付违约金；

（九）　消除影响、恢复名誉；

（十）　赔礼道歉。

以上承担民事责任的方式，可以单独适用，也可以合并适用。

人民法院审理民事案件，除适用上述规定外，还可以予以训诫、责令具结悔过，收缴进行非法活动的财物和非法所得，并可以依照法律规定处以罚款、拘留。

第七章　诉讼时效

第一百三十五条　向人民法院请求保护民事权利的诉讼时效期间为二年，法律另有规定的除外。

第一百三十六条　下列的诉讼时效期间为一年：

（一）　身体受到伤害要求赔偿的；

（二）　出售质量不合格的商品未声明的；

（三）　延付或者拒付租金的；

（四）　寄存财物被丢失或者损毁的。

第一百三十七条　诉讼时效期间从知道或者应当知道权利被侵害时起计算。但是，　从权利被侵害之日起超过二十年的，人民法院不予保护。有特殊情况的，人民法院可以延长诉讼时效期间。

第一百三十八条　超过诉讼时效期间，当事人自愿履行的，不受诉讼时效限制。

第一百三十九条　在诉讼时效期间的最后六个月内，因不可抗力或者其他障碍不能行使请求权的，诉讼时效中止。从中止时效的原因消除之日起，诉讼时效期间继续计算。

第一百四十条　诉讼时效因提起诉讼、当事人一方提出要求或者同意履行义务而中断。从中断时起，诉讼时效期间重新计算。

第一百四十一条　法律对诉讼时效另有规定的，依照法律规定。

第八章　涉外民事关系的法律适用

第一百四十二条　涉外民事关系的法律适用，依照本章的规定确定。

中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

第一百四十三条　中华人民共和国公民定居国外的，他的民事行为能力可以适用定居国法律。

第一百四十四条　不动产的所有权，适用不动产所在地法律。

第一百四十五条　涉外合同的当事人可以选择处理合同争议所适用的法律，法律另有规定的除外。

涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

第一百四十六条　侵权行为的损害赔偿，适用侵权行为地法律。当事人双方国籍相同或者在同一国家有住所的，也可以适用当事人本国法律或者住所地法律。

中华人民共和国法律不认为在中华人民共和国领域外发生的行为是侵权行为的，不作为侵权行为处理。

第一百四十七条　中华人民共和国公民和外国人结婚适用婚姻缔结地法律，离婚适用受理案件的法院所在地法律。

第一百四十八条　扶养适用与被扶养人有最密切联系的国家的法律。

第一百四十九条　遗产的法定继承，动产适用被继承人死亡时住所地法律，不动产适用不动产所在地法律。

第一百五十条　依照本章规定适用外国法律或者国际惯例的，不得违背中华人民共和国的社会公共利益。

第九章　附　　则

第一百五十一条　民族自治地方的人民代表大会可以根据本法规定的原则，结合当地民族的特点，制定变通的或者补充的单行条例或者规定。自治区人民代表大会制定的，依照法律规定报全国人民代表大会常务委员会批准或者备案；自治州，自治县人民代表大会制定的，报省，自治区人民代表大会常务委员会批准。

第一百五十二条　本法生效以前，经省、自治区、直辖市以上主管机关批准开办的全民所有制企业，已经向工商行政管理机关登记的，可以不再办理法人登记，即具有法人资格。

第一百五十三条　本法所称的″不可抗力″，是指不能预见、不能避免并不能克服的客观情况。

第一百五十四条　民法所称的期间按照公历年、月、日、小时计算。

规定按照小时计算期间的，从规定时开始计算。规定按照日、月、年计算期间的，开始的当天不算入，从下一天开始计算。

期间的最后一天是星期日或者其他法定休假日的 ，以休假日的次日为期间的最后一天。

期间的最后一天的截止时间为二十四点。 有业务时间的， 到停止业务活动的时间截止。

第一百五十五条　民法所称的″以上″、″以下″、″以内″、″届满″，包括本数；所称的″不满″、″以外″，不包括本数。

第一百五十六条　本法自一九八七年一月一日起施行。

Order of the President of the People’s Republic of China

(No. 62)

The Property Law of the People’s Republic of China, which was adopted at the 5th session of the Tenth National People’s Congress on March 16, 2007, is hereby promulgated for effect as of October 1, 2007.

President of the People’s Republic of China Hu Jintao

March 16, 2007

Property Law of the People’s Republic of China

(Adopted at the 5th session of the Tenth National People’s Congress on March 16, 2007)

Table of Contents

Part One General Provisions

Chapter I Basic Principles

Article 1 For the purpose of safeguarding the basic economic system of the state, maintaining the socialist market economic order, clarifying property ownerships, giving play to the utilities of properties and protecting the real right of the right holders, this Law has been formulated in accordance with the Constitution Law.

Article 2 This Law shall apply to the civil relationships generated from the ownership and utilization of properties.

The term “property” as mentioned in this Law includes real estates (immovable property) and movable property. In case other laws also stipulate certain rights to be the objects of real right, those provisions shall be followed.

The term ’real right’ as mentioned in this Law refers to the exclusive right of direct control enjoyed by the holder according to law over a specific property, including ownership, usufructuary right and real rights for security.

Article 3 In the primary stage of socialism, the state upholds the basic economic system under which the public (state) ownership shall play a dominant role and diversified forms of ownerships may develop side by side.

The state consolidates and develops the public (state) economy, and encourages, supports and guides the development of the nonpublic economy.

The state practices the socialist market economy system and safeguards the equal legal status and development rights of all market operators.

Article 4 The real rights of the state, collectives, individuals or any other right holder shall be protected by law and shall not be infringed by any entities or individuals.

Article 5 The varieties and contents of real rights shall be stipulated by law.

Article 6 The creation, change, transfer or elimination of the real right of a real estate shall be registered according to law. The creation or transfer of the real right of a movable property shall be delivered according to law.

Article 7 In acquiring or exercising a real right, one shall abide by the law, respect social morals and may not damage the public interests or the legitimate rights and interests of any other person.

Article 8 Where there is any other special provision on real right in any other law, such special provision shall apply.

Chapter II Creation, Change, Transfer and Elimination of Real Right

Section 1 Registration of Real Properties

Article 9 The creation, change, transfer or elimination of the real right of a real property shall become effective after it is registered according to law; it shall have no effect if it is not registered according to law, except it is otherwise prescribed by any law.

The ownership of the natural resources which are owned by the state according to law are not required to be registered.

Article 10 The registration of a real property shall be executed by the registration organ of the place where the real property is located.

The state applies a uniform registration system over real properties. The scope, organ and measures of uniform registration shall be stipulated by the relevant laws and administrative regulations.

Article 11 An applicant for the registration of a real property shall, in light of the different registration items, provide the certificate of ownership of the real property and such required materials as the location and area of the real property.

Article 12 A registration organ shall perform the following duties:

(1) Examining the certificate of ownership and other required materials submitted by the applicant;

(2) Inquiring the applicant about the relevant registration items;

(3) Registering the relevant items according to the facts and in a timely manner; and

(4) Other duties prescribed in any law or administrative regulation.

Where it is necessary to further prove the relevant situation of the real property involved in the application for registration, the registration organ may require the applicant to submit additional materials and carry out on-the-spot inspection when necessary.

Article 13 No registration organ may conduct any of the following behaviors:

(1) Demanding a piece of real property to be evaluated;

(2) Making repeated registration in the name of annual inspection; or

(3) Other behaviors conducted beyond its scope of registration duties.

Article 14 The creation, change, transfer or elimination of the real right of a real property shall, in case it shall be registered as required by law, become effective since the date when it is recorded in the real property register.

Article 15 A contract concluded by the parties concerned on the creation, change, transfer or elimination of the real right of a real property shall become effective upon the conclusion of the contract, except it is otherwise prescribed by any law; and whether the real right has been registered does not affect the validity of the contract.

Article 16 The real property register shall be the basis for determining the ownership and contents of a real property. Realty registers shall be managed by the registration organ.

Article 17 The real property ownership certificate shall be the proof on the holder’s ownership of a real property. The items recorded in the real property ownership certificate shall be consistent with those recorded in the real property register; in case there is any inconsistence, the one recorded in the real property register shall prevail, except there is evidence to prove that it is wrong.

Article 18 Any right holder or interested party may apply for inquiring about or copying the registration materials, and the registration organ shall not refuse.

Article 19 Any right holder or interested party that believes that any item recorded in the real property registry is wrong may apply for correcting the registration. Where the right holder recorded in the real property registry agrees to revise the registration in written form or has evidence to prove that the registration is wrong, the registration organ shall revise the registration accordingly.

Where the right holder recorded in the real property registry does not agree to the change, the interested party may apply for dissidence registration. If the registration organ approves the dissidence registration but the applicant fails to bring an action within 15 days since the date of dissidence registration, the dissidence registration shall cease to be effective. If the dissidence registration is inappropriate and causes damages to the right holder, the holder may request the applicant to make compensation for damages.

Article 20 Where the parties concerned conclude a purchase agreement on a premise or the real right of any other real property, they may apply to the registration organ for advance notice registration to guarantee the realization of the real right in the future. After the advance notice registration, any disposal of the real property without obtaining the consent of the holder in the advance notice registration shall produce no effect of real right.

If, after the advance notice registration is made, the obligee’s right is eliminated or the application for the registration of the real property is not made within 3 months since the date when it can be registered, the advance notice registration shall cease to be effective.

Article 21 Any party concerned that provides false application materials for registration and causes damages to any other person shall undertake the liability for compensation.

Where a registration organ causes damages to any other person because of any mistake in registration, it shall undertake the liability for compensation. After making the compensation, the registration organ may recover the amount from the person causing the registration error.

Article 22 Real property registration fees shall be collected on each piece, and may not be collected according to the size, volume or on the basis of certain proportion of the value of the real property. The specific charging rates shall be stipulated by the relevant departments under the State Council together with the competent department of pricing.

Section 2 Delivery of Movable Properties

Article 23 The creation or transfer of the real right of a movable property shall become effective upon delivery, except it is otherwise prescribed by any law.

Article 24 The creation, change, transfer or elimination of the real right of any vessel, aircraft or motor vehicle, etc, if it is not registered, may not challenge any bona fide third party.

Article 25 If, before the real right of a movable property is established or transferred, the right holder has legally possessed the movable property, the real right shall become effective upon the effectiveness of the legal act.

Article 26 If, before the real right of a movable property is established or transferred, a third party has legally possessed the movable property, the person bearing the obligation of delivery may request the third party to return the rights over the original object by means of transfer to substitutive delivery.

Article 27 If, when the real right of a movable property is transferred, both parties agree to let the transferor continue possessing the movable property, the real right shall become effective upon the effectiveness of the agreement.

Section 3 Other Provisions

Article 28 Where a real right is created, changed, transferred or eliminated for a legal document of the people’s court or arbitration commission or a requisition decision of the people’s government, etc, the real right shall become effective upon the effectiveness of the legal document or the requisition decision of the people’s court.

Article 29 Where a real right is acquired through inheritance or bequest, it shall become effective since the beginning of the inheritance or bequest.

Article 30 Where a real right is created or eliminated for such factual behaviors as the legal construction or demolition of premises, it shall become effective upon the accomplishment of the factual behavior.

Article 31 As for a real right of real property enjoyed in accordance with the provisions of Articles 28 through 30 of this Law, any disposal of the real right shall produce no effect of real right if it is not registered as required by law.

Chapter III Protection of Real Right

Article 32 In case a real right is injured, the right holder may solve the problem through such channels as conciliation, mediation or arbitration, etc.

Article 33 As for a dispute over the ownership or content of real right, the interested parties may petition for confirming the right.

Article 34 As for the untitled possession of a real property or movable property, the right holder may petition for returning the original object.

Article 35 Where a real right has been or may be obstructed, the right holder may petition for removing the impediment or eliminating the danger.

Article 36 Where a real property or movable property is damaged, the right holder may petition for repairing, remaking, changing or restoring the original state.

Article 37 Where a real right is injured and the right holder suffers losses from it, the right holder may petition for the compensation for the losses or the undertaking of any other civil liability.

Article 38 The ways for the protection of real right as stipulated in this Law may apply either independently or by combining with each other in light of the specific circumstance of an injury of real right.

In addition to undertaking civil liabilities, any entity or individual injuring a real right shall undertake the administrative liabilities in case any provision on administrative regulation is violated; if any crime is constituted, he shall be subject to the criminal liabilities.

Part Two Ownership

Chapter IV General Provisions

Article 39 The owner of a real property or movable property has the rights to possess, use, seek profits from and dispose of the real property or movable property according to law.

Article 40 The owner of a real property or movable property has the right to establish a usufructuary right or real right for security over the real property or movable property. When exercising the right, the holder of usufructuary right or the holder of real right for security may not damage the rights and interests of the owner.

Article 41 As for a real property or movable property exclusively owned by the state as prescribed by law, no entity or individual may acquire its ownership.

Article 42 To meet the needs of public interests, collectively-owned lands, premises owned by entities and individuals or other real properties may be expropriated in accordance with the power scope and procedures provided by laws.

As for the expropriation of collectively-owned land, it is necessary to, according to law and in full amount, pay such fees as land compensation fees, placement subsidies, compensations for the above-ground fixtures of the lands and seedlings, arrange for social security fees for the farmers whose land is expropriated, secure their livelihood and safeguard their legitimate rights and interests.

As for the expropriation of the premises owned by entities and individuals or other real properties, it is necessary to make compensation for demolishment and relocation according to law and safeguard the legitimate rights and interests of the owners of the real properties expropriated; as for the expropriation of the individuals' residential houses, it is necessary to safeguard the housing conditions of the owners of the houses expropriated.

No entity or individual may embezzle, misappropriate, privately share, detain or delay in the payment of the compensation fees for expropriation.

Article 43 The state provides special protection for farm lands, strictly restricts the conversion of farm lands into lands for construction and controls the aggregate quantity of lands for construction. No one may requisition any collectively-owned land by violating the statutory power limit and procedures.

Article 44 In case of the needs of emergent dangers or disasters, it is allowed for one to use the real properties or movable properties of entities and individuals in accordance with the statutory power limit and procedures. These real properties or movable properties shall be returned to the owners after the emergent use. Where any real property or movable property of any entity or individual is used or damaged or lost after it is used, corresponding compensation shall be made.

Chapter V State Ownership, Collective Ownership and Private Ownership

Article 45 The properties that shall be owned by the state as prescribed by law belong to the state or all the people as a whole.

The ownership of state-owned properties shall be exercised by the State Council on behalf of the state; where there is any other provision in any law, this provision shall prevail.

Article 46 Mineral deposits, waters and sea areas shall be owned by the state.

Article 47 Urban lands shall be owned by the state. Lands in the rural areas and suburban areas that shall be owned by the state as prescribed by law belong to the state.

Article 48 Natural resources such as forests, mountains, grasslands, waste lands and tidal flats shall be owned by the state, except those that shall be collectively owned as prescribed by law.

Article 49 The wildlife resources that shall be owned by the state as prescribed by law shall be owned by the state.

Article 50 Radio frequency spectrum resources shall be owned by the state.

Article 51 The cultural relics that shall be owned by the state as prescribed by law belong to the state.

Article 52 Assets of national defense shall be owned by the state.

Infrastructures such as railways, highways, electric power facilities, telecommunication facilities, and petrol and gas pipelines that shall be owned by the state as prescribed by law belong to the state.

Article 53 State organs have the right to possess, use and dispose of any real property or movable property directly controlled by them in accordance with the laws and the relevant provisions of the State Council.

Article 54 The public institutions held by the state have the right to possess, use, seek profits from and dispose of any real property or movable property directly under their control in accordance with the laws and the relevant provisions of the State Council.

Article 55 As for the enterprises established with the funds contributed by the state, the State Council and the local people’s governments shall, in accordance with the relevant laws and administrative regulations, perform the contributor’s duties and enjoy the contributor’s rights and interests on behalf of the state.

Article 56 The properties owned by the state shall be under the protection of law, and no entity or individual may embezzle,, loot, privately divide, retain or destroy them.

Article 57 The institutions and their staff that perform the duties of managing and supervising state-owned assets shall make more efforts in the management and supervision of state-owned assets according to law so as to promote the value maintenance and appreciation of state-owned assets and prevent the losses of state-owned assets; any entity or individual causing any loss of state-owned assets for the misuse of authority or neglect of duty shall undertake legal responsibilities according to law.

Any entity or individual violating the provisions on the management of state-owned assets and causing losses of state-owned assets in the process of enterprise restructuring, merger, division or affiliated transactions by way of transferring at a low price, conspiring to distribute them secretly, providing guarantee with them without authorization or any other way shall undertake legal responsibilities according to law.

Article 58 The collectively-owned real properties and movable properties shall include:

(1) Lands, forests, mountains, grasslands, unclaimed lands and tidal flats that shall be collectively owned as prescribed by law;

(2) Collectively-owned buildings, production facilities, farmland, and water conservancy facilities;

(3) Collectively-owned facilities for education, science, culture, sanitation and sports, etc;

(4) Other collectively-owned real properties and movable properties.

Article 59 The real properties and movable properties owned by a farmers' collective shall be collectively owned by all the members of the collective.

The following items shall be decided by the members of the collective in accordance with the statutory procedures:

(1) Land contracting plan and whether to give out a land contract to an entity or individual other than those of the collective;

(2) Adjustment of the contracted lands among the holders of the right to the contracted management of land;

(3) Methods for the use and distribution of such fees as land compensation fees;

(4) The change of ownership or any other relevant issue of an enterprise established with the funds contributed by the collective;

(5) Other items prescribed by any law.

Article 60 The ownership of a collectively-owned land, forest, mountain, grassland, unclaimed land or tidal flat shall be exercised in accordance with the following provisions:

(1) If it is owned by a farmers' collective of a village, the ownership shall be exercised by a collective economic organization or the villagers' committee of the village on behalf of the collective;

(2) If it is owned by two or more farmers' collectives, the ownership shall be exercised by all the collective economic organizations or the villagers' groups of the village on behalf of the collective; and

(3) If it is owned by a farmers' collective of a town, the ownership shall be exercised by a collective economic organization of the town on behalf of the collective.

Article 61 An urban collective has the rights to possess, use, seek profits from and dispose of any real property or movable property it owns in accordance with the relevant laws and administrative regulations.

Article 62 The collective economic organization, villager's committee or villagers' group shall publicize the status of the properties owned by a collective to the members of the collective in accordance with the relevant laws, administrative regulations, articles of association and village regulations and villagers' pledges.

Article 63 Collectively-owned properties shall be under the protection of law, and no entity or individual may embezzle, loot, privately divide, retain, or destroy them.

If a decision made by a collective economic organization, villagers' committee or the person in charge infringes upon the legitimate rights and interests of any member of the

collective, the infringed member of the collective may petition the people's court to withdraw the decision.

Article 64 An individual is entitled to the ownership of his legal income, premise, household goods, instruments of production, raw materials and other real properties and movable properties.

Article 65 The legal savings, investments and the corresponding proceeds of an individual shall be under the protection of law.

The state shall protect an individual's right of inheritance and other legal rights and interests according to law.

Article 66 An individual's legal property shall be under the protection of law, no entity or individual may encroach, plunder or destroy it.

Article 67 The state, any collective or individual may contribute funds to establish a limited liability company, a company limited by shares or any other enterprise. Where the real properties or movable properties owned by the state, a collective or an individual are invested in an enterprise, the contributor shall enjoy such rights as obtaining asset returns, making important decisions and selecting operators and managers and perform their duties in accordance with the agreement or on the basis of his proportion of investment.

Article 68 An enterprise legal person has the right to possess, use, seek profits from and dispose of any real property or movable property it owns in accordance with the laws, administrative regulations and its articles of association.

The rights of a legal person other than an enterprise legal person over the real properties and movable properties it owns shall be governed by the provisions of the relevant laws, administrative regulations and its articles of associations.

Article 69 The real properties and movable properties owned by social organizations according to law shall be under the protection of law.

Chapter VI Owners' Partitioned Ownership of Building Areas (Owners' Condominium Rights)

Article 70 An owner shall have ownership over the exclusive parts within the buildings, such as the residential houses or the houses used for business purposes, and shall have common ownership and the right of common management over the common parts other than the exclusive parts.

Article 71 An owner has the rights to possess, use, seek profits from and dispose of the exclusive parts of the building. No owner may, when exercising his or its rights, endanger the safety of the building or damage the legitimate rights and interests of any other owner.

Article 72 An owner enjoys the rights and undertakes the obligations over the common parts other than the exclusive parts of the building, and may not refuse to fulfill the obligations under the pretext of waiver of rights.

Where an owner transfers his residential house or the house used for business purposes within the building, the common ownership and the right to common management he/she is entitled to over the common parts shall be transferred concurrently.

Article 73 The roads within the building zone (or community) shall be commonly owned by the owners, except the public roads of cities and towns. The green lands within the building area shall be commonly owned by all the owners, except the public green lands of cities and towns or those which are expressly ascribed to individuals. The other public places, common facilities and houses used for real property services within the building zone shall be commonly owned by all the owners.

Article 74 The parking spaces and garages that are within the building area and planned for parking cars shall be used to satisfy, above all else, the needs of the owners.

The ownership of the parking spaces and garages shall be stipulated by the parties concerned by way of selling, complementary using or leasing, etc.

The parking spaces occupying the roads or other fields commonly owned by all owners shall belong to all the owners.

Article 75 The owners may establish an owners' assembly and select an owners' committee.

The relevant departments of the local people's governments shall provide guidance and assistance for the establishment of the owners' assembly and the selection of the owners' committee.

Article 76 The following issues shall be commonly decided by all owners:

(1) Formulating or amending the rules of procedure for the owners' assembly;

(2) Formulating or amending the stipulations on the management of the building and its affiliated facilities;

(3) Selecting the owners' committee or changing the members of the owners' committee;

(4) Selecting or dismissing the real property service enterprise or any other manager;

(5) Raising or using the funds for the maintenance of the building and its affiliated facilities;

(6) Rebuilding the building or any of its affiliated facilities;

(7) Other important issues concerning the common ownership and the right to common management.

The decisions related to the issues prescribed in Item (5) or Item (6) of the preceding paragraph shall be made by the owners who exclusively own 2/3 or more of the total area of the building and who account for 2/3 or more of the total number of the owners. on the decisions related to any other issue prescribed in the preceding paragraph shall be made by the owners who exclusively own half of the total area of the building and who account for half of the total number of the owners.

Article 77 No owner may change a residential house into a house used for business purposes by violating any law, regulation or stipulation on building management. When changing a residential house into a house used for business purposes, the owner shall, in addition to observing laws, regulations and stipulations on building management, obtain the consent of all the other owners who have interests in the change.

Article 78 The decision made by an owners' assembly or an owners' committee is binding to all the owners.

Where any decision made by the owners' assembly or the owners' committee has infringed upon the legitimate rights and interests of an owner, such an owner may petition the people's court for withdrawing the decision.

Article 79 The funds for the maintenance of a building and its affiliated facilities shall be commonly owned by the owners of the building. The funds may be used for the maintenance of such common facilities as elevators and water tanks as codetermined by the owners. The information regarding the raise and use of the maintenance funds shall be published to all the owners.

Article 80 As for such issues as the allocation of the expenses spent for and the distribution of the income obtained from a building or any of its affiliated facilities, where there is any stipulation on it, this stipulation shall apply; where there is no stipulation on it or the stipulation is not clear, these issues shall be determined on the basis the proportion of each owner's exclusive parts to the total area of the building.

Article 81 The owners of a building may manage the building and its affiliated facilities by themselves or by entrusting a real property service enterprise or any other management personnel.

The owners are entitled to change the real property service enterprise or any other management personnel hired by the construction entity according to law.

Article 82 The real property service enterprise or any other management personnel shall manage the building and its affiliated facilities within the building area upon the entrustment of the owners and be subject to the supervision of the owners.

Article 83 The owners shall abide by the laws, regulations and management stipulations.

As for an act injuring the legitimate rights and interests of other persons, such as discarding wastes at will, discharging atmospheric pollutants and noise, breeding animals by violating the relevant regulations, illegally building shelters, occupying passages or refusing to pay real property management fees, etc, the owners' assembly and the owners' committee are entitled to request the actor to cease the infringing act, eliminate the danger, remove the impediments and make compensation for the losses in accordance with the relevant laws, regulations and stipulations on management. An owner may bring a lawsuit to the people's court according to law in case there is any infringement upon his legitimate rights and interests.

Chapter VII Relationships of Adjacency

Article 84 Right holders who are adjacent to one another on a real property shall correctly handle the relationship of adjacency in accordance with the principles of facilitating production, making things convenient in life, showing unity and providing mutual assistance, and fairness and equity.

Article 85 Where there is any provision on the handling of contiguous relationship, such provision shall apply; where there isn't any provision on it, the contiguous relationship shall be handled in light of the local customs.

Article 86 The holder of a real property shall provide necessary convenience for the use of water and drainage of the adjacent right holders.

The utilization of natural running water shall be rationally distributed to the adjacent right holders of a real property. As for the drainage of natural running water, the natural current direction shall be respected.

Article 87 The right holder of a real property shall provide necessary convenience in case a adjacent right holder has to use his land because of passage or any other reason.

Article 88 Where the right holder of a real property has to use a adjacent land or building for such reasons as constructing or repairing a building, or laying wires, cables, water pipes, heating pipelines or fuel gas pipelines, etc, the right holder of the land or building shall provide necessary convenience.

Article 89 As for the construction of a building, no entity or individual may violate the relevant engineering construction standards of the state or block the ventilation, lighting or sunshine of any adjacent building.

Article 90 An holder of real property may not discard solid wastes or discharge atmospheric pollutants, water pollutants, or such harmful substances as noise, light and magnetic radiation by violating the relevant provisions of the state.

Article 91 When excavating a land, constructing a building, laying a pipeline or installing an equipment, the right holder of the real property may not endanger the safety of any adjacent real property.

Article 92 In case the right holder of a real property has to use a adjacent real property for reasons of using water, drainage, passage or laying pipelines, etc, he shall do his best to avoid causing any damage to the right holder of the adjacent real property; if any damage is caused, he shall make corresponding compensations.

Chapter VIII Common Ownership

Article 93 A real property or movable property may be commonly owned by two or more entities or individuals. Common ownership includes several co-ownership and joint ownership.

Article 94 A several co-owner of a commonly owned real property or movable property shall enjoy the ownership of the real property or movable property according to his shares.

Article 95 A joint owner of a commonly owned real property or movable property shall enjoy the ownership of the real property or movable property on a common basis.

Article 96 The co-owners of a commonly owned real property or movable property shall manage the real property or movable property as stipulated; where it is not stipulated or clearly stipulated, all co-owners have the right and obligation of management.

Article 97 As for the disposal or major repair of a commonly owned real property or movable property, the consent of the several co-owners possessing 2/3 of the shares or all joint owners shall be obtained, except it is stipulated otherwise by the co-owners.

Article 98 As for the management expenses or any other liabilities of a commonly owned property, if there is any stipulation on it, such stipulation shall apply; if there isn't any stipulation on it or the stipulation is not clear, the expenses shall be borne by the several co-owners on the basis of their respective shares or commonly borne by all joint owners.

Article 99 In case the co-owners of a commonly owned real property or movable property have stipulated that, in order to maintain the relationship of common ownership, it is not allowed to partition the real property or movable property, such stipulation shall apply; but if any of the co-owners needs to partition the real property or movable property for certain significant reasons, he may petition for partitioning it; if there is no stipulation or the stipulation is not clear, a several co-owner may petition for partitioning it at any time, and a joint owner may petition for partitioning it in case the basis for the common ownership disappears or he needs to partition it for certain significant reasons. If the partition causes any damage to any other person, the corresponding compensation shall be made.

Article 100 The co-owners of a commonly owned real property or movable property may determine the way of partition by means of negotiation. If no agreement is reached and the real property or movable property may be partitioned without affecting its value, the real object shall be partitioned; if it is difficult to partition it or its value would be affected because of the partition, the partition shall be executed by distributing the purchase price obtained from converting its value into money, the auction or selling off the real property or movable property.

In case the real property or movable property obtained by a co-owner from the partition of a commonly owned real property or movable property has any flaw, the other co-owners shall partake the losses together.

Article 101 A several co-owner of a commonly owned real property or movable property may transfer his share of the real property or movable property. The other several co-owners have the preemptive right to purchase the share.

Article 102 As for an obligee's right or a debt generated from a commonly owned real property or movable property, a co-owner shall enjoy joint and several creditor's right or assume joint and several debt in terms of external relationship, except it is otherwise prescribed by any law or that the third party is aware of the fact that the co-owner does not have the relationship of joint and several creditor's right or debt. In terms of the internal relationship among the co-owners, a co-owner shall enjoy the creditor's right or assume

the debt on the basis of his own share, except it is otherwise stipulated by the co-owners; joint owners shall enjoy the creditor’s right or assume the debt on a common basis. Any several co-owner who overpays his share of the debt is entitled to recover the overpaid amount from the other co-owners.

Article 103 Where the co-owners of a real property or movable property does not stipulate whether the real property or movable property is subject to several co-ownership or joint ownership, or where the stipulation is not clear, it shall be deemed as a several co-ownership unless there is a family relationship among the co-owners.

Article 104 A several co-owner’s share of a commonly owned real property or movable property shall be determined on the basis of his amount of contribution in case it is not stipulated or the stipulation is not clear; if it is impossible to determine the amount of contribution, each several co-owner shall enjoy an equal share.

Article 105 Where the usufructuary right or real right for security of a real property or movable property is owned by two or more entities or individuals, the provisions of this Chapter shall apply by analogy.

Chapter IX Special Provisions on the Acquisition of Ownership

Article 106 Where a person untitled to dispose a real property or movable property transfers the real property or movable property to an assignee, the owner has the right to recover the real property or movable property. Except it is otherwise prescribed by law, once it is under any of the following circumstances, the assignee shall obtain the ownership of the real property or movable property:

(1) The assignee accepted the real property or movable property in good faith;

(2) The real property or movable property is transferred at a reasonable price; or

(3) The transferred real property or movable property shall have been registered in case registration is required by law, and shall have been delivered to the assignee in case registration is not required.

Where an assignee obtains the ownership of a real property or movable property in accordance with the preceding paragraph, the original owner may ask the person untitled to dispose of the real property or movable property to make compensation for his losses.

Where a party concerned obtains any other real right in good faith, he shall be governed by the preceding two paragraphs by analogy.

Article 107 The owner or any other holder is entitled to recover a lost property. Where the lost property is possessed by any other person through transfer, the owner is entitled to ask the person untitled to dispose of the property to make compensations for damages, or, within 2 years since the date when he knows who is the assignee, ask the assignee to return the original property. But if the assignee purchases the lost property by way of auction or from a qualified operator, the holder shall, when asking for returning the original property, pay the amount paid by the assignee for purchasing the property to the assignee. Where there is any other provision, such provision shall apply. After paying the amount

paid by the assignee for purchasing the property to the assignee, the owner is entitled to recover the amount from the person untitled to dispose of the property.

Article 108 After a bona fide assignee obtains a real property, the original rights on the real property shall be eliminated, except the right that the bona fide assignee has already been or should be aware of when the transfer is made.

Article 109 A lost-and-found object shall be returned to the right holder of the object. The person who finds such object shall notify the right holder to claim the object or hand it over to the public security department or any other department in a timely manner.

Article 110 A relevant department shall, after receiving a lost-and-found object, in case it knows the right holder of the object, notify him to claim the object in a timely manner; in case it does not know, it shall publish an announcement on the finding of the lost property in a timely manner.

Article 111 A lost-and-found object shall be properly kept by the person who finds the object before it is handed over to the relevant department and by the relevant department before it is claimed by the right holder of the object. In case the object is damaged or lost deliberately or for gross negligence, the relevant personnel shall undertake the civil liabilities.

Article 112 When obtaining a lost-and-found object, the right holder of the object shall pay such necessary expenses as the cost for safekeeping the object to the person who finds the object or the relevant department.

In case a right holder offers a reward for finding the object, he shall fulfill the obligation of granting the reward when claiming the object.

In case the object is misappropriated by the person who finds the object, the person who finds the object shall have no right to ask for paying the expenses paid for safekeeping the object or petition the holder to fulfill the obligation as promised.

Article 113 A lost-and-found object that fails to be claimed within 6 months since the date when the announcement on the finding of the object is published shall be owned by the state.

Article 114 The finding of a drifter or the discovery of an object buried underground or a hidden property shall be governed by the relevant provisions on the finding of a lost-and-found property. In case there is any other provision in such laws as the law on the protection of cultural relics, such provisions shall apply.

Article 115 Where a principal property is transferred, the accessory property shall be transferred together with the principal property, except it is otherwise stipulated by the parties concerned.

Article 116 Natural fruits shall be obtained by the owner; in case there are both owner and holder of usufructuary right on the natural fruits, it shall be obtained by the holder of usufructuary right. Where it is stipulated otherwise by the parties concerned, such stipulation shall apply.

Statutory fruits shall be obtained by the parties concerned as stipulated by them; where it is not stipulated or clearly stipulated, it shall be obtained in accordance with the practices of trading.

Part Three Usufructuary Right

Chapter X General Provisions

Article 117 A usufructuary right holder shall enjoy the right to possess, use and seek proceeds from the real property or movable property owned by someone else according to legal provisions.

Article 118 An entity or individual may possess, use and seek proceeds from the natural resources that are owned by the state or that are owned by the state but used by the collective as well as those that are owned by the collective.

Article 119 The state implements the system of fee-based use of natural resources, unless it is otherwise prescribed by any other laws.

Article 120 A usufructuary right holder shall, when exercising its or his right, abide by the provisions on protection, reasonable exploration and utilization of resources as prescribed in the laws. An owner shall not intervene in the exercise of rights by the usufructuary right holder.

Article 121 In case a real property or movable property is expropriated or requisitioned, and thus causes loss of usufructuary right or affects the use of usufructuary right, the usufructuary right holder shall be entitled to obtain corresponding compensations according to Articles 42 and 44 of this Law.

Article 122 The right to use sea areas as lawfully obtained shall be governed by the law.

Article 123 The mineral prospecting right, the mining right, the water intake right and the right to use water areas or tidal flats for engaging in breeding or fishery shall be protected by law.

Chapter XI Right to the Contracted Management of Land

Article 124 A rural collective economic organization shall implement a dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of household contracted management.

The system of land contracted management shall be implemented to the cultivated land, wood land, grassland, and land for other agricultural uses that are owned by farmers' collectives as well as those that are owned by the state and exploited by farmers' collectives.

Article 125 The holder of the right to the contracted management of land shall enjoy the right to possess, use and seek proceeds from the cultivated land, wood land and grassland, etc. under the contracted management thereof, and have the right to engage in planting, forestry, stockbreeding or other agricultural production activities.

Article 126 The term of a contract for cultivated land shall be 30 years. The term of a contract for grassland shall be 30 up to 50 years. The term of a contract for wood land shall be more than 30 years but less than 70 years. The term of a contract for special forest land may be extended upon approval of the forestry administrative department under the State Council.

After the term of a contract as mentioned in the preceding paragraph expires, the holder of the right to the contracted management of land may continue to fulfill the contract according to the relevant provisions of the state.

Article 127 The right to the contracted management of land shall be established as of the effectiveness of the contract on the right to the contracted management of land.

The local people's government at or above the county level shall issue a certificate of the right to the contracted management of land, a forestry right certificate or a grassland-use right certificate to the holder of right to the contracted management of land, register it in the brochure and confirm the right to the contracted management of land.

Article 128 The holder of the right to the contracted management of land shall be entitled to circulate the right to the contracted management of land according to the provisions in the law on the contracting of rural land. The circulated term shall not exceed the remnant term of the original contract on right to the contracted management of land. Without approval, no contracted land may be used for non-agricultural constructions.

Article 129 In the event that the circulation of the right to the contracted management of land is realized through exchange or transfer, if the parties concerned require that the circulation be registered, an application for the alteration registration of right to the contracted management of land shall be submitted to the local people's government at or above the county level. Without registration, neither party may challenge any bona fide third party.

Article 130 Within the duration of a contract, the contract-letting party shall not readjust the contracted land.

If proper readjustment of cultivated land or grassland as contracted is required due to such special events as natural calamities that have materially damaged the contracted land, it shall be conducted according to the legal provisions in the law on the contracting of rural land and other relevant laws.

Article 131 Within the term of a contract, the contract-letting party shall not take back the contracted land. Where there are separate provisions in the law on the contracting of rural land or any other law, such provisions shall prevail.

Article 132 If a contracted land is expropriated, corresponding compensations shall be given to the holder of the right to the contracted management of land according to Paragraph 2, Article 42 of this Law.

Article 133 The right to the contracted management of land to barren land or other rural land that is contracted by means of bid invitation, auction, or open negotiation, etc. may be circulated by means of transfer, lease, equity contribution, or mortgage, etc.

Article 134 The implementation of contracted management to the rural land that is owned by the state shall be governed by the relevant provisions in this Law by analogy.

Chapter XII Right to Use Land for Construction Purpose

Article 135 The holder of the right to use land for construction shall be entitled to possess, use and seek proceeds from the land owned by the state, and be entitled to make use of the land for constructing buildings, fixtures and their auxiliary facilities.

Article 136 The right to use land for construction may be established separately on the surface of or above or under the land. The newly-established right to use land for construction shall not damage the usufructuary right that has already been established.

Article 137 The right to use land for construction may be established by means of transfer or allotment, etc.

The land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or the land for which there are two or more intended users shall be transferred by means of auction, bid invitation or any other public bidding method.

It is strictly prohibited to establish the right to use land for construction by means of allotment. The means of allotment shall be adopted according to the provisions on land uses in the laws and administrative regulations.

Article 138 Where the right to use land for construction is established by means of auction, bid invitation, or agreement, etc., the parties concerned shall enter into a written contract on the transfer of the right to use land for construction.

A contract on transfer of the right to use land for construction shall generally include the following clauses:

(1) Name and domicile of the parties;

(2) Location and acreage, etc. of the land;

(3) Space occupied by buildings, fixtures and their affiliated facilities;

(4) Purposes of use;

(5) Term of use;

(6) Payment methods for allotment fees and other fees; and

(7) Dispute resolution method.

Article 139 For the creation of the right to use land for construction, an application for the registration of the right to use land for construction shall be filed with the registration organ. The right to use land for construction shall be established upon registration. The

registration organ shall issue a certification on the right to use land for construction to the holder of the right to use land for construction.

Article 140 The holder of the right to use land for construction shall reasonably utilize the land, shall not change the purpose of land use, and shall be subject to the approval of the relevant administrative department if the purpose of land use needs to be changed.

Article 141 The holder of the right to use land for construction shall pay transfer fees and other fees according to the legal provisions and the contract.

Article 142 The ownership of the buildings, fixtures and their affiliated facilities built by the holder of the right to use land for construction shall belong to the holder of the right to use land for construction, unless it is otherwise proved by contrary evidence.

Article 143 The holder of the right to use land for construction shall be entitled to transfer, exchange, use as equity contributions, endow or mortgage the right to use land for construction, unless it is otherwise prescribed by any law.

Article 144 In case the right to use land for construction is transferred, exchanged, used as equity contributions, endowed or mortgaged, the parties shall conclude a corresponding contract in written form. The contractual term shall be stipulated by the parties concerned, but shall not exceed the remnant term as stipulated in the contract on transfer of the right to use land for construction.

Article 145 In case the right to use land for construction is transferred, exchanged, used as equity contributions, or endowed, an application for alteration registration shall be filed with the registration organ.

Article 146 In case the right to use land for construction is transferred, exchanged, used as equity contributions or endowed, the buildings, fixtures and their affiliated facilities on the land shall be disposed of concurrently.

Article 147 In case the buildings, fixtures and their affiliated facilities are transferred, exchanged, used as equity contributions or endowed, the right to use land for construction occupied by the aforesaid buildings, fixtures and their affiliated facilities shall be disposed of concurrently.

Article 148 Before the term of the right to use land for construction expires, if the land needs to be taken back in advance due to public interests, compensations shall be given to the houses and other real properties on the land according to Article 42 of this Law, and corresponding land transfer fees shall be refunded.

Article 149 The term of the right to use land for construction for dwelling houses shall be automatically renewed upon expiration.

The term of the right to use land for construction not for dwelling houses shall be renewed according to legal provisions. Where there are stipulations about the ownership of houses and other real properties on the aforesaid land, such stipulations shall prevail; if there is no such stipulation or the stipulations are not explicit, the ownership shall be determined according to the provisions in the laws and administrative regulations.

Article 150 In case the right to use land for construction is eliminated, the transferor shall go through deregistration procedures in a timely manner, and the registration organ shall take back the certificate on the right to use land for construction.

Article 151 In case a piece of collectively-owned land is used as land for construction, it shall be handled according to the law on land administration and other relevant laws.

Chapter XIII Right to Use House Sites (or Right to Use Lands for Building Houses)

Article 152 The holder of the right to use house sites shall be entitled to possess and use collectively-owned land, and to make use of the land for constructing residential houses and their affiliated facilities.

Article 153 The acquisition, exercise and transfer of the right to use house sites shall be governed by the law on land administration, other relevant laws and the relevant provisions of the state.

Article 154 In case a house site is eliminated due to any natural disaster, etc., the right to use house site shall be eliminated. A villager without a house site shall be allotted a house site again.

Article 155 In case the registered right to use house sites is transferred or eliminated, the alteration or cancellation registration shall be made in a timely manner.

Chapter XIV Easement Rights

Article 156 An easement holder shall be entitled to make use of the real property of someone else according to the contract so as to increase the efficiency of his own real property.

The expression of “real property of someone else” as mentioned in the preceding Paragraph shall be the servient tenement, and the expression of “one’s own real property” shall be the dominant tenement.

Article 157 For the creation of an easement, the parties concerned shall conclude an easement contract in written form.

An easement contract shall generally include the following clauses:

(1) Name and domicile of the parties concerned;

(2) Locations of servient tenement and dominant tenement;

(3) Purposes and methods of utilization;

(4) Term of utilization;

(5) Fees and payment method; and

(6) Dispute resolution method.

Article 158 The easement shall be established as of the effectiveness of an easement contract. In case the parties concerned think it necessary to have it registered, they can

apply for easement registration with the registration organ; otherwise, they shall not challenge any bona fide third party.

Article 159 The holder of servient tenement shall permit an easement holder to make use of his/its land according to the contract, and shall not hamper the latter’s exercise of the right.

Article 160 An easement holder shall make use of the servient tenement according to the purposes and methods as stipulated in the contract, and try to reduce the real right restrictions on the holder of the servient tenement.

Article 161 The term of easement shall be stipulated by the parties concerned, however, it can not exceed the remnant term of the right to the contracted management of land, the right to use land for construction or any other usufructuary right.

Article 162 In case a land owner enjoys or assumes the easement, when the right to the contracted management of land or the right to use house site is established, the holder of the right to the contracted management of land or the right to use house site may continue enjoying or assuming the established easement.

Article 163 In case the right to the contracted management of land, the right to use house site or any other usufructuary right on the land has already been created, the land owner shall not establish any easement without consent of the aforesaid usufructuary right holder.

Article 164 The easement shall not be transferred alone. In case the right to the contracted management of land, the right to use land for construction, the right to use house site or any other usufructuary right is transferred, the easement shall be transferred concurrently, unless it is otherwise stipulated by the contract.

Article 165 The easement shall not be mortgaged by itself. In case the right to the contracted management of land or the right to use land for construction, etc. is mortgaged, the easement shall be transferred concurrently when the mortgage is realized.

Article 166 When the dominant tenement as well as the right to the contracted management of land, the right to use land for construction or the right to use house site thereon is partially transferred, and if the easement is involved in the transferred part, the transferee shall enjoy the easement at the same time.

Article 167 When the servient tenement and the right to the contracted management of land, the right to use land for construction or the right to use house site thereon is partially transferred, and if the easement is involved in the part as transferred, the easement shall be binding on the transferee.

Article 168 In case an easement holder is under any of the following circumstances, the holder of the servient tenement shall be entitled to rescind the easement relationship, and the easement shall be eliminated:

(1) Violating the legal provisions or the contract, or abusively using the easement; or

(2) Failing to pay fees for the paid use of servient tenement after being urged to do so within a reasonable period for two times upon expiration of the stipulated time limit for payment.

Article 169 The alteration or cancellation registration shall be timely executed for the alteration, transfer or elimination of the registered easement.

Part Four Real Rights for Security (Secured Property Rights)

Chapter XV General Provisions

Article 170 The holder of real rights for security shall enjoy priority to receive payments from the property for security in case the obligor fails to pay its due debts or the circumstance for the realization of real rights for security as stipulated by the parties concerned occurs, unless it is otherwise prescribed by any law.

Article 171 An obligee (creditor) may, in such civil activities as loans or sales, establish the real rights for security according to this Law or any other law where the security is required for safeguarding the realization of its/his credits.

To provide security to the obligee for an obligor (debtor), a third party may require the obligor to provide countersecurity. The countersecurity shall be governed by this Law and other relevant laws.

Article 172 For the creation of real rights for security, a security contract shall be concluded according to this Law and other relevant laws. A security contract shall be subordinated to the principal contract. When the principal contract is nullified, the security contract shall be invalidated, unless it is otherwise prescribed by any law.

After a security contract is nullified upon confirmation, the obligor, the security provider and the obligee that has faults shall assume relevant civil liabilities in light of their respective faults.

Article 173 The security range of the real rights for security shall include principal obligee’s rights and their interests, default fines, damages and expenses for keeping the property for security and for realizing the real rights for security. Where there are separate stipulations between the parties concerned, such stipulations shall prevail.

Article 174 In case the property for security is damaged, lost or expropriated during the term of security, the holder of the real rights for security may seek preferred compensations from the insurance money, damages or indemnities, etc. incurred there from, or may submit such insurance money, damages or indemnities, etc. to a competent authority if the term for performing the obligee’s rights as secured has not expired.

Article 175 Where a third party provides any security, if the obligee allows the obligor to transfer all or part of its obligations without the written consent of the third party, the security provider does not have to assume corresponding security liabilities.

Article 176 Where a secured credit involves both physical and personal security, if the obligor fails to pay its due debts or any circumstance for realizing the property for security

as stipulated by the parties concerned occurs, the obligee shall realize the obligee's rights according to the stipulations; where there is no such stipulation or the stipulations are not explicit, and the obligor provides his/its own property for the security, the obligee shall realize the obligee's rights firstly by the security by property; and where a third party provides the security by property, the obligee may realize the obligee's rights with the physical security or may require the guarantor to assume the guaranty liability. The third party for providing the security may, after assuming the security liability, is entitled to recourse payments against the obligor.

Article 177 In any of the following circumstances, the real rights for security may be eliminated:

(1) The principal obligee's rights are eliminated;

(2) The real rights for security have been realized;

(3) The obligee abandons the real rights for security; or

(4) Any other circumstance as prescribed by any law under which the real rights for security will be eliminated.

Article 178 In case any provision in the Security Law conflicts with this Law, the latter shall prevail.

Chapter XVI Right to Mortgage

Section 1 General Right to Mortgage

Article 179 An obligor (debtor) or a third party may, for the security of the payment of debts, mortgage his properties to the obligee (creditor) without transferring the possession of such properties, and when the obligor fails to pay due debts or any circumstance for realizing the mortgage right as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from such properties.

The 'obligor' or 'third party' as prescribed in the preceding paragraph shall be the mortgagor, the 'obligee' shall be the mortgagee, and the 'properties for security' shall be the properties under mortgage.

Article 180 The following properties to which the obligor or the third party has the right to dispose of may be used for mortgage:

(1) Buildings and other fixed objects on the ground;

(2) The right to use land for construction;

(3) The right to contracted management of barren land, etc. as obtained by means of bid invitation, auction and public consultation, etc.;

(4) Manufacturing facilities, raw materials, semi-manufactured goods and products;

(5) Buildings, vessels and aircraft that are under construction;

(6) Means of communications and transportation;

(7) The properties other than those that shall not be mortgaged according to any law or administrative regulation.

A mortgagor may mortgage all the properties listed in the previous paragraph together.

Article 181 Upon the written agreement between the parties concerned, an enterprise, individual industrial and commercial household or agricultural production operator may mortgage the manufacturing facilities, raw materials, semi-manufactured goods and products it has already owned or is going to own, and when the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the movable properties that exist when the parties concerned stipulate to realize the right to mortgage.

Article 182 In case a building is mortgaged, the right to use land for construction occupied by this building shall be mortgaged together. In case the right to use land for construction is mortgaged, all the buildings on this land shall be mortgaged together.

In case a mortgagor fails to mortgage the properties according to the preceding paragraph, the properties that have not been mortgaged shall be regarded as having been mortgaged together.

Article 183 The right to use land for construction of a township or village enterprise shall not be mortgaged by itself. In case the plant of a township and village enterprise is mortgaged, the right to use land for construction occupied by this plant shall be mortgaged together.

Article 184 None of the following properties may be mortgaged:

(1) Land ownership;

(2) The right to use cultivated land, house sites, land set aside for farmers to cultivate for their private use, hilly land allotted for private use and other collectively-owned land, unless it is otherwise prescribed by any law;

(3) Educational, medical, healthy and other public welfare facilities of schools, kindergartens, hospitals and other institutions and social groups with the aim of benefiting the public;

(4) Properties whose ownership or use rights are unclear or controversial;

(5) Properties that are legally confiscated, seized or controlled; or

(6) Other properties that cannot be mortgaged according to any law or administrative regulation.

Article 185 To create a right to mortgage, the parties concerned shall conclude a mortgage contract in written form.

A mortgage contract shall generally include the following clauses:

(1) The variety and amount of the obligee’s rights as secured;

(2) The time limit for the obligor to pay debts;

(3) The name, amount, quality, condition, location, attribution of ownership or use right of the property under mortgage; and

(4) The range of security.

Article 186 Before the time limit for paying debts expires, a mortgagee shall not stipulate with the mortgagor that the ownership of the property under mortgage will be transferred to the obligee when the obligor fails to pay its due debts.

Article 187 As for the mortgage of a property as prescribed in Item (1), (2) or (3) of Paragraph 1 of Article 180 of this Law or a building under construction as prescribed in Item (5), mortgage registration shall be made. The right to mortgage shall be established as of the date of registration.

Article 188 As for the mortgage of a property as prescribed in Item (4) or (6) of Paragraph 1 of Article 180 of this Law or a vessel or aircraft under construction as prescribed in Item (5), the right to mortgage shall come into effect as of the effectiveness of the mortgage contract; without the registration, the right to mortgage shall not challenge any bone fide third party.

Article 189 In case an enterprise, individual industrial and commercial household or agricultural production operator mortgages any of the movable properties prescribed in Article 181 of this Law, it shall file registration with the administrative department for industry and commerce at the place where the mortgagor resides. The right to mortgage shall come into effect as of the effectiveness of the mortgage contract; without the registration, the right to mortgage shall not challenge any bone fide third party.

The registration of the mortgage prescribed in Article 181 of this Law shall not challenge the buyer which has paid a reasonable price in normal business operations and has obtained the property under mortgage.

Article 190 In case the property under mortgage has been leased before the conclusion of the mortgage contract, the original leasehold relations shall not be affected by the right to mortgage. In case the property under mortgage is leased after the right to mortgage has been established, the leasehold relation shall be affected by the registered right to mortgage.

Article 191 In case a mortgagor transfers the property under mortgage during the mortgage term upon consent of the mortgagee, the mortgagor shall pay off its debts to the mortgagee with the money incurred from the transfer in advance or submit the said money to a competent authority for keeping. The value exceeding the obligee’s rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

A mortgagor shall not transfer the property under mortgage during the mortgage term without the mortgagee’s consent, unless the transferee pays off the debts on its behalf so as to eliminate the right to mortgage.

Article 192 The right to mortgage shall not be separated from the obligee's rights or be transferred alone, or be used as a security for other obligee's rights. When the obligee's rights are transferred, the right to mortgage for the said obligee's rights shall be transferred together, unless it is otherwise prescribed by any law or is otherwise stipulated by the parties concerned.

Article 193 In case any act of the mortgagor may sufficiently result in lowering the value of the property under mortgage, the mortgagee shall be entitled to request the mortgagor to stop such act. In case the value of the property under mortgage has been affected, the mortgagee shall be entitled to request the mortgagor to restore the value of the property under mortgage, or provide a security equal to the decreased value. In case the mortgagor neither restores the value of the property under mortgage nor provides any security, the mortgagee shall be entitled to request the mortgagee to pay off the debts in advance.

Article 194 A mortgagee may waive the right to mortgage or the sequence of the right to mortgage. A mortgagee and a mortgagor may change the sequence of the right of mortgage or the amount of obligee's rights as secured, etc., through negotiations, however, the change of the right to mortgage without the written consent of other mortgagees shall not produce unfavorable influences on any other mortgagee.

In case an obligor establishes the mortgage by his own properties, and the mortgagee waives the right to mortgage or the sequence of the right to mortgage or changes the right to mortgage, other security providers shall be exempted from the security liability within the scope for which the said mortgagee has lost the right to seek preferred payments, unless any of other security providers promises to provide the same security.

Article 195 When the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the mortgagee may, by concluding an agreement with the mortgagor, convert the property under mortgage into money or seek preferred payments from the money incurred from the auction or sale of the property under mortgage. In case the said agreement has damaged the interests of any other obligee, the obligee may request the people's court to cancel this agreement within one year after he/it has known or should know the cause for cancellation.

In case the mortgagee and the mortgagor fail to conclude an agreement on the means of realizing the right to mortgage, the mortgagee may request the people's court to auction or sell off the property under mortgage.

The property under mortgage shall be converted into cash or be sold off by referring to its marker price.

Article 196 With respect to the mortgage established according to Article 181 of this Law, the property under mortgage shall be determined when any of the following circumstances occurs:

(1) The obligee's rights have not been fulfilled upon expiration of the time limit for paying debts;

(2) The mortgagor has been declared bankrupt or has been dissolved;

(3) Any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs; or

(4) Any other circumstance that will seriously affect the realization of obligee's rights.

Article 197 When the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, and the property under mortgage is thus seized by the people's court according to law, the mortgagee may, as of the date of seizure, be entitled to collect natural or statutory derivatives of the property under mortgage, unless the mortgagee has failed to notify the obligor to pay off statutory fruits.

The "derivatives" as prescribed in the preceding paragraph shall be used for paying the expenses for the collection of fruits in the first place.

Article 198 After the property under mortgage has been converted into money, auctioned or sold off, the value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

Article 199 If a same property is mortgaged to two or more obligees simultaneously, the money incurred from the auction or sale of the property under mortgage shall be used as payments in light of the following prescriptions:

(1) If all the rights to mortgage have been registered, the payments shall be made in light of the sequence of registration; and if the sequence of registration is the same, the payments shall be made in light of the proportion of obligee's rights;

(2) The right to mortgage that has been registered shall be cleared off prior to the one that has not been registered; and

(3) If no right to mortgage has been registered, the payments shall be made in light of the proportion of obligee's rights.

Article 200 After the right to use land for construction is mortgaged, the newly-constructed buildings on the land shall not belong to the properties under mortgage. When the aforesaid right to use land for construction needs to be disposed of for the realization of the right to mortgage, the newly-constructed buildings on the land can be disposed of together, however, the mortgagee shall not be entitled to seek preferred payments from the money incurred from the disposal of these newly-constructed buildings.

Article 201 In case the right to the contracted management of land prescribed in Item (3) of Paragraph 1 of Article 180 of this Law is mortgaged, or the right to use land for construction occupied by the plant or any other building of a township or village enterprise is mortgaged according to Article 183 of this Law, after the right to mortgage is realized, no nature of land ownership or land use may be changed without completing the statutory procedures.

Article 202 A mortgagee shall exercise the right to mortgage within the limitation of action for the principal obligee's rights, otherwise, such right to mortgage will not be protected by the people's court.

Section 1 Right to Mortgage at Maximum Amount

Article 203 An obligor or third party may, for the security of payment of debts, provide security of mortgage to the obligee for the obligee's rights that will continuously occur within a certain term, and when the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the mortgagee shall be entitled to seek preferred payments from the security properties within the maximum amount of obligee's rights.

The obligee's rights that have existed before the right to mortgage at maximum amount is established may be incorporated into the scope of obligee's rights under the security by mortgage at maximum amount.

Article 204 In case part of obligee's rights are transferred before the security by mortgage at maximum amount is established, the right to mortgage at maximum amount shall not be transferred, unless it is otherwise stipulated by the parties concerned.

Article 205 Before the obligee's rights under the security by mortgage at maximum amount are determined, the mortgagee and the mortgagor may change the term for determining the obligee's rights, the scope of obligee's rights or the maximum amount of obligee's rights by agreement, however, such change shall not produce any unfavorable influence on any other mortgagee.

Article 206 If any of the following circumstances occurs, the mortgagee's obligee's rights shall be determined:

(1) The term for determining the obligee's rights as stipulated expires;

(2) There is no stipulation about the term for determining the obligee's rights or the relevant stipulations are unclear, and the mortgagee or the mortgagor requests to determine the obligee's rights after two years as of the date for establishing the right to mortgage at maximum amount;

(3) No new obligee's right may occur;

(4) The property under mortgage is sealed up or seized;

(5) The obligor or the mortgagor is announced as bankrupt or is revoked; or

(6) Any other circumstance for determining the obligee's rights as prescribed by any other law occurs.

Article 207 The right to mortgage at maximum amount shall be applicable to the provisions on general right to mortgage as prescribed in Section 1 of this Chapter in addition to the provisions in this Section.

Chapter XVII Right of Pledge

Section 1 Pledge of Movable Properties

Article 208 An obligor or third party may, for the security of the payment of debts, pledge his (its) movable properties to the obligee for possession, and when the obligor fails to pay due debts or any circumstance for realizing the right of pledge as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the said movable properties.

The ’debtor’ or ’third party’ as prescribed in the preceding paragraph shall be the pledger, the ’obligee’ shall be the pledgee, and the ’movable properties’ as delivered shall be the pledge.

Article 209 The movable properties prohibited to be pledged by any law or administrative regulation shall not be pledged.

Article 210 For the creation of the right of pledge, the parties concerned shall conclude a contract on the right of pledge in written form.

A contract on the right of pledge shall generally include the following clauses:

(1) The variety and amount of the principal obligee’s rights;

(2) The time limit for the obligor to pay off debts;

(3) The name, amount, quality and condition of the pledge;

(4) The range of security; and

(5) The time for the transfer of pledge.

Article 211 Before the time limit for paying debts expires, the pledgee and the pledger shall not stipulate that the ownership of pledge be transferred to the obligee when the obligor fails to pay due debts.

Article 212 The right of pledge shall be established after the pledgee has transferred the pledge.

Article 213 A pledgee shall be entitled to obtain the derivatives of the pledge, unless it is otherwise stipulated in the contract.

The “derivatives” as prescribed in the preceding paragraph shall be used for paying the expenses for the collection of the derivatives in the first place.

Article 214 In case a pledgee, within the duration of the right of pledge, illegally uses or disposes of the pledge without consent of the pledger, and thus causes damages to the pledger, he/it shall be liable for compensations.

Article 215 A pledgee shall be liable for properly keeping the pledge; and in case the pledge is destroyed or lost due to improper keeping, the pledgee shall be liable for compensations.

In case any act of the pledgee may make the pledge damaged or lost, the pledger may require the pledgee to submit the pledge to a competent authority or require to the payment of debts in advance and take back the pledge.

Article 216 In case any cause not attributable to the fault of the pledgee may result in the destruction of the pledge or an evident decrease of the value of the pledge, and which is sufficient to damage the rights of the pledgee, the pledgee shall be entitled to request the pledger to provide corresponding security. In case the pledger refuses to do so, the pledgee may auction or sell off the pledge, and may, by concluding an agreement with the pledger, seek preferred payments for the obligee's rights in advance with the money incurred from the auction or sell-off of the pledge, or submit the said money to a competent authority.

Article 217 In case a pledgee transfers the pledge within the duration of the right of pledge without consent of the pledger, and thus causes the destroy or loss of the pledge, he shall be liable for making compensations to the pledger.

Article 218 A pledgee may waive the right of pledge. In case an obligor establishes the right of pledge by own properties, and the pledgee waives the right of pledge, other security providers will be exempted from the security liability within the scope for which the pledgee has lost the right to seek preferred payments, unless any of other security providers promises to provide the security all the same.

Article 219 In case the obligor has paid off the debts or the pledger has fulfilled the obligee's rights as secured in advance, the pledgee shall return the pledge.

In case an obligor fails to pay off its due debts or any circumstance for realizing the right of pledge as stipulated by the parties concerned occurs, the pledgee may, by concluding an agreement with the pledger, convert the pledge into money or seek preferred payments from the money incurred from the auction or sell-off of the pledge.

The pledge shall be converted into money or be sold off by referring to its market price.

Article 220 A pledger may require the pledgee to timely exercise the right of pledge upon expiration of the time limit for paying debts; in case the pledgee fails to do so, the pledger may request the people's court to auction or sell off the pledge.

In case a pledger requires the pledgee to timely exercise the right of pledge, but the pledgee is lazy to exercise such right and thus causes the damages, the pledgee shall be liable for compensations.

Article 221 After the pledge is converted into cash, auctioned or sold off, the value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

Article 222 The pledger and the pledgee may establish the right of pledge of maximum amount through negotiations.

The right of pledge of maximum amount shall be governed by the relevant provisions prescribed in this Section, and also be governed by the provisions on the right to

mortgage at maximum amount prescribed in Section 1 of Chapter 16 of this Law by analogy.

Section 1 Pledge of Rights

Article 223 The following rights which an obligor or third party has the right to dispose of may be pledged:

(1) Money orders, checks, and cashier’s checks;

(2) Securities and deposit receipts;

(3) Warehouse receipts and bills of lading;

(4) Transferable fund units and stock rights;

(5) Exclusive trademark rights, patent rights, copyrights or other property rights in intellectual property that can be transferred;

(6) Account receivables; and

(7) Other property rights that can be pledged according to any law or administrative regulation.

Article 224 As for the pledge of a money order, check, cashier’s check, securities, deposit receipt, warehouse receipt or bill of lading, the parties concerned shall conclude a written contract. The right of pledge shall be established after the title certificate of the pledge has been transferred to the pledgee. If there is no title certificate, the right of pledge shall be established after the relevant department has registered the pledge.

Article 225 If the date of redemption or delivery of the money order, check, cashier’s check, securities, deposit receipt, warehouse receipt or bill of lading before the deadline of principal obligee’s rights, the pledgee may make redemption or pick up the goods, and may, by concluding an agreement with the pledger, seek preferred payments in advance with the money redeemed or the goods picked up, or submit the said money or goods to a competent authority for keeping.

Article 226 As for the pledge of fund units or stock rights, the parties concerned shall conclude a written contract. As for the pledge of fund units or the stock rights registered in the securities depository and clearing institution, the right of pledge shall be established after the securities depository and clearing institution has registered the pledge. As for the pledge of other stock rights, the right of pledge shall be established after the administrative department for industry and commerce has registered the pledge.

After the fund units or stock rights have been pledged, they shall not be transferred, unless it is otherwise agreed to by the pledger and the pledgee upon negotiations. The pledger shall fulfill the obligee’s rights to the pledgee in advance with the money incurred from the transfer of fund units or stock rights, or submit the aforesaid money to a competent authority for keeping.

Article 227 In the case of the pledge of registered trademark rights, patent rights, copyrights or other property rights in the intellectual property, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant competent authority has registered the pledge.

After the property rights in the intellectual property have been pledged, the pledger shall not transfer the pledge or permit anyone else to use it, unless it is otherwise agreed to between the pledger and the pledgee after negotiations. The pledger shall use the money incurred from transferring the pledged intellectual property or permitting anyone else to use it to fulfill the obligee's rights in advance, or submit the aforesaid money to a competent authority for keeping.

Article 228 As for the pledge of receivables, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant credit rating institution has registered the pledge.

After the receivables have been pledged, the pledger shall not transfer the pledge, unless it is otherwise agreed on by the pledger and the pledgee upon negotiations. The pledger shall use the money incurred form the transfer of accounts receivable to fulfill the obligee's rights in advance, or submit the aforesaid money to a competent authority.

Article 229 The pledge of rights shall be governed by the provisions on the pledge of movable properties prescribed in Section 1 of this Chapter in addition to the provisions prescribed in this Section.

Chapter XVIII Lien

Article 230 In case an obligor (debtor) fails to pay its due debts, the obligee (creditor) may take the lien of the obligor's movable properties he has lawfully possessed, and be entitled to seek preferred payments from these movable properties.

The 'obligee' prescribed in the preceding Paragraph shall be the lienor (lien holder), and the 'movable properties' as occupied shall be the property under lien.

Article 231 The movable properties taken as lien by the obligee shall fall into a same legal relationship with the obligee's rights, except for the lien between the enterprises.

Article 232 No lien may be taken if any law prohibits to do so or the parties concerned stipulate not to do so.

Article 233 In case a property under lien is a divisible object, the value of the property under lien shall be equal to the amount of debts.

Article 234 A lienor shall be obliged to properly keep the property under lien, and shall be liable for compensations if the property under lien is damaged or lost due to improper keeping.

Article 235 A lienor shall be entitled to obtain the fruits of the property under lien.

The 'fruits' prescribed in the preceding paragraph shall be used for paying off the expenses for the collection of the fruits in the first place.

Article 236 A lienor shall stipulate the term for fulfilling the obligee's rights with the obligor after the property is taken as lien; and in case there is no such stipulation or such stipulations are unclear, the lienor shall give two months or more to the obligor for him (it) to fulfill the obligee's rights, except for fresh goods, perishable goods or those movable properties that are not easy to be kept. In case the obligor fails to fulfill the obligee's rights within the time limit, the lienor may, by concluding an agreement with the obligor, convert the property under lien into money, or seek preferred payments from the money incurred from the auction or sell-off the property under lien.

The property under lien shall be converted into money or sold off by referring to its market price.

Article 237 An obligor may request the lienor to exercise the lien upon expiration of the time limit for fulfilling the obligee's rights; and in case the lienor fails to do so, the obligor may request the people's court to auction or sell off the property under lien.

Article 238 After the property under lien is converted into money, auctioned or sold off, the value exceeding the obligee's rights shall belong to the obligor, and the gap shall be paid off by the obligor.

Article 239 In case the right to mortgage or the right of pledge has been established on a movable property, and this movable property is taken as lien again, the lienor shall be entitled to seek preferred payments.

Article 240 In case a lienor losses the possession of the property under lien or accepts other security separately provided by the obligor, the lien shall perish.

Part Five Possession

Chapter XIX Possession

Article 241 With respect to the possession occurred on the basis of a contractual relationship, the use, proceedings and default liability of the relevant real property or movable property shall be governed by the stipulations in the contract; and in case there is no such stipulation in the contract or the stipulations are unclear, the relevant legal provisions shall be applied.

Article 242 In case a possessor uses the real property or movable property under his (its) possession, and causes this real property or movable property to be damaged, a malicious possessor shall be liable for compensations.

Article 243 In case a real property or movable property is possessed by a possessor, the holder may request the return of original object and its fruits, but shall pay necessary expenses to the bone fide possessor for the maintenance of this real property or movable property.

Article 244 In case a real property or movable property under possession is damaged or lost, and the holder of this real property or movable property requests for compensations, the possessor shall return the insurance money, damages or indemnities obtained from

the said destruction or loss to the holder; and in case the impairment to the holder has not been sufficiently made up, a malicious possessor shall be liable for compensations.

Article 245 In case a real property or movable property under possession is encroached on, the possessor shall be entitled to demand the return of the original object (property); with respect to any act that may impair the possession, the possessor shall be entitled to require the elimination of impairment or danger; and in case any impairment is caused due to encroachment or interference, the possessor shall be entitled to ask for damages.

The claim of a possessor for returning the original object shall be exercised within one year as of the date of encroachment, otherwise, such claim shall perish.

Supplementary Provisions

Article 246 Before any law or administrative regulation prescribes the scope, organ and measures for uniform registration of real properties, a local regulation may prescribe relevant matters according to the relevant provisions in this Law.

Article 247 This Law shall come into effect as of October 1, 2007.

中华人民共和国主席令

第 六十二 号

《中华人民共和国物权法》已由中华人民共和国第十届全国人民代表大会第五次会议于2007年3月16日通过，现予公布，自2007年10月1日起施行。

中华人民共和国主席　胡锦涛

2007年3月16日

中华人民共和国物权法

（2007年3月16日第十届全国人民代表大会第五次会议通过）

目　　录

第一编　总　　则

第一章　基本原则

第一条　为了维护国家基本经济制度，维护社会主义市场经济秩序，明确物的归属，发挥物的效用，保护权利人的物权，根据宪法，制定本法。

第二条　因物的归属和利用而产生的民事关系，适用本法。

本法所称物，包括不动产和动产。法律规定权利作为物权客体的，依照其规定。

本法所称物权，是指权利人依法对特定的物享有直接支配和排他的权利，包括所有权、用益物权和担保物权。

第三条　国家在社会主义初级阶段，坚持公有制为主体、多种所有制经济共同发展的基本经济制度。

国家巩固和发展公有制经济，鼓励、支持和引导非公有制经济的发展。

国家实行社会主义市场经济，保障一切市场主体的平等法律地位和发展权利。

第四条　国家、集体、私人的物权和其他权利人的物权受法律保护，任何单位和个人不得侵犯。

第五条　物权的种类和内容，由法律规定。

第六条　不动产物权的设立、变更、转让和消灭，应当依照法律规定登记。动产物权的设立和转让，应当依照法律规定交付。

第七条 物权的取得和行使，应当遵守法律，尊重社会公德，不得损害公共利益和他人合法权益。

第八条 其他相关法律对物权另有特别规定的，依照其规定。

第二章 物权的设立、变更、转让和消灭

第一节 不动产登记

第九条 不动产物权的设立、变更、转让和消灭，经依法登记，发生效力；未经登记，不发生效力，但法律另有规定的除外。

依法属于国家所有的自然资源，所有权可以不登记。

第十条 不动产登记，由不动产所在地的登记机构办理。

国家对不动产实行统一登记制度。统一登记的范围、登记机构和登记办法，由法律、行政法规规定。

第十一条 当事人申请登记，应当根据不同登记事项提供权属证明和不动产界址、面积等必要材料。

第十二条 登记机构应当履行下列职责：

（一）查验申请人提供的权属证明和其他必要材料；

（二）就有关登记事项询问申请人；

（三）如实、及时登记有关事项；

（四）法律、行政法规规定的其他职责。

申请登记的不动产的有关情况需要进一步证明的，登记机构可以要求申请人补充材料，必要时可以实地查看。

第十三条 登记机构不得有下列行为：

（一）要求对不动产进行评估；

（二）以年检等名义进行重复登记；

（三）超出登记职责范围的其他行为。

第十四条 不动产物权的设立、变更、转让和消灭，依照法律规定应当登记的，自记载于不动产登记簿时发生效力。

第十五条 当事人之间订立有关设立、变更、转让和消灭不动产物权的合同，除法律另有规定或者合同另有约定外，自合同成立时生效；未办理物权登记的，不影响合同效力。

第十六条 不动产登记簿是物权归属和内容的根据。不动产登记簿由登记机构管理。

第十七条 不动产权属证书是权利人享有该不动产物权的证明。不动产权属证书记载的事项，应当与不动产登记簿一致；记载不一致的，除有证据证明不动产登记簿确有错误外，以不动产登记簿为准。

第十八条 权利人、利害关系人可以申请查询、复制登记资料，登记机构应当提供。

第十九条 权利人、利害关系人认为不动产登记簿记载的事项错误的，可以申请更正登记。不动产登记簿记载的权利人书面同意更正或者有证据证明登记确有错误的，登记机构应当予以更正。

不动产登记簿记载的权利人不同意更正的，利害关系人可以申请异议登记。登记机构予以异议登记的，申请人在异议登记之日起十五日内不起诉，异议登记失效。异议登记不当，造成权利人损害的，权利人可以向申请人请求损害赔偿。

第二十条　当事人签订买卖房屋或者其他不动产物权的协议，为保障将来实现物权，按照约定可以向登记机构申请预告登记。预告登记后，未经预告登记的权利人同意，处分该不动产的，不发生物权效力。

预告登记后，债权消灭或者自能够进行不动产登记之日起三个月内未申请登记的，预告登记失效。

第二十一条　当事人提供虚假材料申请登记，给他人造成损害的，应当承担赔偿责任。

因登记错误，给他人造成损害的，登记机构应当承担赔偿责任。登记机构赔偿后，可以向造成登记错误的人追偿。

第二十二条　不动产登记费按件收取，不得按照不动产的面积、体积或者价款的比例收取。具体收费标准由国务院有关部门会同价格主管部门规定。

第二节　动产交付

第二十三条　动产物权的设立和转让，自交付时发生效力，但法律另有规定的除外。

第二十四条　船舶、航空器和机动车等物权的设立、变更、转让和消灭，未经登记，不得对抗善意第三人。

第二十五条　动产物权设立和转让前，权利人已经依法占有该动产的，物权自法律行为生效时发生效力。

第二十六条　动产物权设立和转让前，第三人依法占有该动产的，负有交付义务的人可以通过转让请求第三人返还原物的权利代替交付。

第二十七条　动产物权转让时，双方又约定由出让人继续占有该动产的，物权自该约定生效时发生效力。

第三节　其他规定

第二十八条　因人民法院、仲裁委员会的法律文书或者人民政府的征收决定等，导致物权设立、变更、转让或者消灭的，自法律文书或者人民政府的征收决定等生效时发生效力。

第二十九条　因继承或者受遗赠取得物权的，自继承或者受遗赠开始时发生效力。

第三十条　因合法建造、拆除房屋等事实行为设立或者消灭物权的，自事实行为成就时发生效力。

第三十一条　依照本法第二十八条至第三十条规定享有不动产物权的，处分该物权时，依照法律规定需要办理登记的，未经登记，不发生物权效力。

第三章　物权的保护

第三十二条　物权受到侵害的，权利人可以通过和解、调解、仲裁、诉讼等途径解决。

第三十三条　因物权的归属、内容发生争议的，利害关系人可以请求确认权利。

第三十四条　无权占有不动产或者动产的，权利人可以请求返还原物。

第三十五条　妨害物权或者可能妨害物权的，权利人可以请求排除妨害或者消除危险。

第三十六条　造成不动产或者动产毁损的，权利人可以请求修理、重作、更换或者恢复原状。

第三十七条　侵害物权，造成权利人损害的，权利人可以请求损害赔偿，也可以请求承担其他民事责任。

第三十八条　本章规定的物权保护方式，可以单独适用，也可以根据权利被侵害的情形合并适用。

侵害物权，除承担民事责任外，违反行政管理规定的，依法承担行政责任；构成犯罪的，依法追究刑事责任。

第二编　所有权

第四章　一般规定

第三十九条　所有权人对自己的不动产或者动产，依法享有占有、使用、收益和处分的权利。

第四十条　所有权人有权在自己的不动产或者动产上设立用益物权和担保物权。用益物权人、担保物权人行使权利，不得损害所有权人的权益。

第四十一条　法律规定专属于国家所有的不动产和动产，任何单位和个人不能取得所有权。

第四十二条　为了公共利益的需要，依照法律规定的权限和程序可以征收集体所有的土地和单位、个人的房屋及其他不动产。

征收集体所有的土地，应当依法足额支付土地补偿费、安置补助费、地上附着物和青苗的补偿费等费用，安排被征地农民的社会保障费用，保障被征地农民的生活，维护被征地农民的合法权益。

征收单位、个人的房屋及其他不动产，应当依法给予拆迁补偿，维护被征收人的合法权益；征收个人住宅的，还应当保障被征收人的居住条件。

任何单位和个人不得贪污、挪用、私分、截留、拖欠征收补偿费等费用。

第四十三条 国家对耕地实行特殊保护，严格限制农用地转为建设用地，控制建设用地总量。不得违反法律规定的权限和程序征收集体所有的土地。

第四十四条 因抢险、救灾等紧急需要，依照法律规定的权限和程序可以征用单位、个人的不动产或者动产。被征用的不动产或者动产使用后，应当返还被征用人。单位、个人的不动产或者动产被征用或者征用后毁损、灭失的，应当给予补偿。

第五章 国家所有权和集体所有权、私人所有权

第四十五条 法律规定属于国家所有的财产，属于国家所有即全民所有。

国有财产由国务院代表国家行使所有权；法律另有规定的，依照其规定。

第四十六条 矿藏、水流、海域属于国家所有。

第四十七条 城市的土地，属于国家所有。法律规定属于国家所有的农村和城市郊区的土地，属于国家所有。

第四十八条 森林、山岭、草原、荒地、滩涂等自然资源，属于国家所有，但法律规定属于集体所有的除外。

第四十九条 法律规定属于国家所有的野生动植物资源，属于国家所有。

第五十条 无线电频谱资源属于国家所有。

第五十一条 法律规定属于国家所有的文物，属于国家所有。

第五十二条 国防资产属于国家所有。

铁路、公路、电力设施、电信设施和油气管道等基础设施，依照法律规定为国家所有的，属于国家所有。

第五十三条 国家机关对其直接支配的不动产和动产，享有占有、使用以及依照法律和国务院的有关规定处分的权利。

第五十四条 国家举办的事业单位对其直接支配的不动产和动产，享有占有、使用以及依照法律和国务院的有关规定收益、处分的权利。

第五十五条 国家出资的企业，由国务院、地方人民政府依照法律、行政法规规定分别代表国家履行出资人职责，享有出资人权益。

第五十六条 国家所有的财产受法律保护，禁止任何单位和个人侵占、哄抢、私分、截留、破坏。

第五十七条 履行国有财产管理、监督职责的机构及其工作人员，应当依法加强对国有财产的管理、监督，促进国有财产保值增值，防止国有财产损失；滥用职权，玩忽职守，造成国有财产损失的，应当依法承担法律责任。

违反国有财产管理规定，在企业改制、合并分立、关联交易等过程中，低价转让、合谋私分、擅自担保或者以其他方式造成国有财产损失的，应当依法承担法律责任。

第五十八条 集体所有的不动产和动产包括：

（一）法律规定属于集体所有的土地和森林、山岭、草原、荒地、滩涂；

（二）集体所有的建筑物、生产设施、农田水利设施；

（三）集体所有的教育、科学、文化、卫生、体育等设施；

（四）集体所有的其他不动产和动产。

第五十九条 农民集体所有的不动产和动产，属于本集体成员集体所有。

下列事项应当依照法定程序经本集体成员决定：

（一）土地承包方案以及将土地发包给本集体以外的单位或者个人承包；

（二）个别土地承包经营权人之间承包地的调整；

（三）土地补偿费等费用的使用、分配办法；

（四）集体出资的企业的所有权变动等事项；

（五）法律规定的其他事项。

第六十条 对于集体所有的土地和森林、山岭、草原、荒地、滩涂等，依照下列规定行使所有权：

（一）属于村农民集体所有的，由村集体经济组织或者村民委员会代表集体行使所有权；

（二）分别属于村内两个以上农民集体所有的，由村内各该集体经济组织或者村民小组代表集体行使所有权；

（三）属于乡镇农民集体所有的，由乡镇集体经济组织代表集体行使所有权。

第六十一条 城镇集体所有的不动产和动产，依照法律、行政法规的规定由本集体享有占有、使用、收益和处分的权利。

第六十二条 集体经济组织或者村民委员会、村民小组应当依照法律、行政法规以及章程、村规民约向本集体成员公布集体财产的状况。

第六十三条 集体所有的财产受法律保护，禁止任何单位和个人侵占、哄抢、私分、破坏。

集体经济组织、村民委员会或者其负责人作出的决定侵害集体成员合法权益的，受侵害的集体成员可以请求人民法院予以撤销。

第六十四条　私人对其合法的收入、房屋、生活用品、生产工具、原材料等不动产和动产享有所有权。

第六十五条　私人合法的储蓄、投资及其收益受法律保护。

国家依照法律规定保护私人的继承权及其他合法权益。

第六十六条　私人的合法财产受法律保护，禁止任何单位和个人侵占、哄抢、破坏。

第六十七条　国家、集体和私人依法可以出资设立有限责任公司、股份有限公司或者其他企业。国家、集体和私人所有的不动产或者动产，投到企业的，由出资人按照约定或者出资比例享有资产收益、重大决策以及选择经营管理者等权利并履行义务。

第六十八条　企业法人对其不动产和动产依照法律、行政法规以及章程享有占有、使用、收益和处分的权利。

企业法人以外的法人，对其不动产和动产的权利，适用有关法律、行政法规以及章程的规定。

第六十九条　社会团体依法所有的不动产和动产，受法律保护。

第六章　业主的建筑物区分所有权

第七十条　业主对建筑物内的住宅、经营性用房等专有部分享有所有权，对专有部分以外的共有部分享有共有和共同管理的权利。

第七十一条　业主对其建筑物专有部分享有占有、使用、收益和处分的权利。业主行使权利不得危及建筑物的安全，不得损害其他业主的合法权益。

第七十二条　业主对建筑物专有部分以外的共有部分，享有权利，承担

义务；不得以放弃权利不履行义务。

业主转让建筑物内的住宅、经营性用房，其对共有部分享有的共有和共同管理的权利一并转让。

第七十三条 建筑区划内的道路，属于业主共有，但属于城镇公共道路的除外。建筑区划内的绿地，属于业主共有，但属于城镇公共绿地或者明示属于个人的除外。建筑区划内的其他公共场所、公用设施和物业服务用房，属于业主共有。

第七十四条 建筑区划内，规划用于停放汽车的车位、车库应当首先满足业主的需要。

建筑区划内，规划用于停放汽车的车位、车库的归属，由当事人通过出售、附赠或者出租等方式约定。

占用业主共有的道路或者其他场地用于停放汽车的车位，属于业主共有。

第七十五条 业主可以设立业主大会，选举业主委员会。

地方人民政府有关部门应当对设立业主大会和选举业主委员会给予指导和协助。

第七十六条 下列事项由业主共同决定：

（一）制定和修改业主大会议事规则；

（二）制定和修改建筑物及其附属设施的管理规约；

（三）选举业主委员会或者更换业主委员会成员；

（四）选聘和解聘物业服务企业或者其他管理人；

（五）筹集和使用建筑物及其附属设施的维修资金；

（六）改建、重建建筑物及其附属设施；

（七）有关共有和共同管理权利的其他重大事项。

决定前款第五项和第六项规定的事项，应当经专有部分占建筑物总面积三分之二以上的业主且占总人数三分之二以上的业主同意。决定前款其他事项，应当经专有部分占建筑物总面积过半数的业主且占总人数过半数的业主同意。

第七十七条 业主不得违反法律、法规以及管理规约，将住宅改变为经营性用房。业主将住宅改变为经营性用房的，除遵守法律、法规以及管理规约外，应当经有利害关系的业主同意。

第七十八条 业主大会或者业主委员会的决定，对业主具有约束力。

业主大会或者业主委员会作出的决定侵害业主合法权益的，受侵害的业主可以请求人民法院予以撤销。

第七十九条 建筑物及其附属设施的维修资金，属于业主共有。经业主共同决定，可以用于电梯、水箱等共有部分的维修。维修资金的筹集、使用情况应当公布。

第八十条 建筑物及其附属设施的费用分摊、收益分配等事项，有约定的，按照约定；没有约定或者约定不明确的，按照业主专有部分占建筑物总面积的比例确定。

第八十一条 业主可以自行管理建筑物及其附属设施，也可以委托物业服务企业或者其他管理人管理。

对建设单位聘请的物业服务企业或者其他管理人，业主有权依法更换。

第八十二条 物业服务企业或者其他管理人根据业主的委托管理建筑区划内的建筑物及其附属设施，并接受业主的监督。

第八十三条 业主应当遵守法律、法规以及管理规约。

业主大会和业主委员会，对任意弃置垃圾、排放污染物或者噪声、违反规定饲养动物、违章搭建、侵占通道、拒付物业费等损害他人合法权益的行为，有权依照法律、法规以及管理规约，要求行为人停止侵害、消除危险、排除妨害、赔偿损失。业主对侵害自己合法权益的行为，可以依法向人民法院提起诉讼。

第七章 相邻关系

第八十四条 不动产的相邻权利人应当按照有利生产、方便生活、团结互助、公平合理的原则，正确处理相邻关系。

第八十五条 法律、法规对处理相邻关系有规定的，依照其规定；法律、法规没有规定的，可以按照当地习惯。

第八十六条 不动产权利人应当为相邻权利人用水、排水提供必要的便利。

对自然流水的利用，应当在不动产的相邻权利人之间合理分配。对自然流水的排放，应当尊重自然流向。

第八十七条 不动产权利人对相邻权利人因通行等必须利用其土地的，应当提供必要的便利。

第八十八条 不动产权利人因建造、修缮建筑物以及铺设电线、电缆、水管、暖气和燃气管线等必须利用相邻土地、建筑物的，该土地、建筑物的权利人应当提供必要的便利。

第八十九条 建造建筑物，不得违反国家有关工程建设标准，妨碍相邻

建筑物的通风、采光和日照。

第九十条 不动产权利人不得违反国家规定弃置固体废物，排放大气污染物、水污染物、噪声、光、电磁波辐射等有害物质。

第九十一条 不动产权利人挖掘土地、建造建筑物、铺设管线以及安装设备等，不得危及相邻不动产的安全。

第九十二条 不动产权利人因用水、排水、通行、铺设管线等利用相邻不动产的，应当尽量避免对相邻的不动产权利人造成损害；造成损害的，应当给予赔偿。

第八章 共 有

第九十三条 不动产或者动产可以由两个以上单位、个人共有。共有包括按份共有和共同共有。

第九十四条 按份共有人对共有的不动产或者动产按照其份额享有所有权。

第九十五条 共同共有人对共有的不动产或者动产共同享有所有权。

第九十六条 共有人按照约定管理共有的不动产或者动产；没有约定或者约定不明确的，各共有人都有管理的权利和义务。

第九十七条 处分共有的不动产或者动产以及对共有的不动产或者动产作重大修缮的，应当经占份额三分之二以上的按份共有人或者全体共同共有人同意，但共有人之间另有约定的除外。

第九十八条 对共有物的管理费用以及其他负担，有约定的，按照约定；没有约定或者约定不明确的，按份共有人按照其份额负担，共同共有人共同

负担。

第九十九条 共有人约定不得分割共有的不动产或者动产，以维持共有关系的，应当按照约定，但共有人有重大理由需要分割的，可以请求分割；没有约定或者约定不明确的，按份共有人可以随时请求分割，共同共有人在共有的基础丧失或者有重大理由需要分割时可以请求分割。因分割对其他共有人造成损害的，应当给予赔偿。

第一百条 共有人可以协商确定分割方式。达不成协议，共有的不动产或者动产可以分割并且不会因分割减损价值的，应当对实物予以分割；难以分割或者因分割会减损价值的，应当对折价或者拍卖、变卖取得的价款予以分割。

共有人分割所得的不动产或者动产有瑕疵的，其他共有人应当分担损失。

第一百零一条 按份共有人可以转让其享有的共有的不动产或者动产份额。其他共有人在同等条件下享有优先购买的权利。

第一百零二条 因共有的不动产或者动产产生的债权债务，在对外关系上，共有人享有连带债权、承担连带债务，但法律另有规定或者第三人知道共有人不具有连带债权债务关系的除外；在共有人内部关系上，除共有人另有约定外，按份共有人按照份额享有债权、承担债务，共同共有人共同享有债权、承担债务。偿还债务超过自己应当承担份额的按份共有人，有权向其他共有人追偿。

第一百零三条 共有人对共有的不动产或者动产没有约定为按份共有或者共同共有，或者约定不明确的，除共有人具有家庭关系等外，视为按份共有。

第一百零四条 按份共有人对共有的不动产或者动产享有的份额，没有约定或者约定不明确的，按照出资额确定；不能确定出资额的，视为等额享有。

第一百零五条 两个以上单位、个人共同享有用益物权、担保物权的，参照本章规定。

第九章 所有权取得的特别规定

第一百零六条 无处分权人将不动产或者动产转让给受让人的，所有权人有权追回；除法律另有规定外，符合下列情形的，受让人取得该不动产或者动产的所有权：

（一）受让人受让该不动产或者动产时是善意的；

（二）以合理的价格转让；

（三）转让的不动产或者动产依照法律规定应当登记的已经登记，不需要登记的已经交付给受让人。

受让人依照前款规定取得不动产或者动产的所有权的，原所有权人有权向无处分权人请求赔偿损失。

当事人善意取得其他物权的，参照前两款规定。

第一百零七条 所有权人或者其他权利人有权追回遗失物。该遗失物通过转让被他人占有的，权利人有权向无处分权人请求损害赔偿，或者自知道或者应当知道受让人之日起二年内向受让人请求返还原物，但受让人通过拍卖或者向具有经营资格的经营者购得该遗失物的，权利人请求返还原物时应当支付受让人所付的费用。权利人向受让人支付所付费用后，有权向无处分

权人追偿。

第一百零八条 善意受让人取得动产后，该动产上的原有权利消灭，但善意受让人在受让时知道或者应当知道该权利的除外。

第一百零九条 拾得遗失物，应当返还权利人。拾得人应当及时通知权利人领取，或者送交公安等有关部门。

第一百一十条 有关部门收到遗失物，知道权利人的，应当及时通知其领取；不知道的，应当及时发布招领公告。

第一百一十一条 拾得人在遗失物送交有关部门前，有关部门在遗失物被领取前，应当妥善保管遗失物。因故意或者重大过失致使遗失物毁损、灭失的，应当承担民事责任。

第一百一十二条 权利人领取遗失物时，应当向拾得人或者有关部门支付保管遗失物等支出的必要费用。

权利人悬赏寻找遗失物的，领取遗失物时应当按照承诺履行义务。

拾得人侵占遗失物的，无权请求保管遗失物等支出的费用，也无权请求权利人按照承诺履行义务。

第一百一十三条 遗失物自发布招领公告之日起六个月内无人认领的，归国家所有。

第一百一十四条 拾得漂流物、发现埋藏物或者隐藏物的，参照拾得遗失物的有关规定。文物保护法等法律另有规定的，依照其规定。

第一百一十五条 主物转让的，从物随主物转让，但当事人另有约定的除外。

第一百一十六条 天然孳息，由所有权人取得；既有所有权人又有用益

物权人的，由用益物权人取得。当事人另有约定的，按照约定。

法定孳息，当事人有约定的，按照约定取得；没有约定或者约定不明确的，按照交易习惯取得。

第三编　用益物权

第十章　一般规定

第一百一十七条　用益物权人对他人所有的不动产或者动产，依法享有占有、使用和收益的权利。

第一百一十八条　国家所有或者国家所有由集体使用以及法律规定属于集体所有的自然资源，单位、个人依法可以占有、使用和收益。

第一百一十九条　国家实行自然资源有偿使用制度，但法律另有规定的除外。

第一百二十条　用益物权人行使权利，应当遵守法律有关保护和合理开发利用资源的规定。所有权人不得干涉用益物权人行使权利。

第一百二十一条　因不动产或者动产被征收、征用致使用益物权消灭或者影响用益物权行使的，用益物权人有权依照本法第四十二条、第四十四条的规定获得相应补偿。

第一百二十二条　依法取得的海域使用权受法律保护。

第一百二十三条　依法取得的探矿权、采矿权、取水权和使用水域、滩涂从事养殖、捕捞的权利受法律保护。

第十一章　土地承包经营权

第一百二十四条 农村集体经济组织实行家庭承包经营为基础、统分结合的双层经营体制。

农民集体所有和国家所有由农民集体使用的耕地、林地、草地以及其他用于农业的土地，依法实行土地承包经营制度。

第一百二十五条 土地承包经营权人依法对其承包经营的耕地、林地、草地等享有占有、使用和收益的权利，有权从事种植业、林业、畜牧业等农业生产。

第一百二十六条 耕地的承包期为三十年。草地的承包期为三十年至五十年。林地的承包期为三十年至七十年；特殊林木的林地承包期，经国务院林业行政主管部门批准可以延长。

前款规定的承包期届满，由土地承包经营权人按照国家有关规定继续承包。

第一百二十七条 土地承包经营权自土地承包经营权合同生效时设立。

县级以上地方人民政府应当向土地承包经营权人发放土地承包经营权证、林权证、草原使用权证，并登记造册，确认土地承包经营权。

第一百二十八条 土地承包经营权人依照农村土地承包法的规定，有权将土地承包经营权采取转包、互换、转让等方式流转。流转的期限不得超过承包期的剩余期限。未经依法批准，不得将承包地用于非农建设。

第一百二十九条 土地承包经营权人将土地承包经营权互换、转让，当事人要求登记的，应当向县级以上地方人民政府申请土地承包经营权变更登记；未经登记，不得对抗善意第三人。

第一百三十条 承包期内发包人不得调整承包地。

因自然灾害严重毁损承包地等特殊情形，需要适当调整承包的耕地和草地的，应当依照农村土地承包法等法律规定办理。

第一百三十一条 承包期内发包人不得收回承包地。农村土地承包法等法律另有规定的，依照其规定。

第一百三十二条 承包地被征收的，土地承包经营权人有权依照本法第四十二条第二款的规定获得相应补偿。

第一百三十三条 通过招标、拍卖、公开协商等方式承包荒地等农村土地，依照农村土地承包法等法律和国务院的有关规定，其土地承包经营权可以转让、入股、抵押或者以其他方式流转。

第一百三十四条 国家所有的农用地实行承包经营的，参照本法的有关规定。

第十二章 建设用地使用权

第一百三十五条 建设用地使用权人依法对国家所有的土地享有占有、使用和收益的权利，有权利用该土地建造建筑物、构筑物及其附属设施。

第一百三十六条 建设用地使用权可以在土地的地表、地上或者地下分别设立。新设立的建设用地使用权，不得损害已设立的用益物权。

第一百三十七条 设立建设用地使用权，可以采取出让或者划拨等方式。

工业、商业、旅游、娱乐和商品住宅等经营性用地以及同一土地有两个以上意向用地者的，应当采取招标、拍卖等公开竞价的方式出让。

严格限制以划拨方式设立建设用地使用权。采取划拨方式的，应当遵守法律、行政法规关于土地用途的规定。

第一百三十八条 采取招标、拍卖、协议等出让方式设立建设用地使用权的，当事人应当采取书面形式订立建设用地使用权出让合同。

建设用地使用权出让合同一般包括下列条款：

（一）当事人的名称和住所；

（二）土地界址、面积等；

（三）建筑物、构筑物及其附属设施占用的空间；

（四）土地用途；

（五）使用期限；

（六）出让金等费用及其支付方式；

（七）解决争议的方法。

第一百三十九条 设立建设用地使用权的，应当向登记机构申请建设用地使用权登记。建设用地使用权自登记时设立。登记机构应当向建设用地使用权人发放建设用地使用权证书。

第一百四十条 建设用地使用权人应当合理利用土地，不得改变土地用途；需要改变土地用途的，应当依法经有关行政主管部门批准。

第一百四十一条 建设用地使用权人应当依照法律规定以及合同约定支付出让金等费用。

第一百四十二条 建设用地使用权人建造的建筑物、构筑物及其附属设施的所有权属于建设用地使用权人，但有相反证据证明的除外。

第一百四十三条 建设用地使用权人有权将建设用地使用权转让、互换、出资、赠与或者抵押，但法律另有规定的除外。

第一百四十四条 建设用地使用权转让、互换、出资、赠与或者抵押的，

当事人应当采取书面形式订立相应的合同。使用期限由当事人约定，但不得超过建设用地使用权的剩余期限。

第一百四十五条 建设用地使用权转让、互换、出资或者赠与的，应当向登记机构申请变更登记。

第一百四十六条 建设用地使用权转让、互换、出资或者赠与的，附着于该土地上的建筑物、构筑物及其附属设施一并处分。

第一百四十七条 建筑物、构筑物及其附属设施转让、互换、出资或者赠与的，该建筑物、构筑物及其附属设施占用范围内的建设用地使用权一并处分。

第一百四十八条 建设用地使用权期间届满前，因公共利益需要提前收回该土地的，应当依照本法第四十二条的规定对该土地上的房屋及其他不动产给予补偿，并退还相应的出让金。

第一百四十九条 住宅建设用地使用权期间届满的，自动续期。

非住宅建设用地使用权期间届满后的续期，依照法律规定办理。该土地上的房屋及其他不动产的归属，有约定的，按照约定；没有约定或者约定不明确的，依照法律、行政法规的规定办理。

第一百五十条 建设用地使用权消灭的，出让人应当及时办理注销登记。登记机构应当收回建设用地使用权证书。

第一百五十一条 集体所有的土地作为建设用地的，应当依照土地管理法等法律规定办理。

第十三章 宅基地使用权

第一百五十二条 宅基地使用权人依法对集体所有的土地享有占有和使用的权利，有权依法利用该土地建造住宅及其附属设施。

第一百五十三条 宅基地使用权的取得、行使和转让，适用土地管理法等法律和国家有关规定。

第一百五十四条 宅基地因自然灾害等原因灭失的，宅基地使用权消灭。对失去宅基地的村民，应当重新分配宅基地。

第一百五十五条 已经登记的宅基地使用权转让或者消灭的，应当及时办理变更登记或者注销登记。

第十四章 地役权

第一百五十六条 地役权人有权按照合同约定，利用他人的不动产，以提高自己的不动产的效益。

前款所称他人的不动产为供役地，自己的不动产为需役地。

第一百五十七条 设立地役权，当事人应当采取书面形式订立地役权合同。

地役权合同一般包括下列条款：

（一）当事人的姓名或者名称和住所；

（二）供役地和需役地的位置；

（三）利用目的和方法；

（四）利用期限；

（五）费用及其支付方式；

（六）解决争议的方法。

第一百五十八条 地役权自地役权合同生效时设立。当事人要求登记的，可以向登记机构申请地役权登记；未经登记，不得对抗善意第三人。

第一百五十九条 供役地权利人应当按照合同约定，允许地役权人利用其土地，不得妨害地役权人行使权利。

第一百六十条 地役权人应当按照合同约定的利用目的和方法利用供役地，尽量减少对供役地权利人物权的限制。

第一百六十一条 地役权的期限由当事人约定，但不得超过土地承包经营权、建设用地使用权等用益物权的剩余期限。

第一百六十二条 土地所有权人享有地役权或者负担地役权的，设立土地承包经营权、宅基地使用权时，该土地承包经营权人、宅基地使用权人继续享有或者负担已设立的地役权。

第一百六十三条 土地上已设立土地承包经营权、建设用地使用权、宅基地使用权等权利的，未经用益物权人同意，土地所有权人不得设立地役权。

第一百六十四条 地役权不得单独转让。土地承包经营权、建设用地使用权等转让的，地役权一并转让，但合同另有约定的除外。

第一百六十五条 地役权不得单独抵押。土地承包经营权、建设用地使用权等抵押的，在实现抵押权时，地役权一并转让。

第一百六十六条 需役地以及需役地上的土地承包经营权、建设用地使用权部分转让时，转让部分涉及地役权的，受让人同时享有地役权。

第一百六十七条 供役地以及供役地上的土地承包经营权、建设用地使用权部分转让时，转让部分涉及地役权的，地役权对受让人具有约束力。

第一百六十八条 地役权人有下列情形之一的，供役地权利人有权解除

地役权合同，地役权消灭：

（一）违反法律规定或者合同约定，滥用地役权；

（二）有偿利用供役地，约定的付款期间届满后在合理期限内经两次催告未支付费用。

第一百六十九条 已经登记的地役权变更、转让或者消灭的，应当及时办理变更登记或者注销登记。

第四编 担保物权

第十五章 一般规定

第一百七十条 担保物权人在债务人不履行到期债务或者发生当事人约定的实现担保物权的情形，依法享有就担保财产优先受偿的权利，但法律另有规定的除外。

第一百七十一条 债权人在借贷、买卖等民事活动中，为保障实现其债权，需要担保的，可以依照本法和其他法律的规定设立担保物权。

第三人为债务人向债权人提供担保的，可以要求债务人提供反担保。反担保适用本法和其他法律的规定。

第一百七十二条 设立担保物权，应当依照本法和其他法律的规定订立担保合同。担保合同是主债权债务合同的从合同。主债权债务合同无效，担保合同无效，但法律另有规定的除外。

担保合同被确认无效后，债务人、担保人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

第一百七十三条 担保物权的担保范围包括主债权及其利息、违约金、

损害赔偿金、保管担保财产和实现担保物权的费用。当事人另有约定的，按照约定。

第一百七十四条 担保期间，担保财产毁损、灭失或者被征收等，担保物权人可以就获得的保险金、赔偿金或者补偿金等优先受偿。被担保债权的履行期未届满的，也可以提存该保险金、赔偿金或者补偿金等。

第一百七十五条 第三人提供担保，未经其书面同意，债权人允许债务人转移全部或者部分债务的，担保人不再承担相应的担保责任。

第一百七十六条 被担保的债权既有物的担保又有人的担保的，债务人不履行到期债务或者发生当事人约定的实现担保物权的情形，债权人应当按照约定实现债权；没有约定或者约定不明确，债务人自己提供物的担保的，债权人应当先就该物的担保实现债权；第三人提供物的担保的，债权人可以就物的担保实现债权，也可以要求保证人承担保证责任。提供担保的第三人承担担保责任后，有权向债务人追偿。

第一百七十七条 有下列情形之一的，担保物权消灭：

（一）主债权消灭；

（二）担保物权实现；

（三）债权人放弃担保物权；

（四）法律规定担保物权消灭的其他情形。

第一百七十八条 担保法与本法的规定不一致的，适用本法。

第十六章 抵押权

第一节 一般抵押权

第一百七十九条 为担保债务的履行，债务人或者第三人不转移财产的占有，将该财产抵押给债权人的，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就该财产优先受偿。

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押财产。

第一百八十条 债务人或者第三人有权处分的下列财产可以抵押：

（一）建筑物和其他土地附着物；

（二）建设用地使用权；

（三）以招标、拍卖、公开协商等方式取得的荒地等土地承包经营权；

（四）生产设备、原材料、半成品、产品；

（五）正在建造的建筑物、船舶、航空器；

（六）交通运输工具；

（七）法律、行政法规未禁止抵押的其他财产。

抵押人可以将前款所列财产一并抵押。

第一百八十一条 经当事人书面协议，企业、个体工商户、农业生产经营者可以将现有的以及将有的生产设备、原材料、半成品、产品抵押，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就实现抵押权时的动产优先受偿。

第一百八十二条 以建筑物抵押的，该建筑物占用范围内的建设用地使用权一并抵押。以建设用地使用权抵押的，该土地上的建筑物一并抵押。

抵押人未依照前款规定一并抵押的，未抵押的财产视为一并抵押。

第一百八十三条 乡镇、村企业的建设用地使用权不得单独抵押。以乡

镇、村企业的厂房等建筑物抵押的，其占用范围内的建设用地使用权一并抵押。

第一百八十四条 下列财产不得抵押：

（一）土地所有权；

（二）耕地、宅基地、自留地、自留山等集体所有的土地使用权，但法律规定可以抵押的除外；

（三）学校、幼儿园、医院等以公益为目的的事业单位、社会团体的教育设施、医疗卫生设施和其他社会公益设施；

（四）所有权、使用权不明或者有争议的财产；

（五）依法被查封、扣押、监管的财产；

（六）法律、行政法规规定不得抵押的其他财产。

第一百八十五条 设立抵押权，当事人应当采取书面形式订立抵押合同。抵押合同一般包括下列条款：

（一）被担保债权的种类和数额；

（二）债务人履行债务的期限；

（三）抵押财产的名称、数量、质量、状况、所在地、所有权归属或者使用权归属；

（四）担保的范围。

第一百八十六条 抵押权人在债务履行期届满前，不得与抵押人约定债务人不履行到期债务时抵押财产归债权人所有。

第一百八十七条 以本法第一百八十条第一款第一项至第三项规定的财产或者第五项规定的正在建造的建筑物抵押的，应当办理抵押登记。抵押权

自登记时设立。

第一百八十八条 以本法第一百八十条第一款第四项、第六项规定的财产或者第五项规定的正在建造的船舶、航空器抵押的，抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。

第一百八十九条 企业、个体工商户、农业生产经营者以本法第一百八十一条规定的动产抵押的，应当向抵押人住所地的工商行政管理部门办理登记。抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。

依照本法第一百八十一条规定抵押的，不得对抗正常经营活动中已支付合理价款并取得抵押财产的买受人。

第一百九十条 订立抵押合同前抵押财产已出租的，原租赁关系不受该抵押权的影响。抵押权设立后抵押财产出租的，该租赁关系不得对抗已登记的抵押权。

第一百九十一条 抵押期间，抵押人经抵押权人同意转让抵押财产的，应当将转让所得的价款向抵押权人提前清偿债务或者提存。转让的价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

抵押期间，抵押人未经抵押权人同意，不得转让抵押财产，但受让人代为清偿债务消灭抵押权的除外。

第一百九十二条 抵押权不得与债权分离而单独转让或者作为其他债权的担保。债权转让的，担保该债权的抵押权一并转让，但法律另有规定或者当事人另有约定的除外。

第一百九十三条 抵押人的行为足以使抵押财产价值减少的，抵押权人有权要求抵押人停止其行为。抵押财产价值减少的，抵押权人有权要求恢复

抵押财产的价值，或者提供与减少的价值相应的担保。抵押人不恢复抵押财产的价值也不提供担保的，抵押权人有权要求债务人提前清偿债务。

第一百九十四条 抵押权人可以放弃抵押权或者抵押权的顺位。抵押权人与抵押人可以协议变更抵押权顺位以及被担保的债权数额等内容，但抵押权的变更，未经其他抵押权人书面同意，不得对其他抵押权人产生不利影响。

债务人以自己的财产设定抵押，抵押权人放弃该抵押权、抵押权顺位或者变更抵押权的，其他担保人在抵押权人丧失优先受偿权益的范围内免除担保责任，但其他担保人承诺仍然提供担保的除外。

第一百九十五条 债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，抵押权人可以与抵押人协议以抵押财产折价或者以拍卖、变卖该抵押财产所得的价款优先受偿。协议损害其他债权人利益的，其他债权人可以在知道或者应当知道撤销事由之日起一年内请求人民法院撤销该协议。

抵押权人与抵押人未就抵押权实现方式达成协议的，抵押权人可以请求人民法院拍卖、变卖抵押财产。

抵押财产折价或者变卖的，应当参照市场价格。

第一百九十六条 依照本法第一百八十一条规定设定抵押的，抵押财产自下列情形之一发生时确定：

（一）债务履行期届满，债权未实现；

（二）抵押人被宣告破产或者被撤销；

（三）当事人约定的实现抵押权的情形；

（四）严重影响债权实现的其他情形。

第一百九十七条 债务人不履行到期债务或者发生当事人约定的实现抵

押权的情形，致使抵押财产被人民法院依法扣押的，自扣押之日起抵押权人有权收取该抵押财产的天然孳息或者法定孳息，但抵押权人未通知应当清偿法定孳息的义务人的除外。

前款规定的孳息应当先充抵收取孳息的费用。

第一百九十八条 抵押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

第一百九十九条 同一财产向两个以上债权人抵押的，拍卖、变卖抵押财产所得的价款依照下列规定清偿：

（一）抵押权已登记的，按照登记的先后顺序清偿；顺序相同的，按照债权比例清偿；

（二）抵押权已登记的先于未登记的受偿；

（三）抵押权未登记的，按照债权比例清偿。

第二百条 建设用地使用权抵押后，该土地上新增的建筑物不属于抵押财产。该建设用地使用权实现抵押权时，应当将该土地上新增的建筑物与建设用地使用权一并处分，但新增建筑物所得的价款，抵押权人无权优先受偿。

第二百零一条 依照本法第一百八十条第一款第三项规定的土地承包经营权抵押的，或者依照本法第一百八十三条规定以乡镇、村企业的厂房等建筑物占用范围内的建设用地使用权一并抵押的，实现抵押权后，未经法定程序，不得改变土地所有权的性质和土地用途。

第二百零二条 抵押权人应当在主债权诉讼时效期间行使抵押权；未行使的，人民法院不予保护。

第二节 最高额抵押权

第二百零三条 为担保债务的履行，债务人或者第三人对一定期间内将要连续发生的债权提供担保财产的，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，抵押权人有权在最高债权额限度内就该担保财产优先受偿。

最高额抵押权设立前已经存在的债权，经当事人同意，可以转入最高额抵押担保的债权范围。

第二百零四条 最高额抵押担保的债权确定前，部分债权转让的，最高额抵押权不得转让，但当事人另有约定的除外。

第二百零五条 最高额抵押担保的债权确定前，抵押权人与抵押人可以通过协议变更债权确定的期间、债权范围以及最高债权额，但变更的内容不得对其他抵押权人产生不利影响。

第二百零六条 有下列情形之一的，抵押权人的债权确定：

（一）约定的债权确定期间届满；

（二）没有约定债权确定期间或者约定不明确，抵押权人或者抵押人自最高额抵押权设立之日起满二年后请求确定债权；

（三）新的债权不可能发生；

（四）抵押财产被查封、扣押；

（五）债务人、抵押人被宣告破产或者被撤销；

（六）法律规定债权确定的其他情形。

第二百零七条 最高额抵押权除适用本节规定外，适用本章第一节一般抵押权的规定。

第十七章 质　　权

第一节　动产质权

第二百零八条　为担保债务的履行，债务人或者第三人将其动产出质给债权人占有的，债务人不履行到期债务或者发生当事人约定的实现质权的情形，债权人有权就该动产优先受偿。

前款规定的债务人或者第三人为出质人，债权人为质权人，交付的动产为质押财产。

第二百零九条　法律、行政法规禁止转让的动产不得出质。

第二百一十条　设立质权，当事人应当采取书面形式订立质权合同。

质权合同一般包括下列条款：

（一）被担保债权的种类和数额；

（二）债务人履行债务的期限；

（三）质押财产的名称、数量、质量、状况；

（四）担保的范围；

（五）质押财产交付的时间。

第二百一十一条　质权人在债务履行期届满前，不得与出质人约定债务人不履行到期债务时质押财产归债权人所有。

第二百一十二条　质权自出质人交付质押财产时设立。

第二百一十三条　质权人有权收取质押财产的孳息，但合同另有约定的除外。

前款规定的孳息应当先充抵收取孳息的费用。

第二百一十四条　质权人在质权存续期间，未经出质人同意，擅自使用、处分质押财产，给出质人造成损害的，应当承担赔偿责任。

第二百一十五条 质权人负有妥善保管质押财产的义务；因保管不善致使质押财产毁损、灭失的，应当承担赔偿责任。

质权人的行为可能使质押财产毁损、灭失的，出质人可以要求质权人将质押财产提存，或者要求提前清偿债务并返还质押财产。

第二百一十六条 因不能归责于质权人的事由可能使质押财产毁损或者价值明显减少，足以危害质权人权利的，质权人有权要求出质人提供相应的担保；出质人不提供的，质权人可以拍卖、变卖质押财产，并与出质人通过协议将拍卖、变卖所得的价款提前清偿债务或者提存。

第二百一十七条 质权人在质权存续期间，未经出质人同意转质，造成质押财产毁损、灭失的，应当向出质人承担赔偿责任。

第二百一十八条 质权人可以放弃质权。债务人以自己的财产出质，质权人放弃该质权的，其他担保人在质权人丧失优先受偿权益的范围内免除担保责任，但其他担保人承诺仍然提供担保的除外。

第二百一十九条 债务人履行债务或者出质人提前清偿所担保的债权的，质权人应当返还质押财产。

债务人不履行到期债务或者发生当事人约定的实现质权的情形，质权人可以与出质人协议以质押财产折价，也可以就拍卖、变卖质押财产所得的价款优先受偿。

质押财产折价或者变卖的，应当参照市场价格。

第二百二十条 出质人可以请求质权人在债务履行期届满后及时行使质权；质权人不行使的，出质人可以请求人民法院拍卖、变卖质押财产。

出质人请求质权人及时行使质权，因质权人怠于行使权利造成损害的，

由质权人承担赔偿责任。

第二百二十一条 质押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

第二百二十二条 出质人与质权人可以协议设立最高额质权。

最高额质权除适用本节有关规定外，参照本法第十六章第二节最高额抵押权的规定。

第二节 权利质权

第二百二十三条 债务人或者第三人有权处分的下列权利可以出质：

（一）汇票、支票、本票；

（二）债券、存款单；

（三）仓单、提单；

（四）可以转让的基金份额、股权；

（五）可以转让的注册商标专用权、专利权、著作权等知识产权中的财产权；

（六）应收账款；

（七）法律、行政法规规定可以出质的其他财产权利。

第二百二十四条 以汇票、支票、本票、债券、存款单、仓单、提单出质的，当事人应当订立书面合同。质权自权利凭证交付质权人时设立；没有权利凭证的，质权自有关部门办理出质登记时设立。

第二百二十五条 汇票、支票、本票、债券、存款单、仓单、提单的兑现日期或者提货日期先于主债权到期的，质权人可以兑现或者提货，并与出

质人协议将兑现的价款或者提取的货物提前清偿债务或者提存。

第二百二十六条 以基金份额、股权出质的，当事人应当订立书面合同。以基金份额、证券登记结算机构登记的股权出质的，质权自证券登记结算机构办理出质登记时设立；以其他股权出质的，质权自工商行政管理部门办理出质登记时设立。

基金份额、股权出质后，不得转让，但经出质人与质权人协商同意的除外。出质人转让基金份额、股权所得的价款，应当向质权人提前清偿债务或者提存。

第二百二十七条 以注册商标专用权、专利权、著作权等知识产权中的财产权出质的，当事人应当订立书面合同。质权自有关主管部门办理出质登记时设立。

知识产权中的财产权出质后，出质人不得转让或者许可他人使用，但经出质人与质权人协商同意的除外。出质人转让或者许可他人使用出质的知识产权中的财产权所得的价款，应当向质权人提前清偿债务或者提存。

第二百二十八条 以应收账款出质的，当事人应当订立书面合同。质权自信贷征信机构办理出质登记时设立。

应收账款出质后，不得转让，但经出质人与质权人协商同意的除外。出质人转让应收账款所得的价款，应当向质权人提前清偿债务或者提存。

第二百二十九条 权利质权除适用本节规定外，适用本章第一节动产质权的规定。

第十八章 留置权

第二百三十条 债务人不履行到期债务，债权人可以留置已经合法占有的债务人的动产，并有权就该动产优先受偿。

前款规定的债权人为留置权人，占有的动产为留置财产。

第二百三十一条 债权人留置的动产，应当与债权属于同一法律关系，但企业之间留置的除外。

第二百三十二条 法律规定或者当事人约定不得留置的动产，不得留置。

第二百三十三条 留置财产为可分物的，留置财产的价值应当相当于债务的金额。

第二百三十四条 留置权人负有妥善保管留置财产的义务；因保管不善致使留置财产毁损、灭失的，应当承担赔偿责任。

第二百三十五条 留置权人有权收取留置财产的孳息。

前款规定的孳息应当先充抵收取孳息的费用。

第二百三十六条 留置权人与债务人应当约定留置财产后的债务履行期间；没有约定或者约定不明确的，留置权人应当给债务人两个月以上履行债务的期间，但鲜活易腐等不易保管的动产除外。债务人逾期未履行的，留置权人可以与债务人协议以留置财产折价，也可以就拍卖、变卖留置财产所得的价款优先受偿。

留置财产折价或者变卖的，应当参照市场价格。

第二百三十七条 债务人可以请求留置权人在债务履行期届满后行使留置权；留置权人不行使的，债务人可以请求人民法院拍卖、变卖留置财产。

第二百三十八条 留置财产折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债务人清偿。

第二百三十九条 同一动产上已设立抵押权或者质权，该动产又被留置的，留置权人优先受偿。

第二百四十条 留置权人对留置财产丧失占有或者留置权人接受债务人另行提供担保的，留置权消灭。

第五编 占 有

第十九章 占 有

第二百四十一条 基于合同关系等产生的占有，有关不动产或者动产的使用、收益、违约责任等，按照合同约定；合同没有约定或者约定不明确的，依照有关法律规定。

第二百四十二条 占有人因使用占有的不动产或者动产，致使该不动产或者动产受到损害的，恶意占有人应当承担赔偿责任。

第二百四十三条 不动产或者动产被占有人占有的，权利人可以请求返还原物及其孳息，但应当支付善意占有人因维护该不动产或者动产支出的必要费用。

第二百四十四条 占有的不动产或者动产毁损、灭失，该不动产或者动产的权利人请求赔偿的，占有人应当将因毁损、灭失取得的保险金、赔偿金或者补偿金等返还给权利人；权利人的损害未得到足够弥补的，恶意占有人还应当赔偿损失。

第二百四十五条 占有的不动产或者动产被侵占的，占有人有权请求返还原物；对妨害占有的行为，占有人有权请求排除妨害或者消除危险；因侵占或者妨害造成损害的，占有人有权请求损害赔偿。

占有人返还原物的请求权，自侵占发生之日起一年内未行使的，该请求权消灭。

附　　则

第二百四十六条　法律、行政法规对不动产统一登记的范围、登记机构和登记办法作出规定前，地方性法规可以依照本法有关规定作出规定。

第二百四十七条　本法自 2007 年 10 月 1 日起施行。

Order of the President of the People's Republic of China

(No. 54)

The Law of the People's Republic of China on Enterprise Bankruptcy, which was adopted at the 23rd meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on August 27, 2006, is hereby promulgated and shall come into force as of June 1, 2007.

President of the People's Republic of China Hu Jingtao

August 27, 2006

Law of the People's Republic of China on Enterprise Bankruptcy

(Adopted at the 23rd meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on August 27, 2006)

Table of Contents

Section II Conversion and Distribution

Section III Conclusion of the Procedures for Bankruptcy

Chapter XI Legal Liabilities

Chapter XII Supplementary Provisions

Chapter I General Provisions

Article 1 The present Law is formulated for purposes of regulating the procedures for enterprise bankruptcy, fairly settling the credits and debts, safeguarding the legitimate rights and interests of creditors and debtors, and maintaining the market order of the socialist economy.

Article 2 Where an enterprise legal person fails to clear off its debt as due, and if its assets are not enough to pay off all the debts or if it is obviously incapable of clearing off its debts, its liabilities shall be liquidated according to the provisions of the present Law.

Where an enterprise legal person is under the aforesaid circumstance or if it is obviously likely that it is unable to pay off its debts, it may be subject to revival according to the provisions of the present Law.

Article 3 A bankruptcy case shall be governed by the people’s court where the relevant debtor is domiciled.

Article 4 The procedures for hearing a bankruptcy case shall, in the absence of relevant provisions in the present Law, be governed by the relevant provisions of the Civil Litigation Law.

Article 5 The procedures for bankruptcy which have been initiated according to the present Law shall have binding force over the assets of the relevant debtor beyond the territory of the People’s Republic of China.

Where any legally effective judgment or ruling made by a foreign court involves any debtor’s assets within the territory of the People’s Republic of China and if the debtor applies with or requests the people’s court to confirm or enforce it, the people’s court shall, according to the relevant international treaties that China has concluded or acceded to or according to the principles of reciprocity, conduct an examination thereon and, when believing that it does not violate the basic principles of the laws of the People’s Republic of China, does not damage the sovereignty, safety or social public interests of the state, does not damage the legitimate rights and interests of the debtors within the territory of the People’s Republic of China, grant confirmation and permission for enforcement.

Article 6 In the hearing of a bankruptcy case, the people’s court shall guarantee the legitimate rights and interests of the employers in the insolvent enterprise and subject its mangers to legal liabilities.

Chapter II Application and Acceptance

Section I Application

Article 7 Where a debtor is under the circumstance as prescribed by Article 2 of the present Law, it may file an application with the people's court for revival, compromise or bankrupt liquidation.

Where the debtor fails to pay off its due debts, it may file an application with the people's court for revival or bankrupt liquidation.

Where an enterprise legal person has been dissolved without any liquidation or without completing the liquidation and if the relevant assets are not enough to clear off the debts, the person liable for liquidation shall apply with the people's court for bankrupt liquidation.

Article 8 To apply for bankruptcy, an Application for Bankruptcy and the related evidences shall be submitted to the people's court:

The following matters shall be indicated in the Application for Bankruptcy:

(1)Basic introduction to the applicant and respondent;

(2)Purpose of application;

(3)Facts and ground of the application; and

(4)Any other matter that the people's court deems necessary to be indicated.

Where a debtor files an application, it shall submit the statements on financial status, a checklist of debts, a checklist of the credit right, the relevant financial statements, a reserve plan for employee arrangement as well as the payment documents of wages and social insurance premiums.

Article 9 Before the people's court accepts an application for bankruptcy, the applicant may request for withdrawing its application.

Section II Acceptance

Article 10 Where a creditor files an application for bankruptcy, the people's court shall, within 5 days as of the day when the application is received, inform the related debtor. Where a debtor has any different opinion to an application, it shall put forward its demurral to the people's court within 7 days as of the day when a notice is received from the people's court. The people's court shall decide whether or not to accept the case within 10 days as of expiration of the term for filing a demurral.

Except for the circumstance as prescribed in the preceding paragraph, the people's court shall decide whether or not to accept an application for bankruptcy within 15 days as of the day when the application is received.

Under any special circumstance where the term for accepting a case as prescribed in the preceding two paragraphs is required to be extended, it may be extended for another 15 days upon the approval of the people's court at a higher level.

Article 11 Where the people's court accepts an application for bankruptcy, it shall serve it on the relevant applicant within 5 days as of the day when the decision is made.

Where a creditor files an application, the people's court shall serve it on the relevant debtor within 5 days as of the day when a decision is made. The relevant debtor shall, within 15 days as of the day when a decision is served, submit to the people's court its statements on financial status, a checklist of debts, a checklist of the creditor's right, the relevant financial statements as well as the payment documents of wages and social insurance premiums.

Article 12 Where the people's court decides not to accept an application for bankruptcy, it shall serve its decision on the applicant within 5 days as of the day when the decision is made. Where an applicant is dissatisfied with the decision, it may, within 10 days as of the day when the decision is served, file an appeal with the people's court at the next higher level.

During the period from when the people's court accepts an application for bankruptcy to when a bankruptcy is announced, where it is found that the relevant debtor is not under the circumstance as prescribed by Article 2 of the present Law, its application may be rejected. Where an applicant is dissatisfied with a decision, it may, within 10 days as of the day when the decision is served on, file an appeal with the people's court at the next higher level.

Article 13 Where the people's court accepts an application for bankruptcy, it shall designate a bankruptcy administrator in the meanwhile.

Article 14 The people's court shall, within 25 days as of the day when it decides to accept an application for bankruptcy, notify the relevant creditors and announce its decision as well.

The following matters shall be indicated in the aforesaid notice and announcement:

(1)Name of the applicant and respondent;

(2)The time when the people's court accepts the application for bankruptcy;

(3)Term, address and points of attention in the declaration of the creditor's right;

(4)Name of the bankruptcy administrator as well as the address where it undertakes its business;

(5)Requirements that the debtors or asset holders of the debtor shall clear off the debts or deliver the assets;

(6)The time and place where the first creditors' meeting is held; and

(7)Any other matter that the people's court deems necessary to be notified and announced.

Article 15 During the period from the day when the people's court decides to accept an application for bankruptcy to the day when the procedures for bankruptcy are concluded, the relevant personnel of the debtor shall bear the following obligations:

(1)Properly preserving the assets, seals and account bookss as well as documents under its occupation and management;

(2)Working according to the requirements of the people’s court and bankruptcy administrator and answering their inquiries in a faithful manner;

(3)Attending the creditor’s meeting and answering the creditors’ inquiries;

(4)Not leaving its domicile in the absence of permission of the people’s court; and

(5)Not assuming any post of director, supervisor or senior manager in any other enterprise.

The term "relevant personnel" as mentioned in the preceding paragraph are the legal representatives of an enterprise, which may, upon approval of the people’s court, include the financial managers and other operators of the enterprise.

Article 16 After the people’s court accepts an application for bankruptcy, the repayment of debts made by a debtor to individual creditors shall be invalidated.

Article 17 After the people’s court accepts an application for bankruptcy, the debtors or asset holders of the debtor shall pay off the debts or deliver the relevant assets to the bankruptcy administrator.

Where any debtor or asset holder purposely violates the provisions of the preceding paragraph by paying off its debts or delivering the assets to the debtor and thus incurs losses to the relevant creditors, its obligation of paying off the debts or delivering the assets shall not be exempted.

Article 18 After the people’s court accepts an application for bankruptcy, the relevant bankruptcy administrator shall decide to rescind or continue to perform a contract that has been established before acceptance yet has not been fully performed by both parties concerned and notify the opposite party concerned of its decision. Where the bankruptcy administrator fails to inform the opposite party concerned within 2 months as of the day of acceptance or to make any reply to an urge made by the opposite party concerned, it shall be deemed as rescission of the contract.

Where the bankruptcy administrator decides to continue a contract, the opposite party concerned shall continue the performance of the contract yet has the right to request the administrator to provide guaranty. Where the administrator does not provide any guaranty, it shall be deemed as rescission of the contract.

Article 19 After the people’s court accepts an application for bankruptcy, the relevant measures for preserving the debtor’s assets shall be released and the procedures for ution shall be suspended.

Article 20 After the people’s court accepts an application for bankruptcy, any civil action or arbitration involving the relevant debtor that is in the process of trial shall be suspended. The action or arbitration can be resumed after a bankruptcy administrator takes over the debtor’s assets.

Article 21 After the people’s court accepts an application for bankruptcy, the relevant debtor’s civil action shall be filed with the very people’s court only.

Chapter III Bankruptcy Administrator

Article 22 A bankruptcy administrator shall be designated by the people’s court.

Where it is decided at the creditors’ meeting that a bankruptcy administrator fails to perform or fulfill its duties and functions in a lawful and impartially manner, the creditors may apply with the people’s court for alteration.

The measures for designating bankruptcy administrators and deciding the remunerations of bankruptcy administrators shall be made by the Supreme People’s Court.

Article 23 A bankruptcy administrator shall, according to the provisions of the present Law, perform its functions and duties, report its work to the people’s court and accept the supervision of the creditors’ meeting and the creditors’ committee.

A bankruptcy administrator shall attend the creditors’ meeting, report the performance of its duties and functions and answer the relevant inquiries.

Article 24 The post of bankruptcy administrator may be assumed by a liquidation group comprised of the relevant departments and organs or by such social intermediary agencies as a law firm, an accounting firm, a bankruptcy liquidation firm that have been established according to law.

The people’s court may, according to the real status of a debtor and upon consulting the opinions of the relevant social intermediary agencies, designate the relevant personnel who have a good command of specialties and have obtained the practice qualification for bankruptcy administrators.

Under any of the following circumstances, one shall not assume the post of bankruptcy administrator:

(1)Having been given a criminal punishment for deliberate crime;

(2)Having been deprive of the relevant practice qualification certificate of related specialty;

(3)Having any interest relation to the case; or

(4)Being under any other circumstance where the people’s court deems it improper to act as a bankruptcy administrator.

Where an individual assumes the post of bankruptcy administrator, he shall purchase the responsibility insurance.

Article 25 A bankruptcy administrator shall perform the following functions and duties:

(1)Taking over the assets, seals as well as the account books and documents of the debtor;

(2)Investigating into the financial status of the debtor and formulating the financial statements;

(3)Deciding the internal management of the debtor;

(4)Deciding the daily expenditure and other necessary expenditures of the debtor;

(5)Deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business;

(6)Managing and disposing of the debtors' assets;

(7)Participating actions, arbitrations or any other legal procedures on behalf of the debtor;

(8)Proposing to hold creditors' meetings; and

(9)Performing any other functions and duties that the people's court believes it should perform.

In the case of any separate provision on the bankruptcy administrator's functions and duties in the present Law, it shall prevail.

Article 26 Before the first creditors' meeting is held, if a bankruptcy administrator decides to continue or suspend the business operation of a debtor or has any of the acts as prescribed by the provisions of Article 69 of the present Law, it shall be subject to the approval of the people's court.

Article 27 A bankruptcy administrator shall be diligent and dutiful, and shall faithfully perform its duties as well.

Article 28 A bankruptcy administrator may, upon approval of the people's court, employ the relevant work staff as necessary.

The remunerations of a bankruptcy administrator shall be decided by the people's court. In case the creditors' meeting has any different opinion to the remuneration of a bankruptcy administrator, it has the right to file demurral with the people's court.

Article 29 A bankruptcy administrator shall not quit its post without any justifiable reason. The resignation of a bankruptcy administrator shall be subject to the approval of the people's court.

Chapter IV A Debtor's Assets

Article 30 A debtor's assets refer to all the assets that belong to a debtor when an application for bankruptcy is accepted, as well as the assets as obtained by the debtor during the period from when an application for bankruptcy is accepted to when the procedures for bankruptcy are concluded.

Article 31 Within 1 year before the people's court accepts an application for bankruptcy, a bankruptcy administrator has the right to plead the court to revoke any act relating to the debtor's assets:

(1)Transferring the assets free of charge;

(2)Trading at an obviously unreasonable price;

(3)Providing asset guaranty to those debts without any asset guaranty;

(4)Paying off the undue debts in advance; or

(5)Giving up the creditor's right.

Article 32 Within 6 months before the people's court accepts an application for bankruptcy, if a debtor is under any circumstance as prescribed by paragraph 1, Article 2 of the present Law where it makes repayment to individual creditors, its bankruptcy administrator has the right to plead the people's court to revoke it, except where individual repayment may do good to the debtors' assets.

Article 33 Any of the following acts involving the debtor's assets shall be deemed as invalid:

(1)Concealing or transferring the assets in order to avoid the debts; or

(2)Fabricating any debt or acknowledging any unreal debt.

Article 34 As to any asset of a debtor as obtained under any circumstance as prescribed by Article 31, 32 or 33 of the present Law, the relevant bankruptcy administrator has the right to recover it.

Article 35 After the people's court accepts an application for bankruptcy, where any capital contributor of a debtor fails to fulfill its obligation of capital contribution, the relevant bankruptcy administrator shall require the capital contributor to make full contribution of the capital it has subscribed to, irrespective of the term for capital contribution.

Article 36 Where any director, supervisor or senior manger takes advantage of his power to obtain any abnormal income from his enterprise or embezzles any enterprise asset, the relevant bankruptcy administrator shall recover it.

Article 37 After the people's court accepts an application for bankruptcy, the bankruptcy administrator may take back its pledge or lien by means of paying off its debts or providing a guaranty that can be accepted by the relevant creditor.

As to the payment of debts or substitutive guaranty, where the value of the pledge or lien is lower than that of the amount of the creditor's right, a bottom line shall be set on the contemporary market value of the pledge or lien.

Article 38 After the people's court accepts an application for bankruptcy, where what the relevant debtor occupies are not its own assets, the owner of the assets may take the assets back through the bankruptcy administrator, unless it is separately prescribed by the present Law.

Article 39 After the people's court accepts an application for bankruptcy, if the seller has sent the subject matter to the debtor of the buyer and the latter has not yet received the goods and paid off the price, the seller may take back the goods on the way. However, the relevant bankruptcy administrator may pay off the price and request the seller to deliver the subject matter.

Article 40 Where a creditor is indebted with its debtor before an application for bankruptcy is accepted, it may claim for offset against the bankruptcy administrator. However, under any of the following circumstances, the relevant debts shall not be offset:

(1)Where a debtor of the debtor obtains the creditor's right of any other party against the debtor after the application for bankruptcy is accepted;

(2)Where a creditor learns that a debtor is incapable of paying off its due debts is in the process of applying for bankruptcy and if it is indebted with the debtor; with the exception, however, that the creditor assumes its liabilities according to the provisions of law or for any reason as incurred 1 year before the application for bankruptcy is filed;

(3)Where a debtor of the debtor learns that the debtor is incapable of paying off its debtd or is in the process of applying for bankruptcy, and therefore obtains the creditor's right from the debtor, except where the debtor's debtor obtains the creditor's right according to law or for any reason as incurred 1 year before the application for bankruptcy.

Chapter V Bankrupt Expenses and Community Liabilities

Article 41 The following expenses that occur after the people's court accepts an application for bankruptcy are bankrupt expenses:

(1)Costs of action on bankruptcy cases;

(2)Expenses for the administration, conversion and distribution of the debtor's assets; and

(3)Expenses for the bankruptcy administrator's performance of its functions and duties, for its remunerations and expenses for the recruitment of employees.

Article 42 The following liabilities that occur after the people's court accepts an application for bankruptcy are community liabilities:

(1)The liabilities as generated from a contract, the performance of which both parties concerned fail to fulfill upon the request of performance raised by the bankruptcy administrator or debtor against the opposite party;

(2)The liabilities as generated from the negotiorum gestio of the debtor's assets;

(3)The liabilities as generated from the ill-gotten gains;

(4)The labor cost for the continuance of business operations, social insurance premiums as well as other liabilities as incurred therefrom;

(5)The liabilities as generated from the damage that occurs in the performance of functions and duties by a bankruptcy administrator or other relevant personnel; and

(6)The liabilities as generated from any damage due to the debtor's assets.

Article 43 The bankrupt expenses and community liabilities shall be cleared off through the debtor's assets at any time.

Where the debtor's assets are not enough to clear off all the bankrupt expenses and community liabilities, the bankrupt expenses shall be paid off in priority.

Where the debtor’s assets are not enough to clear off the bankrupt expenses or community liabilities, the liquidation shall be conducted pro rata.

Where the debtor’s assets are not enough to clear off the bankrupt expenses, the relevant bankruptcy administrator shall apply with the people’s court for concluding the procedures for bankruptcy. The people’s court shall, with 15 days as of the day when an application is received, decide whether to conclude the procedures for bankruptcy and announce its decision as well.

Chapter VI Declaration of the Creditor’s Right

Article 44 A creditor that enjoys the creditor’s right against its debtor when the people’s court accepts an application for bankruptcy may exercise its right according to the procedures as prescribed herein.

Article 45 The people’s court shall, after accepting an application for bankruptcy, decide the term for a creditor to its creditor’s right. The term for declaration of the creditor’s right shall be calculated as of the day when the people’s court announces its acceptance of an application for bankruptcy within a range of no less than 30 days and no more than 3 months.

Article 46 Any undue creditor’s right shall be deemed as due when the relevant application for bankruptcy is accepted.

The calculation of the interest of any creditor’s right shall be stopped when the relevant application for bankruptcy is accepted.

Article 47 As to any creditor’s right attached with certain conditions or time limit or any creditor’s right that fails to be settled through an action or arbitration, the relevant creditor may it with the people’s court.

Article 48 A debtor shall, within the term for declaration of the creditor’s right as decided by the people’s court, its creditor’s right.

The wages, subsidies for medical treatment and disability, comfort and compensatory funds as defaulted by a debtor, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred into the employees’ personal accounts as well as the compensation for the employees as prescribed by the relevant laws and administrative regulations are not required to be d, for which the relevant bankruptcy administrator shall produce a corresponding checklist upon investigation and make an announcement as well. Where any employee has any different opinion to the relevant checklist, he may request the bankruptcy administrator to make correction. Where a bankruptcy administrator fails to correct it, the relevant employee may file an action with the people’s court.

Article 49 Where a creditor s its creditor’s right, it shall make a written statement on the amount of the creditor’s right and on whether there is any property guaranty and submit the relevant evidences as well. In the case of any joint and several creditor’s right, an explanation shall be given.

Article 50 The joint and several creditors may choose one from among them to their creditor's right or may jointly the creditor's right together.

Article 51 Where the guarantor of a debtor or any other related joint and several debtor has cleared off the liabilities on behalf of the debtor, it may its creditor's right on the basis of its right to recourse against the debtor.

Where the guarantor of a debtor or any other related joint and several debtor has not yet paid off the debts on behalf of the debtor, it may claim its creditor's right on the basis of its future right to recourse against the debtor, unless the creditors have d all the creditor's right against the relevant bankruptcy administrator.

Article 52 Where several joint and several debtors are ruled to be governed by the procedures as prescribed in the present Law, the creditors thereof have the right to their creditors' rights as a whole in each bankruptcy case respectively.

Article 53 Where a bankruptcy administrator or creditor rescinds a contract according to the provisions of the present Law, the opposite party concerned may its creditor's right on the basis of the right to compensation for the damage as generated therefrom.

Article 54 Where a debtor is the entrusting party of an entrustment contract which has been ruled to be governed by the procedures as prescribed in the present Law and if the entrusted party has no knowledge of the aforesaid facts and continues to deal with the entrusted business, the entrusted party may its creditor's right on the basis of the right of claim as generated therefrom.

Article 55 Where a debtor is a producer of instruments which have been ruled to be governed by the procedures as prescribed in the present Law and if the relevant payer of the instruments continues its payment or acceptance, the payer may its creditor's right on the basis of the right of claim as generated therefrom.

Article 56 Within the term for declaration of the creditor's right as decided by the people's court, where a creditor fails to claim its creditor's right, it may make up its declaration before the final distribution of insolvent assets. However, if the relevant distribution has already been conducted, no more declaration may be made. The expenses for examining and confirming the supplementary declaration of the creditor's right shall be borne by the party who has applied for supplementary declaration.

Where a creditor fails to its creditor's right according to the provisions of the present Law, it may not exercise the relevant right according to the procedures prescribed in the present Law.

Article 57 Where a bankruptcy administrator receives the declaration materials of the creditor's right, it shall register them into a book, conduct an examination on the d creditor's right and formulate a form of the creditor's right as well.

The form of the creditor's right and the declaration materials of the creditor's right shall be kept by the relevant bankruptcy administrator for reference by the interested parties.

Article 58 A form of the creditor's right as formulated according to the provisions of Article 57 of the present Law shall be submitted to the first creditors' meeting for examination.

Where the relevant debtors and creditors have no different opinion to the form of the creditors' right, it shall be ruled by the people's court.

Where any debtor or creditor has any different opinion to a form of the creditors' right, it may file an action with the people's court that has accepted the application for bankruptcy.

Chapter VII The Creditors' Meeting

Section I General Provisions

Article 59 A creditor declaring its creditor's right according to law is a member of the creditors' meeting that has the right to attend the creditors' meeting and enjoy the right to vote.

Any creditor whose creditor's right has not yet been decided is not entitled to exercise any right to vote unless the people's court can temporarily decide the amount of the creditor's right for the sake of exercising the right to vote.

Any creditor that has the right to guaranty on the particular assets of its debtor and that has not given up the priority right to be repaid may not enjoy the right to vote for any matter as prescribed in Item (7) or (10), paragraph 1 of Article 61 of the present Law.

A creditor may entrust its agent to attend the creditors' meeting and exercise the right to vote. Where an agent attends the creditors' meeting, it shall submit a Power of Attorney with the people's court or the chairman of the creditors' meeting.

A creditors' meeting shall be attended by the employees of the relevant debtor as well as the representatives of its work union, who may therefore air their views on the relevant issues.

Article 60 There shall be a chairman of the creditors' meeting, who shall be designated by the people's court from among the creditors with the right to vote.

The chairman of the creditors' meeting shall preside over the creditors' meeting.

Article 61 The creditors' meeting shall exercise the following functions and duties:

(1)Examining the creditor's right;

(2)Applying with the people's court for alteration of the bankruptcy administrators and examining the expenses and remunerations of the bankruptcy administrator;

(3)Supervising the bankruptcy administrator;

(4)Selecting and altering the members of the creditors' meeting;

(5)Deciding to continue or stop the debtor's business operations;

(6)Deciding whether to adopt a revival plan;

(7)Deciding whether to adopt a compromise;

(8)Deciding whether to adopt a management plan of the debtor's assets;

(9)Deciding whether to adopt a conversion plan of the insolvent assets;

(10)Deciding whether to adopt a distribution plan of the insolvent assets; and

(11)Exercising any other functions and powers that the people's court deems the creditors' meeting shall exercise.

Meeting minutes shall be made for the resolutions made for the matters deliberated at the creditors' meeting.

Article 62 The first creditors' meeting shall be held by the people's court within 15 days as of expiration of the term for declaration of creditor's right.

Subsequent creditors' meetings may be held when the people's court deems it necessary or where the bankruptcy administrator, the creditors' committee, or any creditor representing 1/4 or more of the total creditor's right proposes the chairman of the creditors' meeting to hold one.

Article 63 Where a creditors' meeting is held, the relevant bankruptcy administrator shall notify the already-known creditors 15 days before.

Article 64 A resolution of the creditors' meeting may be adopted only upon the consent of 1/2 or more of the creditors that attend the meeting and have the right to vote, representing 1/2 or more of the aggregate amount of the creditors' right free from property guaranty, unless it is separately prescribed by this Law.

Where any creditor believes that any resolution of the creditors' meeting has violated any law or damaged its interest, it may, within 15 days as of the day when the creditors' meeting makes a resolution, plead the people's court to revoke the resolution and order the creditors' meeting to re-make a resolution according to law.

A resolution as adopted at the creditors' meeting shall be binding on all creditors.

Article 65 Any matter as prescribed in items (8) and (9), paragraph 1, Article 61 of the present Law that has not been adopted at the creditors' meeting shall be ruled by the people's court.

Any matter as prescribed in item (10), paragraph 1, Article 61 of the present Law that has not been adopted after a second voting at the creditors' meeting shall be ruled by the people's court.

As to the ruling as prescribed in the preceding paragraph, the people's court may announce it at the creditors' meeting or separately notify the relevant creditors.

Article 66 Where a creditor is dissatisfied with any ruling made by the people's court according to paragraph 1, Article 65 of the present Law, or where a creditor representing 1/2 or more of the aggregate creditor's right free from property guaranty is dissatisfied with any ruling made by the people's court according to paragraph 2, Article 65 of the present Law, it may apply with the very people's court for review within 15 days as of the day when

the ruling is announced or when the relevant notice is received. The ution of the ruling shall not be stopped in the duration of review.

Section II The Creditors' Committee

Article 67 The creditors' meeting may decide to establish the creditors' committee, which shall comprise of the creditor representatives as selected at the creditors' meeting as well as a employee representative of the relevant debtor or a representative of the work union. The members of the creditors' committee shall be no more than 9 persons.

The members of the creditors' committee shall be confirmed by the people's court in written form.

Article 68 The creditors' committee shall perform the following functions and duties:

(1)Supervising the management and disposal of the debtor's assets;

(2)Supervising the distribution of the insolvent assets;

(3)Proposing to hold a creditors' meeting; and

(4)Performing the other functions and duties as entrusted at the creditors' meeting.

Where the creditors' committee performs its functions and duties, it has the right to require the relevant bankruptcy administrator and debtor to give an explanation on any matter within the scope of its functions and duties or provide the relevant documents.

Where the relevant personnel of a bankruptcy administrator or debtor refuse to accept the supervision in violation of the provisions of the present Law, the creditors' committee has the right to plead the court to make a decision on supervision, and the latter shall make a decision thereon within 5 days.

Article 69 Where a bankruptcy administrator conducts any of the following acts, it shall report it to the creditors' committee in a timely manner.

(1)Transfer of the right and interests of such realties as land and houses;

(2)Transfer of such property rights as the right to mine exploitation, mining right and intellectual property right;

(3)Transfer of all the inventory or business operation;

(4)Loans;

(5)Setting of property guaranty;

(6)Transfer of the creditors' right and securities;

(7)Performance of any contract that has not been fully performed by the debtor and the opposite party concerned;

(8)Waiver of the right;

(9)Withdrawal of the pledge; and

(10)Any other property disposal that has an important impact on the creditor’s interest.

In the case of no such creditors’ committee, a bankruptcy administrator shall, when implementing the aforesaid provisions, report it to the people’s court in a timely manner.

Chapter VIII Revival

Section I Application for and Period of Revival

Article 70 A debtor or creditor may, according to the provisions of the present Law, apply directly with the people’s court for revival against the debtor.

Where any creditor applies for bankrupt liquidation against its debtor, after the people’s court accepts the application for bankruptcy and before the debtor is announced bankrupt, the debtor or its capital contributor whose capital contribution makes up 1/10 or more of the debtor’s registered capital may apply with the people’s court for revival.

Article 71 Where the people’s court deems, upon examination, that an application for revival complies with the provisions of the present Law, it shall order the debtor to be revived and announce its decision as well.

Article 72 The period of revival lasts from the day when the people’s court rules that a debtor shall conduct revival to the day when the procedures for revival are terminated.

Article 73 In the duration of revival, a debtor may, upon filing an application and obtaining an approval from the people’s court, manage its assets and business operation under the supervision of its bankruptcy administrator.

Under the circumstance as prescribed in the preceding paragraph, a bankruptcy administrator that has taken over the assets and business operation shall deliver the assets and business operation to the debtor according to the provisions of the present Law, and the bankruptcy administrator’s functions and duties as prescribed herein shall be exercised by the debtor.

Article 74 A bankruptcy administrator that takes charge of assets and business operations may employ the business managers of the debtor to take care of the business operations.

Article 75 In the duration of revival, the right to guaranty on the particular assets of a debtor shall be suspended. However, in the case of possible damage or significant depreciation of value, which may injure the guarantor’s right, the guarantor may apply with the people’s court for recovering the right to guaranty.

In the period of revival, a debtor or bankruptcy administrator that borrows money for business carry-on may set a guaranty on the loan.

Article 76 Where a debtor legally occupies any other’s property and if the owner of the property right requests to take back the property, it shall meet the requirements as stipulated in advance.

Article 77 During the period of revival, no capital contributor of a debtor may request for distribution of any investment proceeds.

During the period of revival, no director, supervisor or senior manager of a debtor may transfer the equity it has held to a third party, unless the people's court approves it.

Article 78 In the duration of revival, under any of the following circumstances, the people's court shall, upon the request of a bankruptcy administrator or any interested party, rule to terminate the procedures for revival and announce the relevant debtor bankrupt:

(1)Where the business operation or financial status of a debtor goes worse off and cannot be remediedin any way;

(2)Where a debtor has any act of cheating or maliciously deducting its assets or has any act obviously against its creditors; or

(3)Where the act of a debtor makes its bankruptcy administrator unable to perform its duties and functions.

Section II Formulation and Approval of a Revival Plan

Article 79 A debtor or bankruptcy administrator may, within 6 months as of the day when the people's court approves its revival, submit a draft of the revival plan to the people's court and the creditors' meeting.

Where the term as prescribed in the preceding paragraph expires, the people's court may, upon request of any debtor or the bankruptcy administrator, and on a justifiable ground, rule an extension of 3 months.

Where a debtor or bankruptcy administrator fails to submit a draft of the revival plan according to the schedule, the people's court shall rule to terminate the procedures for revival and announce the debtor bankrupt.

Article 80 Where a debtor manages its own assets and business operations, it shall formulate a draft of revival plan.

Where a bankruptcy administrator takes charge of the assets and business operations of a debtor, it shall formulate a draft of revival plan.

Article 81 A draft of revival plan shall include the following contents:

(1)A business plan of a debtor;

(2)Classification of the creditor's right;

(3)An adjustment plan of the creditor's right;

(4)A repayment plan of the creditor's right;

(5)Term for implementing the revival plan;

(6)Term for supervising the performance of the revival plan; and

(7)Any other plan conducive to the debtor's revival.

Article 82 Where the relevant creditors who have the following creditor's rights attend the creditor's meeting to discuss a draft of revival plan, they shall be grouped according to the following creditor's rights so as to vote a draft of revival plan:

(1)The creditor's right with guaranty on the debtor's particular assets;

(2)The wages, subsidies for medical treatment and disability and comfort and compensatory funds as defaulted by the debtor, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred into the individual accounts of employers as well as the compensation for the employees as prescribed by the relevant laws and administrative regulations;

(3)The taxes as defaulted by the debtor; and

(4)The common creditor's right.

The people's court shall, when it so requires, decide to set a group of the small-amount creditor's right in the group of the common creditor's right so as to vote a draft of revival plan.

Article 83 A revival plan shall not cover any stipulation on the exemption of the social insurance premium as defaulted by a debtor other than what is prescribed in item (2), paragraph 1, Article 82 of the present Law. The creditor of social insurance premiums shall not attend the voting of a draft of revival plan.

Article 84 The people's court shall, within 30 days as of the day when a draft of revival plan is received, hold a creditor's meeting so as to vote the draft.

Where 1/2 or more of the creditors in a same voting group at the creditors' meeting agree to a draft of revival plan, representing 2/3 or more of the total amount of the creditor's right, it shall be deemed as an adoption of the draft of revival plan.

The relevant creditors or bankruptcy administrator shall give an explanation to the draft of the revival plan and answer the relevant inquiries at the creditors' meeting.

Article 85 The representatives of capital contributors of a debtor may attend the creditor's meeting to discuss a draft of revival plan.

Where a draft of revival plan involves the adjustment of the right and interest of capital contributors, a group of capital contributors shall be formed to vote this issue.

Article 86 Where all the voting groups agree to a draft of revival plan, it shall be deemed that the plan is adopted.

Within 10 days as of the day when a revival plan is adopted, a creditor or bankruptcy administrator shall file an application with the people's court for approving the revival plan. Where the people's court deems, upon examination, that the application complies with the present Law, it shall, within 30 days as of the day when the application is received, grant an approval, terminate the relevant procedures for revival and announce it as well.

Article 87 Where some voting groups do not agree to a draft of revival plan, the relevant debtor or bankruptcy administrator may negotiate with the aforesaid voting groups. The latter may vote for one more times upon negotiation. The result of negotiation shall not damage the interest of any other voting group.

Where a voting group that does not agree to a draft of revival plan refuses to re-vote or disagrees with the draft of revival plan upon re-voting yet if the draft of revival plan meets the following requirements, the relevant debtor or bankruptcy administrator may apply with the people's court for approving the draft of revival plan.

(1)Where, according to a draft of revival plan, the creditor's right as prescribed in item (1), paragraph 1, Article 82 of the present Law shall be cleared off by means of the particular assets and the losses as incurred from postponed payment shall be compensated for in a fair manner, given that the right to guaranty has not been materially damaged, or the relevant voting groups have adopted the draft of revival plan;

(2)Where, according to the draft of revival plan, the creditor's right as prescribed in items (2) and (3) of paragraph 1, Article 82 of the present Law shall be cleared off, or the relevant voting groups have adopted the draft of revival plan;

(3)Where, according to the draft of revival plan, the repayment proportion of the common creditor's right shall not be any lower than that as set in the procedures for bankrupt liquidation when the draft of revival plan is submitted for approval, or the relevant contributor group has adopted the draft of revival plan;

(4)Where the draft of revival plan can bring a fair and justifiable adjustment to the rights and interests of capital contributors, or the contributor group has adopted the draft of revival plan;

(5)Where the draft of revival plan treats the members of a same voting group fairly and the liquidation order of the creditor's right does not violate the provisions of Article 113 of the present Law;

(6)Where the debtor's business plan is feasible.

Where the people's court deems that the draft of revival plan complies with the provisions of the preceding paragraph, it shall, within 30 days as of the day when an application is received, approve it, terminate the procedures for revival and announce it.

Article 88 Where a draft of revival plan fails to be adopted and fails to be approved according to the provisions of Article 87 of the present Law, or where an adopted draft of revival plan fails to be approved, the people's court shall rule to terminate the procedures for revival and announce the debtor bankrupt.

Section III Implementation of a Revival Plan

Article 89 A revival plan shall be implemented under the debtor's charge.

Where the people's court decides to approve a revival plan, the bankruptcy administrator that has taken over the assets and business operation shall transfer the assets and business operation to the debtor.

Article 90 As of the day when the people's court decides to approve a revival plan and within the term for supervision as prescribed by the revival plan, the relevant bankruptcy administrator shall supervise the implementation thereof.

Within the term for supervision, a debtor shall report the implementation of its revival plan as well as its financial status to the relevant bankruptcy administrator.

Article 91 Upon expiration of the term for supervision, a bankruptcy administrator shall submit a supervision report to the people's court. As of the day when a supervision report is submitted, a bankruptcy administrator's functions and duties shall be terminated.

Where a bankruptcy administrator submits a supervision report with the people's court, any interested party to the revival plan has the right to consult therewith.

Upon application by a bankruptcy administrator, the people's court may decide to extend the term for supervision over the implementation of a revival plan.

Article 92 A revival plan as approved by the people's court has binding force on the debtor and all the creditors.

Where a creditor fails to its creditor's right according to the provisions of the present law, it shall not exercise any right when a revival plan is implemented. When the implementation of a revival plan is concluded, the relevant creditor may exercise its right according to the requirements for liquidation of identical creditor's right as prescribed in the revival plan.

The right of a creditor against the guarantor of its debtor as well as all the joint and several debtors shall not be affected by a revival plan.

Article 93 Where a debtor fails to or refuses to implement a revival plan, the people's court may, upon request of the relevant bankruptcy administrator or interested party, terminate the implementation of the revival plan and announce the debtor bankrupt.

Where the people's court decides to terminate the implementation of a revival plan, the commitment of the relevant creditor on the adjustment of the creditor's right in the revival plan shall be invalidated. The liquidation for the relevant creditor when the revival plan is implemented remains effective and the creditor's right that has not been repaid shall be regarded as the credit of bankruptcy.

The creditor as prescribed in the preceding paragraph may, only when the other creditors in the sequential order of the liquidation are repaid at a same proportion, continue to join the distribution.

Under any circumstance as prescribed in paragraph 1 of this Article, any guaranty set for the implementation of a revival plan shall continue to be effective.

Article 94 As to the liabilities that is exempted according to a revival plan, the relevant debtor is not required to make repayment therefor upon conclusion of the revival plan.

Chapter IX Compromise

Article 95 A debtor may, according to the provisions of the present Law, apply for compromise with the people's court; or may, after the people's court accepts its application for bankruptcy and before it is announced bankrupt, apply with the people's court for compromise.

Where the debtor applies for reconciliation, it shall put forwards a draft of the conciliation agreement.

Article 96 Where the people's court deems upon examination that an application for compromise complies with the provisions of the present Law, it shall rule on a compromise, announce it and hold a creditors' meeting so as to discuss the draft of a composition deed.

A holder of the right to guaranty on the debtor's particular assets may exercise its right as of the day when the people's court rules on a compromise.

Article 97 The adoption of a resolution of a composition deed at the creditors' meeting shall be based on the consent of 1/2 or more of the creditors with the right to vote who attend the meeting, representing 2/3 or more of the total credit amount free from property guaranty.

Article 98 Where a composition deed is adopted at the creditors' meeting, the people's court shall decide whether to confirm it, terminate the procedures for compromise and announce it. The relevant bankruptcy administrator shall transfer the assets and business operation to the debtor and submit a report on the performance of its functions and duties to the people's court.

Article 99 Where the draft of a composition deed fails to be adopted at the creditors' meeting or a composition deed that has been adopted at the creditors' meeting fails to be confirmed by the people's court, the people's court shall rule to terminate the procedures for compromise and announce the debtor bankrupt.

Article 100 A composition deed that has been confirmed by the people's court shall have a binding force on the debtor and all the creditors in the composition.

The term "creditor in the composition" refers to a party that enjoys the creditor's right free from property guaranty against its debtor when the people's court accepts the relevant application for bankruptcy.

Where any creditor in the composition fails to its creditor's right according to the provisions of the present Law, it may not exercise its right during the period when the composition deed is conducted. After the implementation of a composition deed is concluded, it may exercise its right according to the requirements for repayment as prescribed by the composition deed.

Article 101 The right as enjoyed by the creditor in the composition against the guarantor of its debtor and other joint and several debtors shall not be affected by any composition deed.

Article 102 A debtor shall pay off its debts according to the conditions as prescribed in the relevant composition deed.

Article 103 As to any composition deed that is established by fraud or based on any illegal act of a debtor, the people's court shall rule it as ineffective and announce the debtor bankrupt.

Under any of the aforesaid circumstances, the repayment that a creditor in the composition gets when the composition deed is performed shall not be returned at the same proportion as the other creditors.

Article 104 Where a debtor is unable or fails to implement a composition deed, the people's court shall, upon request of the creditor in the composition, rule to terminate the implementation of the composition deed, and announce the debtor bankrupt.

Where the people's court terminates the implementation of a composition deed, the commitment as made by the creditor in the composition on the adjustment of the creditor's right shall be invalidated. The repayment made to the creditor in the composition when the composition deed is implemented shall still be effective and the creditor's right in the composition that has not been repaid shall be the credit of bankruptcy.

The creditor as prescribed in the preceding paragraph may, only when sharing the repayment at a same proportion as the other creditors, continue to join the distribution.

Under the circumstance as prescribed in paragraph 1 of this Article, the guaranty set on the implementation of a composition deed shall remain effective.

Article 105 After the people's court accepts an application for bankruptcy, if the relevant debtor and all the creditors conclude an agreement on settlement of credits and debts by themselves, they may request the court to confirm it and terminate the procedures for bankruptcy.

Article 106 As to the liabilities that has been exempted according to a composition deed, the relevant debtor may, as of the day when the composition deed is concluded, not bear the liabilities of compensation.

Chapter X Bankrupt Liquidation

Section I Announcement of Bankruptcy

Article 107 Where the people's court announces a debtor bankrupt according to the provisions of the present Law, it shall, within 5 days as of the day when the decision is made, serve it on the relevant debtor and bankruptcy administrator, and shall, within 10 days as of the day when the decision is made, notify the already-known creditors and announce it as well.

Where a debtor is announced bankrupt, the debtor is named as the bankrupt and the debtor's assets are taken as the insolvent assets. The creditor's right against the debtor when the people's court accepts an application for bankruptcy is the credit of bankruptcy.

Article 108 Before any bankruptcy is announced, under any of the following circumstances, the people's court shall decide to terminate the procedures for bankruptcy and announce it as well:

(1)Where a third party provides any full-amount guaranty to or pays off all the debts as due for the debtor; or

(2)Where the debtor has paid off all the due debts.

Article 109 An owner of the right to guaranty on the particular assets of the bankrupt may enjoy the priority right to be repaid by means of the particular assets.

Article 110 Where a creditor that enjoys the right as prescribed in the provisions of Article 109 of the present Law exercises the priority right to be repaid, the un-repaid creditor's right shall be the common creditor's right. Where the priority right to be repaid is given up, the creditor's right shall be taken as the common creditor's right.

Section II Conversion and Distribution

Article 111 A bankruptcy administrator shall draft a conversion plan of insolvent assets and submit it to the creditor's meeting for discussion.

A bankruptcy administrator shall, according to the conversion plan of insolvent assets that has been adopted at the creditor's meeting or that has been confirmed by the people's court according to the provisions of paragraph 1, Article 65 of the present Law, sell the insolvent assets by means of conversion at a proper time.

Article 112 A sale of insolvent assets by means of conversion shall be conducted through auction, unless there is any other resolution at the creditor's meeting.

An insolvent enterprise may be wholly or partially sold by means of conversion. Where an enterprise is sold by means of conversion, the intangible assets and other assets thereof may be solely sold by means of conversion.

As to the assets that shall not be auctioned or whose transfer is restricted, it shall be handled through the method as prescribed by the state.

Article 113 The insolvent assets shall, after the costs for bankruptcy proceedings and community liabilities are repaid in priority, be liquidated according to the following sequence:

(1)The wages and subsidies for medial treatment and disability, comfort and compensatory expenses as defaulted by the bankrupt, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred to the employees' personal account as well as the compensation for employees as prescribed by the relevant laws and administrative regulations;

(2)The social insurance premiums and tax fees as defaulted by the bankrupt other than those as prescribed by the aforesaid provisions; and

(3)The common credit of bankruptcy.

Where the insolvent assets are not enough to satisfy the requirements for liquidation in a same sequence, it shall be distributed according to the proportion.

The wages of the directors, supervisors as well as senior managers of an insolvent enterprise shall be calculated in light of the average wage of employees.

Article 114 The insolvent assets shall be subject to monetary distribution, unless it is separately decided at the creditors' meeting.

Article115 A bankruptcy administrator shall formulate a distribution plan of insolvent assets in a timely manner, and submit it to the creditor's meeting for discussion:

A distribution plan of insolvent assets shall indicate the following matters:

(1) Names and domiciles of the creditors that attend the distribution of insolvent assets;

(2) The amount of the creditor's right that is involved in the distribution of insolvent assets;

(3) The amount of insolvent assets as ready for distribution;

(4) The sequence, proportion and amount of insolvent assets subject to distribution; and

(5) The measures for distributing insolvent assets.

After a distribution plan of insolvent assets is adopted at the creditors' meeting, the relevant bankruptcy administrator shall submit the plan to the people's court for confirmation.

Article 116 A distribution plan of insolvent assets shall, upon confirmation of the people's court, be uted by the relevant bankruptcy administrator.

Where a bankruptcy administrator implements a distribution in installments according to a distribution plan of insolvent assets, it shall announce the amount of assets and the creditor's right in the distribution. Where a bankruptcy administrator implements a conclusive distribution in a lump sum, it shall be indicated in the announcement, wherein the matters as prescribed in paragraph 2, Article 117 of the present Law shall be indicated as well.

Article 117 As to any creditor's right subject to the requirement for effectiveness or rescission, a bankruptcy administrator shall preserve the distribution share in advance.

As to the distribution share as preserved by the bankruptcy administrator in advance in the preceding paragraph, on the announcement day of the conclusive distribution, where the requirement for effectiveness is not satisfied or the requirement for rescission is satisfied, it shall be distributed to the other creditors; on the announcement day of the conclusive distribution, where the requirement for effectiveness is satisfied or the requirement for rescission is not satisfied, it shall be delivered to the creditors.

Article 118 The distribution shares of the insolvent assets that have not been collected by creditors shall be preserved by the relevant bankruptcy administrator in advance. Where a creditor fails to collect its share within 2 months as of the last day of distribution announcement, it shall be deemed as a waiver of the right to collect the distribution share. The bankruptcy administrator or the people's court shall distribute the preserved distribution share to other creditors.

Article 119 Where the insolvent assets are distributed, as to any creditor's right that has not been settled by action or arbitration, a bankruptcy administrator shall preserve the distribution share in advance. Where any distribution share fails to be collected within 2 years as of the day when the procedures for bankruptcy are concluded, the people's court shall distribute the preserved distribution share to other creditors.

Section III Conclusion of the Procedures for Bankruptcy

Article 120 In the case of no asset for the bankrupt to distribute, the relevant bankruptcy administrator shall request the people's court to terminate the procedures for bankruptcy.

A bankruptcy administrator shall, upon conclusion of a conclusive distribution, report to the people's court a report on the distribution of insolvent assets in a timely manner and request the people's court to terminate the procedures for bankruptcy.

The people's court shall, within 15 days as of the day when a request of a bankruptcy administrator to conclude the procedures for bankruptcy is received, make a decision on whether to conclude the procedures. Any decision on concluding the procedures shall be announced.

Article 121 A bankruptcy administrator shall, within 10 days as of the day when the procedures for bankruptcy are concluded, handle the formalities for write-off in the organ as originally in charge of the registration of the bankrupt upon the strength of the decision of the people's court on concluding the procedures for bankruptcy.

Article122 A bankruptcy administrator shall terminate the performance of its functions and duties on the following day after it completes the formalities for the registration of write-off, unless the relevant action or arbitration has not been concluded.

Article 123 Within 2 years as of the day when the procedures for bankruptcy are concluded according to the provisions of paragraph 4, Article 43 or Article 120 of the present Law, under any of the following circumstances, a creditor may request the people's court to make an additional distribution according to the distribution plan of insolvent assets:

(1)Where the relevant assets shall be recovered according to the provisions of Article 31, 32, 33 or 36 of the present Law; and

(2)Where the bankrupt has any other asset that shall have been distributed.

Under any of the following circumstances as prescribed in the preceding paragraph, yet where the amount of assets are not enough to meet the expenses for distribution, no

additional distribution may be held and the relevant assets shall be turned over by the people's court into the state treasury.

Article 124 The guarantor and other joint and several debtors of the bankrupt shall, upon conclusion of the procedures for bankruptcy, bear the joint and several liabilities of repayment of the creditor's right that has not been repaid according to the procedures for bankrupt liquidation and according to law.

Chapter XI Legal Liabilities

Article 125 Where a director, supervisor or senior manager violates his obligations of being honest and diligent and thus leads to enterprise bankruptcy, he shall be subject to the relevant civil liabilities according to law.

No person under any circumstance as prescribed in the preceding paragraph may, within 3 years as of the day when the procedures for bankruptcy are concluded, assume the post of director, supervisor or senior manager of any enterprise.

Article 126 For any staff member of a debtor who is obligated to attend the creditor's meeting yet fails to do so upon summon of the people's court without any justifiable reason, the people's court may summon him by force and impose upon him a fine according to law. Where any staff member of a debtor violates the provisions of the present Law by refusing to illustrate or answer, or producing any false statement or answer, the people's court may impose upon him a fine according to law.

Article 127 Where a debtor violates the provisions of the present Law by refusing to submit any required material to the people's court or submit thereto any fraud statement on financial status, checklist of debts, checklist of the creditor's right, financial statement or payment statement of its employees' wages or social insurance premiums, the people's court may impose a fine upon the directly liable person according to law.

Where any debtor violates the provisions of the present Law by refusing to transfer its assets, seals or such materials as book accounts and documents, or fabricating or destroying the relevant materials of financial evidences, thereby making its financial status ambiguous, the people's court may impose a fine upon the directly liable person according to law.

Article 128 Where a debtor has any act as prescribed in Article 31, 32 or 33 by damaging the interest of its creditors, the legal representative of the debtor or any other directly liable person shall be subject to the liabilities of compensation according to law.

Article 129 Where any staff member of a debtor violates the provisions of the present Law by unlawfully leaving his domicile, the people's court can give an admonition or detainment, and may impose a fine upon him concurrently according to law.

Article 130 Where a bankruptcy administrator fails to perform its functions and duties in a diligent and faithful manner according to the provisions of the present Law, the people's court can impose upon it a fine according to law. Where any loss is incurred to a creditor, a

debtor or a third party, the bankruptcy administrator shall be subject to the liabilities of compensation according to law.

Article 131 Any entity that violates the provisions of the present Law and thus constitutes a crime shall be subject to criminal liabilities according to law.

Chapter XII Supplementary Provisions

Article 132 After the present Law is implemented, as to the defaulted wages and subsidies for medical treatment and disability, comfort and compensatory expenses, the fundamental old-age insurance premiums and fundamental medical insurance premiums that shall have transferred into the individual accounts of employees as well as the compensation for the employees as prescribed by the relevant laws and administrative regulations, where the assets are not enough for repayment upon liquidation according to the provisions of Article 113 of the present Law, the particular assets as prescribed in Article 109 of the present Law shall be liquidated prior to the repayment for the owner of the right to guaranty on the particular assets.

Article 133 Any special matter in the bankruptcy of a state-owned enterprise within the term and scope as prescribed by the State Council before the present Law comes into force shall be handled according to the relevant provision of the State Council.

Article 134 Where such financial institutions as a commercial bank, securities company or insurance company is under any of the following circumstances as prescribed in Article 2 of the present Law, the financial supervision organ under the State Council shall file an application with the people's court for revival or bankruptcy liquidation of the financial institution. Where the financial supervision organ under the State Council adopts, according to law, such measures as take-over and custody to a financial institutions carrying major business risks, it may apply with the people's court for suspending the procedures for civil action or ution, wherein the said financial institution is the defendant or party against whom a judgment or order is being uted.

Where a financial institution is under bankruptcy, the State Council may, according to the present Law and other relevant laws, formulate the corresponding measures for implementation.

Article 135 The liquidation of the organizations other than enterprise legal persons as prescribed by law, which falls within the category of bankrupt liquidation, shall be governed by the procedures as prescribed by the present Law.

Article 136 The present Law shall come into force as of June 1, 2007. The Law of the People's Republic of China on Enterprise Bankruptcy (for Trial Implementation) shall be simultaneously abolished.

中华人民共和国主席令

（ 第 54 号 ）

《中华人民共和国企业破产法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十三次会议于 2006 年 8 月 27 日通过，现予公布，自 2007 年 6 月 1 日起施行。

中华人民共和国主席　胡锦涛

2006 年 8 月 27 日□□□

中华人民共和国企业破产法

（ 2006 年 8 月 27 日第十届全国人民代表大会常务委员会第二十三次会议通过 ）

目　　录

第一章　总则

第一条　为规范企业破产程序，公平清理债权债务，保护债权人和债务人的合法权益，维护社会主义市场经济秩序，制定本法。

第二条　企业法人不能清偿到期债务，并且资产不足以清偿全部债务或者明显缺乏清偿能力的，依照本法规定清理债务。

企业法人有前款规定情形，或者有明显丧失清偿能力可能的，可以依照本法规定进行重整。

第三条　破产案件由债务人住所地人民法院管辖。

第四条　破产案件审理程序，本法没有规定的，适用民事诉讼法的有关规定。

第五条　依照本法开始的破产程序，对债务人在中华人民共和国领域外的财产发生效力。

对外国法院作出的发生法律效力的破产案件的判决、裁定，涉及债务人在中华人民共和国领域内的财产，申请或者请求人民法院承认和执行的，人民法院依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查，认为不违反中华人民共和国法律的基本原则，不损害国家主权、安全和社会公共利益，不损害中华人民共和国领域内债权人的合法权益的，裁定承认和执行。

第六条　人民法院审理破产案件，应当依法保障企业职工的合法权益，依法追究破产企业经营管理人员的法律责任。

第二章　申请和受理

第一节　申请

第七条　债务人有本法第二条规定的情形，可以向人民法院提出重整、和解或者破产清算申请。

债务人不能清偿到期债务，债权人可以向人民法院提出对债务人进行重整或者破产清算的申请。

企业法人已解散但未清算或者未清算完毕，资产不足以清偿债务的，依法负有清算责任的人应当向人民法院申请破产清算。

第八条　向人民法院提出破产申请，应当提交破产申请书和有关证据。

破产申请书应当载明下列事项：

（一）申请人、被申请人的基本情况；

（二）申请目的；

（ 三 ）申请的事实和理由；

（ 四 ）人民法院认为应当载明的其他事项。

债务人提出申请的，还应当向人民法院提交财产状况说明、债务清册、债权清册、有关财务会计报告、职工安置预案以及职工工资的支付和社会保险费用的缴纳情况。

第九条　人民法院受理破产申请前，申请人可以请求撤回申请。　　第二节　受理

第十条　债权人提出破产申请的，人民法院应当自收到申请之日起五日内通知债务人。债务人对申请有异议的，应当自收到人民法院的通知之日起七日内向人民法院提出。人民法院应当自异议期满之日起十日内裁定是否受理。

除前款规定的情形外，人民法院应当自收到破产申请之日起十五日内裁定是否受理。

有特殊情况需要延长前两款规定的裁定受理期限的，经上一级人民法院批准，可以延长十五日。

第十一条　人民法院受理破产申请的，应当自裁定作出之日起五日内送达申请人。

债权人提出申请的，人民法院应当自裁定作出之日起五日内送达债务人。债务人应当自裁定送达之日起十五日内，向人民法院提交财产状况说明、债务清册、债权清册、有关财务会计报告以及职工工资的支付和社会保险费用的缴纳情况。

第十二条　人民法院裁定不受理破产申请的，应当自裁定作出之日起五日内送达申请人并说明理由。申请人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院提起上诉。

人民法院受理破产申请后至破产宣告前，经审查发现债务人不符合本法第二条规定情形的，可以裁定驳回申请。申请人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院提起上诉。

第十三条　人民法院裁定受理破产申请的，应当同时指定管理人。

第十四条　人民法院应当自裁定受理破产申请之日起二十五日内通知已知债权人，并予以公告。

通知和公告应当载明下列事项：

（ 一 ）申请人、被申请人的名称或者姓名；

（ 二 ）人民法院受理破产申请的时间；

（ 三 ）申报债权的期限、地点和注意事项；

（ 四 ）管理人的名称或者姓名及其处理事务的地址；

（ 五 ）债务人的债务人或者财产持有人应当向管理人清偿债务或者交付财产的要求；

（ 六 ）第一次债权人会议召开的时间和地点；

（ 七 ）人民法院认为应当通知和公告的其他事项。

第十五条　自人民法院受理破产申请的裁定送达债务人之日起至破产程序终结之日，债务人的有关人员承担下列义务：

（一）妥善保管其占有和管理的财产、印章和账簿、文书等资料；

（二）根据人民法院、管理人的要求进行工作，并如实回答询问；

（三）列席债权人会议并如实回答债权人的询问；

（四）未经人民法院许可，不得离开住所地；

（五）不得新任其他企业的董事、监事、高级管理人员。

前款所称有关人员，是指企业的法定代表人；经人民法院决定，可以包括企业的财务管理人员和其他经营管理人员。

第十六条　人民法院受理破产申请后，债务人对个别债权人的债务清偿无效。

第十七条　人民法院受理破产申请后，债务人的债务人或者财产持有人应当向管理人清偿债务或者交付财产。

债务人的债务人或者财产持有人故意违反前款规定向债务人清偿债务或者交付财产，使债权人受到损失的，不免除其清偿债务或者交付财产的义务。

第十八条　人民法院受理破产申请后，管理人对破产申请受理前成立而债务人和对方当事人均未履行完毕的合同有权决定解除或者继续履行，并通知对方当事人。管理人自破产申请受理之日起二个月内未通知对方当事人，或者自收到对方当事人催告之日起三十日内未答复的，视为解除合同。

管理人决定继续履行合同的，对方当事人应当履行；但是，对方当事人有权要求管理人提供担保。管理人不提供担保的，视为解除合同。

第十九条　人民法院受理破产申请后，有关债务人财产的保全措施应当解除，执行程序应当中止。

第二十条　人民法院受理破产申请后，已经开始而尚未终结的有关债务人的民事诉讼或者仲裁应当中止；在管理人接管债务人的财产后，该诉讼或者仲裁继续进行。

第二十一条　人民法院受理破产申请后，有关债务人的民事诉讼，只能向受理破产申请的人民法院提起。

第三章　管理人

第二十二条　管理人由人民法院指定。

债权人会议认为管理人不能依法、公正执行职务或者有其他不能胜任职务情形的，可以申请人民法院予以更换。

指定管理人和确定管理人报酬的办法，由最高人民法院规定。

第二十三条　管理人依照本法规定执行职务，向人民法院报告工作，并接受债权人会议和债权人委员会的监督。

管理人应当列席债权人会议，向债权人会议报告职务执行情况，并回答询问。

第二十四条　管理人可以由有关部门、机构的人员组成的清算组或者依法设立的律师事务所、会计师事务所、破产清算事务所等社会中介机构担任。

人民法院根据债务人的实际情况，可以在征询有关社会中介机构的意见后，指定该机构具备相关专业知识并取得执业资格的人员担任管理人。

有下列情形之一的，不得担任管理人：

（一）因故意犯罪受过刑事处罚；

（二）曾被吊销相关专业执业证书；

（三）与本案有利害关系；

（四）人民法院认为不宜担任管理人的其他情形。

个人担任管理人的，应当参加执业责任保险。

第二十五条　管理人履行下列职责：

（一）接管债务人的财产、印章和账簿、文书等资料；

（二）调查债务人财产状况，制作财产状况报告；

（三）决定债务人的内部管理事务；

（四）决定债务人的日常开支和其他必要开支；

（五）在第一次债权人会议召开之前，决定继续或者停止债务人的营业；

（六）管理和处分债务人的财产；

（七）代表债务人参加诉讼、仲裁或者其他法律程序；

（八）提议召开债权人会议；

（九）人民法院认为管理人应当履行的其他职责。

本法对管理人的职责另有规定的，适用其规定。

第二十六条　在第一次债权人会议召开之前，管理人决定继续或者停止债务人的营业或者有本法第六十九条规定行为之一的，应当经人民法院许可。

第二十七条　管理人应当勤勉尽责，忠实执行职务。

第二十八条　管理人经人民法院许可，可以聘用必要的工作人员。

管理人的报酬由人民法院确定。债权人会议对管理人的报酬有异议的，有权向人民法院提出。

第二十九条　管理人没有正当理由不得辞去职务。管理人辞去职务应当经人民法院许可。

第四章　债务人财产

第三十条　破产申请受理时属于债务人的全部财产，以及破产申请受理后至破产程序终结前债务人取得的财产，为债务人财产。

第三十一条　人民法院受理破产申请前一年内，涉及债务人财产的下列行为，管理人有权请求人民法院予以撤销：

（一）无偿转让财产的；

（二）以明显不合理的价格进行交易的；

（三）对没有财产担保的债务提供财产担保的；

（四）对未到期的债务提前清偿的；

（五）放弃债权的。

第三十二条　人民法院受理破产申请前六个月内，债务人有本法第二条第一款规定的情形，仍对个别债权人进行清偿的，管理人有权请求人民法院予以撤销。但是，个别清偿使债务人财产受益的除外。

第三十三条　涉及债务人财产的下列行为无效：

（一）为逃避债务而隐匿、转移财产的；

（二）虚构债务或者承认不真实的债务的。

第三十四条　因本法第三十一条、第三十二条或者第三十三条规定的行为而取得的债务人的财产，管理人有权追回。

第三十五条　人民法院受理破产申请后，债务人的出资人尚未完全履行出资义务的，管理人应当要求该出资人缴纳所认缴的出资，而不受出资期限的限制。

第三十六条　债务人的董事、监事和高级管理人员利用职权从企业获取的非正常收入和侵占的企业财产，管理人应当追回。

第三十七条　人民法院受理破产申请后，管理人可以通过清偿债务或者提供为债权人接受的担保，取回质物、留置物。

前款规定的债务清偿或者替代担保，在质物或者留置物的价值低于被担保的债权额时，以该质物或者留置物当时的市场价值为限。

第三十八条　人民法院受理破产申请后，债务人占有的不属于债务人的财产，该财产的权利人可以通过管理人取回。但是，本法另有规定的除外。

第三十九条　人民法院受理破产申请时，出卖人已将买卖标的物向作为买受人的债务人发运，债务人尚未收到且未付清全部价款的，出卖人可以取回在运途中的标的物。但是，管理人可以支付全部价款，请求出卖人交付标的物。

第四十条　债权人在破产申请受理前对债务人负有债务的，可以向管理人主张抵销。但是，有下列情形之一的，不得抵销：

（一）债务人的债务人在破产申请受理后取得他人对债务人的债权的；

（二）债权人已知债务人有不能清偿到期债务或者破产申请的事实，对债务人负担债务的；但是，债权人因为法律规定或者有破产申请一年前所发生的原因而负担债务的除外；

（三）债务人的债务人已知债务人有不能清偿到期债务或者破产申请的事实，对债务人取得债权的；但是，债务人的债务人因为法律规定或者有破产申请一年前所发生的原因而取得债权的除外。

第五章　破产费用和共益债务

第四十一条　人民法院受理破产申请后发生的下列费用，为破产费用：

（一）破产案件的诉讼费用；

（二）管理、变价和分配债务人财产的费用；

（三）管理人执行职务的费用、报酬和聘用工作人员的费用。

第四十二条　人民法院受理破产申请后发生的下列债务，为共益债务：

（一）因管理人或者债务人请求对方当事人履行双方均未履行完毕的合同所产生的债务；

（二）债务人财产受无因管理所产生的债务；

（三）因债务人不当得利所产生的债务；

（四）为债务人继续营业而应支付的劳动报酬和社会保险费用以及由此产生的其他债务；

（五）管理人或者相关人员执行职务致人损害所产生的债务；

（六）债务人财产致人损害所产生的债务。

第四十三条　破产费用和共益债务由债务人财产随时清偿。

债务人财产不足以清偿所有破产费用和共益债务的，先行清偿破产费用。

债务人财产不足以清偿所有破产费用或者共益债务的，按照比例清偿。

债务人财产不足以清偿破产费用的，管理人应当提请人民法院终结破产程序。人民法院应当自收到请求之日起十五日内裁定终结破产程序，并予以公告。

第六章　债权申报

第四十四条　人民法院受理破产申请时对债务人享有债权的债权人，依照本法规定的程序行使权利。

第四十五条　人民法院受理破产申请后，应当确定债权人申报债权的期限。债权申报期限自人民法院发布受理破产申请公告之日起计算，最短不得少于三十日，最长不得超过三个月。

第四十六条　未到期的债权，在破产申请受理时视为到期。

附利息的债权自破产申请受理时起停止计息。

第四十七条　附条件、附期限的债权和诉讼、仲裁未决的债权，债权人可以申报。

第四十八条　债权人应当在人民法院确定的债权申报期限内向管理人申报债权。

债务人所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金，不必申报，由管理人调查后列出清单并予以公示。职工对清单记载有异议的，可以要求管理人更正；管理人不予更正的，职工可以向人民法院提起诉讼。

第四十九条　债权人申报债权时，应当书面说明债权的数额和有无财产担保，并提交有关证据。申报的债权是连带债权的，应当说明。

第五十条　连带债权人可以由其中一人代表全体连带债权人申报债权，也可以共同申报债权。

第五十一条　债务人的保证人或者其他连带债务人已经代替债务人清偿债务的，以其对债务人的求偿权申报债权。

债务人的保证人或者其他连带债务人尚未代替债务人清偿债务的，以其对债务人的将来求偿权申报债权。但是，债权人已经向管理人申报全部债权的除外。

第五十二条　连带债务人数人被裁定适用本法规定的程序的，其债权人有权就全部债权分别在各破产案件中申报债权。

第五十三条　管理人或者债务人依照本法规定解除合同的，对方当事人以因合同解除所产生的损害赔偿请求权申报债权。

第五十四条　债务人是委托合同的委托人，被裁定适用本法规定的程序，受托人不知该事实，继续处理委托事务的，受托人以由此产生的请求权申报债权。

第五十五条　债务人是票据的出票人，被裁定适用本法规定的程序，该票据的付款人继续付款或者承兑的，付款人以由此产生的请求权申报债权。

第五十六条　在人民法院确定的债权申报期限内，债权人未申报债权的，可以在破产财产最后分配前补充申报；但是，此前已进行的分配，不再对其补充分配。为审查和确认补充申报债权的费用，由补充申报人承担。

债权人未依照本法规定申报债权的，不得依照本法规定的程序行使权利。

第五十七条　管理人收到债权申报材料后，应当登记造册，对申报的债权进行审查，并编制债权表。

债权表和债权申报材料由管理人保存，供利害关系人查阅。

第五十八条　依照本法第五十七条规定编制的债权表，应当提交第一次债权人会议核查。

债务人、债权人对债权表记载的债权无异议的，由人民法院裁定确认。

债务人、债权人对债权表记载的债权有异议的，可以向受理破产申请的人民法院提起诉讼。

第七章　债权人会议

第一节　一般规定

第五十九条　依法申报债权的债权人为债权人会议的成员，有权参加债权人会议，享有表决权。

债权尚未确定的债权人，除人民法院能够为其行使表决权而临时确定债权额的外，不得行使表决权。

对债务人的特定财产享有担保权的债权人，未放弃优先受偿权利的，对于本法第六十一条第一款第七项、第十项规定的事项不享有表决权。

债权人可以委托代理人出席债权人会议，行使表决权。代理人出席债权人会议，应当向人民法院或者债权人会议主席提交债权人的授权委托书。

债权人会议应当有债务人的职工和工会的代表参加，对有关事项发表意见。

第六十条　债权人会议设主席一人，由人民法院从有表决权的债权人中指定。

债权人会议主席主持债权人会议。

第六十一条　债权人会议行使下列职权：

（一）核查债权；

（二）申请人民法院更换管理人，审查管理人的费用和报酬；

（三）监督管理人；

（四）选任和更换债权人委员会成员；

（五）决定继续或者停止债务人的营业；

（六）通过重整计划；

（七）通过和解协议；

（八）通过债务人财产的管理方案；

（九）通过破产财产的变价方案；

（十）通过破产财产的分配方案；

（十一）人民法院认为应当由债权人会议行使的其他职权。

债权人会议应当对所议事项的决议作成会议记录。

第六十二条　第一次债权人会议由人民法院召集，自债权申报期限届满之日起十五日内召开。

以后的债权人会议，在人民法院认为必要时，或者管理人、债权人委员会、占债权总额四分之一以上的债权人向债权人会议主席提议时召开。

第六十三条　召开债权人会议，管理人应当提前十五日通知已知的债权人。

第六十四条　债权人会议的决议，由出席会议的有表决权的债权人过半数通过，并且其所代表的债权额占无财产担保债权总额的二分之一以上。但是，本法另有规定的除外。

债权人认为债权人会议的决议违反法律规定，损害其利益的，可以自债权人会议作出决议之日起十五日内，请求人民法院裁定撤销该决议，责令债权人会议依法重新作出决议。

债权人会议的决议，对于全体债权人均有约束力。

第六十五条　本法第六十一条第一款第八项、第九项所列事项，经债权人会议表决未通过的，由人民法院裁定。

本法第六十一条第一款第十项所列事项，经债权人会议二次表决仍未通过的，由人民法院裁定。

对前两款规定的裁定，人民法院可以在债权人会议上宣布或者另行通知债权人。

第六十六条　债权人对人民法院依照本法第六十五条第一款作出的裁定不服的，债权额占无财产担保债权总额二分之一以上的债权人对人民法院依照本法第六十五条第二款作出的裁定不服的，可以自裁定宣布之日或者收到通知之日起十五日内向该人民法院申请复议。复议期间不停止裁定的执行。

第二节　债权人委员会

第六十七条　债权人会议可以决定设立债权人委员会。债权人委员会由债权人会议选任的债权人代表和一名债务人的职工代表或者工会代表组成。债权人委员会成员不得超过九人。

债权人委员会成员应当经人民法院书面决定认可。

第六十八条　债权人委员会行使下列职权：

（一）监督债务人财产的管理和处分；

（二）监督破产财产分配；

（三）提议召开债权人会议；

（四）债权人会议委托的其他职权。

债权人委员会执行职务时，有权要求管理人、债务人的有关人员对其职权范围内的事务作出说明或者提供有关文件。

管理人、债务人的有关人员违反本法规定拒绝接受监督的，债权人委员会有权就监督事项请求人民法院作出决定；人民法院应当在五日内作出决定。

第六十九条　管理人实施下列行为，应当及时报告债权人委员会：

（一）涉及土地、房屋等不动产权益的转让；

（二）探矿权、采矿权、知识产权等财产权的转让；

（三）全部库存或者营业的转让；

（四）借款；

（五）设定财产担保；

（六）债权和有价证券的转让；

（ 七 ）履行债务人和对方当事人均未履行完毕的合同；

（ 八 ）放弃权利；

（ 九 ）担保物的取回；

（ 十 ）对债权人利益有重大影响的其他财产处分行为。

未设立债权人委员会的，管理人实施前款规定的行为应当及时报告人民法院。

第八章　重整

第一节　重整申请和重整期间

第七十条　债务人或者债权人可以依照本法规定，直接向人民法院申请对债务人进行重整。

债权人申请对债务人进行破产清算的，在人民法院受理破产申请后、宣告债务人破产前，债务人或者出资额占债务人注册资本十分之一以上的出资人，可以向人民法院申请重整。

第七十一条　人民法院经审查认为重整申请符合本法规定的，应当裁定债务人重整，并予以公告。

第七十二条　自人民法院裁定债务人重整之日起至重整程序终止，为重整期间。

第七十三条　在重整期间，经债务人申请，人民法院批准，债务人可以在管理人的监督下自行管理财产和营业事务。

有前款规定情形的，依照本法规定已接管债务人财产和营业事务的管理人应当向债务人移交财产和营业事务，本法规定的管理人的职权由债务人行使。

第七十四条　管理人负责管理财产和营业事务的，可以聘任债务人的经营管理人员负责营业事务。

第七十五条　在重整期间，对债务人的特定财产享有的担保权暂停行使。但是，担保物有损坏或者价值明显减少的可能，足以危害担保权人权利的，担保权人可以向人民法院请求恢复行使担保权。

在重整期间，债务人或者管理人为继续营业而借款的，可以为该借款设定担保。

第七十六条　债务人合法占有的他人财产，该财产的权利人在重整期间要求取回的，应当符合事先约定的条件。

第七十七条　在重整期间，债务人的出资人不得请求投资收益分配。

在重整期间，债务人的董事、监事、高级管理人员不得向第三人转让其持有的债务人的股权。但是，经人民法院同意的除外。

第七十八条　在重整期间，有下列情形之一的，经管理人或者利害关系人请求，人民法院应当裁定终止重整程序，并宣告债务人破产：

（ 一 ）债务人的经营状况和财产状况继续恶化，缺乏挽救的可能性；

（ 二 ）债务人有欺诈、恶意减少债务人财产或者其他显著不利于债权人的行为；

（三）由于债务人的行为致使管理人无法执行职务。

第二节　重整计划的制定和批准

第七十九条　债务人或者管理人应当自人民法院裁定债务人重整之日起六个月内，同时向人民法院和债权人会议提交重整计划草案。

前款规定的期限届满，经债务人或者管理人请求，有正当理由的，人民法院可以裁定延期三个月。

债务人或者管理人未按期提出重整计划草案的，人民法院应当裁定终止重整程序，并宣告债务人破产。

第八十条　债务人自行管理财产和营业事务的，由债务人制作重整计划草案。

管理人负责管理财产和营业事务的，由管理人制作重整计划草案。

第八十一条　重整计划草案应当包括下列内容：

（一）债务人的经营方案；

（二）债权分类；

（三）债权调整方案；

（四）债权受偿方案；

（五）重整计划的执行期限；

（六）重整计划执行的监督期限；

（七）有利于债务人重整的其他方案。

第八十二条　下列各类债权的债权人参加讨论重整计划草案的债权人会议，依照下列债权分类，分组对重整计划草案进行表决：

（一）对债务人的特定财产享有担保权的债权；

（二）债务人所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金；

（三）债务人所欠税款；

（四）普通债权。

人民法院在必要时可以决定在普通债权组中设小额债权组对重整计划草案进行表决。

第八十三条　重整计划不得规定减免债务人欠缴的本法第八十二条第一款第二项规定以外的社会保险费用；该项费用的债权人不参加重整计划草案的表决。

第八十四条　人民法院应当自收到重整计划草案之日起三十日内召开债权人会议，对重整计划草案进行表决。

出席会议的同一表决组的债权人过半数同意重整计划草案，并且其所代表的债权额占该组债权总额的三分之二以上的，即为该组通过重整计划草案。

债务人或者管理人应当向债权人会议就重整计划草案作出说明，并回答询问。

第八十五条　债务人的出资人代表可以列席讨论重整计划草案的债权人会议。

重整计划草案涉及出资人权益调整事项的，应当设出资人组，对该事项进行表决。

第八十六条　各表决组均通过重整计划草案时，重整计划即为通过。

自重整计划通过之日起十日内，债务人或者管理人应当向人民法院提出批准重整计划的申请。人民法院经审查认为符合本法规定的，应当自收到申请之日起三十日内裁定批准，终止重整程序，并予以公告。

第八十七条　部分表决组未通过重整计划草案的，债务人或者管理人可以同未通过重整计划草案的表决组协商。该表决组可以在协商后再表决一次。双方协商的结果不得损害其他表决组的利益。

未通过重整计划草案的表决组拒绝再次表决或者再次表决仍未通过重整计划草案，但重整计划草案符合下列条件的，债务人或者管理人可以申请人民法院批准重整计划草案：

（一）按照重整计划草案，本法第八十二条第一款第一项所列债权就该特定财产将获得全额清偿，其因延期清偿所受的损失将得到公平补偿，并且其担保权未受到实质性损害，或者该表决组已经通过重整计划草案；

（二）按照重整计划草案，本法第八十二条第一款第二项、第三项所列债权将获得全额清偿，或者相应表决组已经通过重整计划草案；

（三）按照重整计划草案，普通债权所获得的清偿比例，不低于其在重整计划草案被提请批准时依照破产清算程序所能获得的清偿比例，或者该表决组已经通过重整计划草案；

（四）重整计划草案对出资人权益的调整公平、公正，或者出资人组已经通过重整计划草案；

（五）重整计划草案公平对待同一表决组的成员，并且所规定的债权清偿顺序不违反本法第一百一十三条的规定；

（六）债务人的经营方案具有可行性。

人民法院经审查认为重整计划草案符合前款规定的，应当自收到申请之日起三十日内裁定批准，终止重整程序，并予以公告。

第八十八条　重整计划草案未获得通过且未依照本法第八十七条的规定获得批准，或者已通过的重整计划未获得批准的，人民法院应当裁定终止重整程序，并宣告债务人破产。

第三节　重整计划的执行

第八十九条　重整计划由债务人负责执行。

人民法院裁定批准重整计划后，已接管财产和营业事务的管理人应当向债务人移交财产和营业事务。

第九十条　自人民法院裁定批准重整计划之日起，在重整计划规定的监督期内，由管理人监督重整计划的执行。

在监督期内，债务人应当向管理人报告重整计划执行情况和债务人财务状况。

第九十一条　监督期届满时，管理人应当向人民法院提交监督报告。自监督报告提交之日起，管理人的监督职责终止。

管理人向人民法院提交的监督报告，重整计划的利害关系人有权查阅。

经管理人申请，人民法院可以裁定延长重整计划执行的监督期限。

第九十二条　经人民法院裁定批准的重整计划，对债务人和全体债权人均有约束力。

债权人未依照本法规定申报债权的，在重整计划执行期间不得行使权利；在重整计划执行完毕后，可以按照重整计划规定的同类债权的清偿条件行使权利。

债权人对债务人的保证人和其他连带债务人所享有的权利，不受重整计划的影响。

第九十三条　债务人不能执行或者不执行重整计划的，人民法院经管理人或者利害关系人请求，应当裁定终止重整计划的执行，并宣告债务人破产。

人民法院裁定终止重整计划执行的，债权人在重整计划中作出的债权调整的承诺失去效力。债权人因执行重整计划所受的清偿仍然有效，债权未受清偿的部分作为破产债权。

前款规定的债权人，只有在其他同顺位债权人同自己所受的清偿达到同一比例时，才能继续接受分配。

有本条第一款规定情形的，为重整计划的执行提供的担保继续有效。

第九十四条　按照重整计划减免的债务，自重整计划执行完毕时起，债务人不再承担清偿责任。

第九章　和解

第九十五条　债务人可以依照本法规定，直接向人民法院申请和解；也可以在人民法院受理破产申请后、宣告债务人破产前，向人民法院申请和解。

债务人申请和解，应当提出和解协议草案。

第九十六条　人民法院经审查认为和解申请符合本法规定的，应当裁定和解，予以公告，并召集债权人会议讨论和解协议草案。

对债务人的特定财产享有担保权的权利人，自人民法院裁定和解之日起可以行使权利。

第九十七条　债权人会议通过和解协议的决议，由出席会议的有表决权的债权人过半数同意，并且其所代表的债权额占无财产担保债权总额的三分之二以上。

第九十八条　债权人会议通过和解协议的，由人民法院裁定认可，终止和解程序，并予以公告。管理人应当向债务人移交财产和营业事务，并向人民法院提交执行职务的报告。

第九十九条　和解协议草案经债权人会议表决未获得通过，或者已经债权人会议通过的和解协议未获得人民法院认可的，人民法院应当裁定终止和解程序，并宣告债务人破产。

第一百条　经人民法院裁定认可的和解协议，对债务人和全体和解债权人均有约束力。

和解债权人是指人民法院受理破产申请时对债务人享有无财产担保债权的人。

和解债权人未依照本法规定申报债权的，在和解协议执行期间不得行使权利；在和解协议执行完毕后，可以按照和解协议规定的清偿条件行使权利。

第一百零一条　和解债权人对债务人的保证人和其他连带债务人所享有的权利，不受和解协议的影响。

第一百零二条　债务人应当按照和解协议规定的条件清偿债务。

第一百零三条　因债务人的欺诈或者其他违法行为而成立的和解协议，人民法院应当裁定无效，并宣告债务人破产。

有前款规定情形的，和解债权人因执行和解协议所受的清偿，在其他债权人所受清偿同等比例的范围内，不予返还。

第一百零四条　债务人不能执行或者不执行和解协议的，人民法院经和解债权人请求，应当裁定终止和解协议的执行，并宣告债务人破产。

人民法院裁定终止和解协议执行的，和解债权人在和解协议中作出的债权调整的承诺失去效力。和解债权人因执行和解协议所受的清偿仍然有效，和解债权未受清偿的部分作为破产债权。

前款规定的债权人，只有在其他债权人同自己所受的清偿达到同一比例时，才能继续接受分配。

有本条第一款规定情形的，为和解协议的执行提供的担保继续有效。

第一百零五条　人民法院受理破产申请后，债务人与全体债权人就债权债务的处理自行达成协议的，可以请求人民法院裁定认可，并终结破产程序。

第一百零六条　按照和解协议减免的债务，自和解协议执行完毕时起，债务人不再承担清偿责任。

第十章　破产清算

第一节　破产宣告

第一百零七条　人民法院依照本法规定宣告债务人破产的，应当自裁定作出之日起五日内送达债务人和管理人，自裁定作出之日起十日内通知已知债权人，并予以公告。

债务人被宣告破产后，债务人称为破产人，债务人财产称为破产财产，人民法院受理破产申请时对债务人享有的债权称为破产债权。

第一百零八条　破产宣告前，有下列情形之一的，人民法院应当裁定终结破产程序，并予以公告：

（一）第三人为债务人提供足额担保或者为债务人清偿全部到期债务的；

（二）债务人已清偿全部到期债务的。

第一百零九条　对破产人的特定财产享有担保权的权利人，对该特定财产享有优先受偿的权利。

第一百一十条　享有本法第一百零九条规定权利的债权人行使优先受偿权利未能完全受偿的，其未受偿的债权作为普通债权；放弃优先受偿权利的，其债权作为普通债权。

第二节　变价和分配

第一百一十一条　管理人应当及时拟订破产财产变价方案，提交债权人会议讨论。

管理人应当按照债权人会议通过的或者人民法院依照本法第六十五条第一款规定裁定的破产财产变价方案，适时变价出售破产财产。

第一百一十二条　变价出售破产财产应当通过拍卖进行。但是，债权人会议另有决议的除外。

破产企业可以全部或者部分变价出售。企业变价出售时，可以将其中的无形资产和其他财产单独变价出售。

按照国家规定不能拍卖或者限制转让的财产，应当按照国家规定的方式处理。

第一百一十三条　破产财产在优先清偿破产费用和共益债务后，依照下列顺序清偿：

（一）破产人所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金；

（二）破产人欠缴的除前项规定以外的社会保险费用和破产人所欠税款；

（三）普通破产债权。

破产财产不足以清偿同一顺序的清偿要求的，按照比例分配。

破产企业的董事、监事和高级管理人员的工资按照该企业职工的平均工资计算。

第一百一十四条　破产财产的分配应当以货币分配方式进行。但是，债权人会议另有决议的除外。

第一百一十五条　管理人应当及时拟订破产财产分配方案，提交债权人会议讨论。

破产财产分配方案应当载明下列事项：

（一）参加破产财产分配的债权人名称或者姓名、住所；

（二）参加破产财产分配的债权额；

（三）可供分配的破产财产数额；

（四）破产财产分配的顺序、比例及数额；

（五）实施破产财产分配的方法。

债权人会议通过破产财产分配方案后，由管理人将该方案提请人民法院裁定认可。

第一百一十六条　破产财产分配方案经人民法院裁定认可后，由管理人执行。

管理人按照破产财产分配方案实施多次分配的，应当公告本次分配的财产额和债权额。管理人实施最后分配的，应当在公告中指明，并载明本法第一百一十七条第二款规定的事项。

第一百一十七条　对于附生效条件或者解除条件的债权，管理人应当将其分配额提存。

管理人依照前款规定提存的分配额，在最后分配公告日，生效条件未成就或者解除条件成就的，应当分配给其他债权人；在最后分配公告日，生效条件成就或者解除条件未成就的，应当交付给债权人。

第一百一十八条　债权人未受领的破产财产分配额，管理人应当提存。债权人自最后分配公告之日起满二个月仍不领取的，视为放弃受领分配的权利，管理人或者人民法院应当将提存的分配额分配给其他债权人。

第一百一十九条　破产财产分配时，对于诉讼或者仲裁未决的债权，管理人应当将其分配额提存。自破产程序终结之日起满二年仍不能受领分配的，人民法院应当将提存的分配额分配给其他债权人。　　第三节　破产程序的终结

第一百二十条　破产人无财产可供分配的，管理人应当请求人民法院裁定终结破产程序。

管理人在最后分配完结后，应当及时向人民法院提交破产财产分配报告，并提请人民法院裁定终结破产程序。

人民法院应当自收到管理人终结破产程序的请求之日起十五日内作出是否终结破产程序的裁定。裁定终结的，应当予以公告。

第一百二十一条　管理人应当自破产程序终结之日起十日内，持人民法院终结破产程序的裁定，向破产人的原登记机关办理注销登记。

第一百二十二条　管理人于办理注销登记完毕的次日终止执行职务。但是，存在诉讼或者仲裁未决情况的除外。

第一百二十三条　自破产程序依照本法第四十三条第四款或者第一百二十条的规定终结之日起二年内，有下列情形之一的，债权人可以请求人民法院按照破产财产分配方案进行追加分配：

（一）发现有依照本法第三十一条、第三十二条、第三十三条、第三十六条规定应当追回的财产的；

（二）发现破产人有应当供分配的其他财产的。

有前款规定情形，但财产数量不足以支付分配费用的，不再进行追加分配，由人民法院将其上交国库。

第一百二十四条　破产人的保证人和其他连带债务人，在破产程序终结后，对债权人依照破产清算程序未受清偿的债权，依法继续承担清偿责任。　　第十一章　法律责任

第一百二十五条　企业董事、监事或者高级管理人员违反忠实义务、勤勉义务，致使所在企业破产的，依法承担民事责任。

有前款规定情形的人员，自破产程序终结之日起三年内不得担任任何企业的董事、监事、高级管理人员。

第一百二十六条　有义务列席债权人会议的债务人的有关人员，经人民法院传唤，无正当理由拒不列席债权人会议的，人民法院可以拘传，并依法处以罚款。债务人的有关人员违反本法规定，拒不陈述、回答，或者作虚假陈述、回答的，人民法院可以依法处以罚款。

第一百二十七条　债务人违反本法规定，拒不向人民法院提交或者提交不真实的财产状况说明、债务清册、债权清册、有关财务会计报告以及职工工资的支付情况和社会保险费用的缴纳情况的，人民法院可以对直接责任人员依法处以罚款。

债务人违反本法规定，拒不向管理人移交财产、印章和账簿、文书等资料的，或者伪造、销毁有关财产证据材料而使财产状况不明的，人民法院可以对直接责任人员依法处以罚款。

第一百二十八条　债务人有本法第三十一条、第三十二条、第三十三条规定的行为，损害债权人利益的，债务人的法定代表人和其他直接责任人员依法承担赔偿责任。

第一百二十九条　债务人的有关人员违反本法规定，擅自离开住所地的，人民法院可以予以训诫、拘留，可以依法并处罚款。

第一百三十条　管理人未依照本法规定勤勉尽责，忠实执行职务的，人民法院可以依法处以罚款；给债权人、债务人或者第三人造成损失的，依法承担赔偿责任。

第一百三十一条　违反本法规定，构成犯罪的，依法追究刑事责任。　　第十二章　附则

第一百三十二条　本法施行后，破产人在本法公布之日前所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金，依照本法第一百一十三条的规定清偿后不足以清偿的部分，以本法第一百零九条规定的特定财产优先于对该特定财产享有担保权的权利人受偿。

第一百三十三条　在本法施行前国务院规定的期限和范围内的国有企业实施破产的特殊事宜，按照国务院有关规定办理。

第一百三十四条　商业银行、证券公司、保险公司等金融机构有本法第二条规定情形的，国务院金融监督管理机构可以向人民法院提出对该金融机构进行重整或者破产清算的申请。国务院金融监督管理机构依法对出现重大经营风险的金融机构采取接管、托管等措施的，可以向人民法院申请中止以该金融机构为被告或者被执行人的民事诉讼程序或者执行程序。

金融机构实施破产的，国务院可以依据本法和其他有关法律的规定制定实施办法。

第一百三十五条　其他法律规定企业法人以外的组织的清算，属于破产清算的，参照适用本法规定的程序。

第一百三十六条　本法自 2007 年 6 月 1 日起施行，《中华人民共和国企业破产法（ 试行 》同时废止。

chl_78895

Anti-Monopoly Law of the People's Republic of China

(Adopted at the 29th Session of the Standing Committee of the 10th National People's Congress on August 30, 2007)

TABLE OF CONTENTS

Chapter I General Provisions

Article 1

This Law is enacted for the purposes of guarding against and prohibiting monopolistic conduct, safeguarding fair market competition, improving economic efficiency, protecting the interests of consumers and public interests, and promoting the healthy development of the socialist market economy.

Article 2

This Law is applicable to monopolistic conducts in economic activities within the territory of the People's Republic of China; this Law is applicable to conducts outside the territory of the People's Republic of China that have eliminative or restrictive effects on competition in the domestic market of the People's Republic of China.

Article 3

Monopolistic conduct under this Law includes:

(1) Undertakings concluding monopoly agreements;

(2) Abuse of dominant market position by undertakings;

(3) Concentration of undertakings that has or may have the effect of eliminating or restricting competition.

Article 4

The State shall formulate and implement competition rules, which are suitable to the socialist market economy, improve macroeconomic control, as well as improve a unified, open, competitive and orderly market system.

Article 5

Undertakings may implement concentration through fair competition and voluntary coalition in accordance with law to expand their business scale and increase their market competitiveness.

Article 6

Undertakings with a dominant market position shall not abuse their market dominant position to eliminate or restrict competition.

Article 7

With respect to industries that are dominated by the State-owned economy and that have a direct bearing on national economic wellbeing and national security, as well as industries that conduct exclusive and monopolistic sales in accordance with law, the State shall protect the legitimate business activities of the undertakings in these industries. The State shall implement the supervision, adjustment and control of the business operations and the prices of products and service of these undertakings in accordance with law, safeguard the legitimate interests of consumers and promote technological progress.

Undertakings of industries under the previous paragraph shall conduct their business in accordance with law in an honest and trustworthy manner, impose strict self-discipline, and accept supervision from the public. These undertakings shall not harm the interests of consumers by making use of their position of control or their position of exclusive and monopolistic sales.

Article 8

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to eliminate or restrict competition.

Article 9

The State Council shall establish the Anti-Monopoly Commission, which shall be responsible for organizing, coordinating and guiding anti-monopoly work and it shall have the following functions:

(1) Research and formulate relevant competition policies;

(2) Organize investigations, assess the state of overall market competition, and issue assessment reports;

(3) Formulate and promulgate anti-monopoly guidelines;

(4) Coordinate the anti-monopoly administrative enforcement work ; and

(5) Other functions as specified by the State Council.

The State Council shall stipulate the composition of and the work protocols of the Anti-Monopoly Commission under the State Council.

Article 10

The authority empowered by the State Council to have the functions for anti-monopoly law enforcement (hereafter the "Anti-Monopoly Enforcement Authority under the State Council") is responsible for the anti-monopoly law enforcement in accordance with provisions of this Law.

If necessary in light of the practical work, the Anti-Monopoly Enforcement Authority under the State Council may delegate to corresponding agencies at the levels of province, autonomous region and municipality directly under the State Council functions for relevant anti-monopoly law enforcement in accordance with provisions of this Law.

Article 11

Industry associations shall strengthen self-disciplining of undertakings within their industries and guide these undertakings to compete in accordance with law and maintain the order of market competition.

Article 12

For the purposes of this Law, an "undertaking" means a natural person, legal person or other organization that engages in manufacturing commodities, operating or providing services.

For the purposes of this Law, a "relevant market" means the product scope or territory within which undertakings compete with respect to specific products or services (hereafter collectively "products") during a certain period.

Chapter II Monopoly Agreements

Article 13

The following Monopoly Agreements among undertakings with competing relationships shall be prohibited:

(1) Fix or change prices of products;

(2) Restrict the production output or sales volume of products;

(3) Allocate the sales markets or the raw material purchasing markets;

(4) Restrict the purchase of new technology or new equipment, or restricts the development of new technology or new products;

(5) Jointly boycott transactions; and

(6) Other Monopoly Agreements as otherwise determined by the Anti-Monopoly Enforcement Authority under the State Council.

A monopolistic agreement referred to in this Law refers to any agreements, decisions or other concerted actions that eliminate or restrict competition.

Article 14

Undertakings are prohibited from reaching the following Monopoly Agreements with their counter-parties that:

(1) Fix the resale price of products with respect to third parties;

(2) Restrict the minimal resale price of products with respect to the third parties;

(3) are monopoly agreements as otherwise determined by the Anti-monopoly Enforcement Authority under the State Council.

Article 15

Monopoly Agreements between undertakings that can be proven to fall under any of the following cases shall be exempt from the application of Article 13 and Article 14:

(1) For the purpose of technology improvement, or research and development of new products;

(2) For the purpose of upgrading product quality, reducing cost and improving efficiency, unifying products specifications or standards or implementing the division of labour based on specialization;

(3) For the purpose of improving operational efficiency of small and medium-sized undertakings and enhancing their competitiveness;

(4) For the purpose of achieving such public interests as energy savings, environmental protection, disaster relief and other charitable assistance;

(5) For the purpose of mitigating serious decrease in sales volumes or distinctive production oversupply during economic depression.

(6) For the purpose of safeguarding the legitimate interests in foreign trade and economic cooperation; or

(7) Other circumstances as stipulated by law and the State Council. (***New Provision***)

In the case that Monopoly Agreements fall within the circumstances set out in subparagraphs (1) to (5), undertakings shall also prove that the agreements entered into will not substantially restrict competition in the relevant market, and consumers are able to share the benefits derived from such agreements.

Article 16

Industrial Associations shall not organize undertakings within their industries to engage in monopolistic conducts prohibited by this Chapter.

Chapter III Abuse of Dominant Market Position

Article 17

Undertakings holding a dominant market position are prohibited from engaging in the following activities by abusing their dominant market position:

(1) Selling products at unfairly high prices or buying products at unfairly low prices;

(2) Selling products at prices below cost without any justification;

(3) Refusing to enter into transactions with their counter-parties without any justification;

(4) Limiting their counter-parties to enter into transactions exclusively with them or undertakings designated by them without any justification;

(5) Implementing tie-in sales without any justification or imposing any other unreasonable transaction terms in the course of transactions;

(6) Applying discriminating treatment on prices or other transaction terms to their counter-parties that are in the same positions without any justification; and

(7) Other abusive exploitations of dominant market position as determined by the Anti-Monopoly Enforcement Authority under the State Council.

For the purpose of this Law, a "dominant market position" means the market position of undertakings to control the price, quantity of products or other transaction terms in the relevant market, or to enable them to block or affect other undertakings in entering into the relevant market.

Article 18

A finding of a dominant market position of an undertaking shall be based on the following factors:

(1) The market share of the undertaking in the relevant market, and the competitive conditions in the relevant market;

(2) The ability of the undertaking to control the sales market or raw material purchasing market;

(3) The financial status and technical conditions/capabilities of the undertaking;

(4) The extent of dependence on the undertaking by other undertakings in respect to transactions;

(5) The level of difficulty for other undertakings to enter into the relevant market; and

(6) Other factors relating to the dominant market position of the undertaking.

Article 19

In any of the following cases, a dominant market position of an undertaking or undertakings may be presumed:

(1) The market share of one undertaking in the relevant market accounts for 1/2;

(2) The aggregate market share of two undertakings in the relevant market accounts for 2/3; or

(3) The aggregate market share of three undertakings in the relevant market accounts for 3/4.

In case of sub-paragraphs (2) or (3), an undertaking with a market share of less than 1/10 shall not be presumed to hold a dominant market position.

An undertaking which is presumed to hold a dominant market position shall not be found to be in a dominant market position, if it can provide evidence which shows it does not hold a dominant market position.

Chapter IV Concentration of Undertakings

Article 20

A "concentration of undertakings" means any of the following circumstances:

(1) A merger among undertakings;

(2) Acquisition by an undertaking(s) of control of other undertakings through means of acquiring shares or assets; or

(3) By contract or other means, an acquisition by an undertaking(s) of control of other undertakings, or an acquisition by an undertaking(s) of the ability to impose decisive influence on other undertakings.

Article 21

Where a concentration of undertakings meets the relevant thresholds for notification as stipulated by the State Council, the undertakings shall file a notification with the Anti-Monopoly Enforcement Authority under the State Council; without notification

with the Anti-Monopoly Enforcement Authority under the State Council, the undertakings shall be prohibited from implementing the concentration.

Article 22

In any of the following cases, the undertakings to a concentration may dispense with the notification with the Anti-monopoly Enforcement Authority under the State Council:

(1) One undertaking to the concentration holds more than 50% of the shares with voting rights or assets of each of the other participating undertakings;

(2) More than 50% of the shares with voting rights or assets of each of the undertakings to the concentration are owned by a single undertaking that is not participating in the concentration.

Article 23

In filing a notification of concentration with the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall submit the following documents and materials:

(1) The notification;

(2) Explanation regarding the impact of the concentration on competition in the relevant market;

(3) The agreement of the concentration;

(4) The financial and accounting reports in the preceding accounting year of the undertakings participating in the concentration, which reports shall have been audited by an accountant; and

(5) Other documents or materials required by the Anti-Monopoly Enforcement Authority under the State Council.

The notification shall specify matters such as the names, addresses, scope of business, proposed date for implementing the concentration and other matters as stipulated by the Anti-Monopoly Enforcement Authority under the State Council.

Article 24

In case that the documents and materials submitted for notification by the undertakings are not complete, the undertakings shall supplement the documents and materials within the time limit specified by the Anti-Monopoly Enforcement Authority under the State Council. Where the undertakings fail to supplement such documents or materials within the time limit, it shall be deemed that no notification is filed.

Article 25

Within 30 days from the date of receipt of the documents and materials that are consistent with provisions of Article 23 of this Law as submitted by the undertakings, the Anti-Monopoly Enforcement Authority under the State Council shall initiate the preliminary review, make a decision whether or not to initiate further review, and notify the undertakings in writing. Pending the decision of the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall refrain from implementing the concentration.

Where the Anti-Monopoly Enforcement Authority under the State Council decides not to initiate further review or makes no decision within the time limit, the undertakings may implement the concentration.

Article 26

Where the Anti-monopoly Enforcement Authority under the State Council decides to initiate further review, it shall complete the review within 90 days from the date of the decision, makes a decision whether or not to prohibit the concentration of undertakings and notify the undertakings in writing; in case of a decision to prohibit the concentration of undertakings, the Anti-monopoly Enforcement Authority under the State Council shall state its reasons thereof. During the period of the further review, undertakings shall not implement the concentration.

In any of the following cases, the Anti-Monopoly Enforcement Authority under the State Council may extend the time limit specified in the above paragraph after notifying the undertakings in writing, provided that the maximum extension period does not exceed 60 days:

(1) The undertakings agree to extend the time limit;

(2) The documents or materials submitted by the undertakings are inaccurate and need further verification; or

(3) Material changes have occurred with respect to relevant circumstances since the filing of the notification by the undertakings.

Where the Anti-monopoly Enforcement Authority under the State Council makes no decision within the time limit, undertakings may implement the concentration

Article 27

In reviewing a concentration of undertakings, the following factors shall be taken into consideration:

(1) The market shares of the undertakings participating in the concentration in the relevant market(s) and their ability to control the market(s);

(2) The degree of concentration in the relevant market(s);

(3) The effect of the proposed concentration on market access and technological progress;

(4) The effect of the proposed concentration on consumers and other relevant undertakings;

(5) The effect of the proposed concentration on the development of the national economy ; and

(6) Other factors having effects on market competition that the Anti-Monopoly Enforcement Authority under the State Council considers shall be taken into consideration.

Article 28

Where the concentration of undertakings has or may have the effect of eliminating or restricting competition, the Anti-monopoly Enforcement Authority under the State Council shall make a decision to prohibit the concentration of undertakings. However, the Anti-Monopoly Enforcement Authority under the State Council may make a decision not to prohibit the concentration of undertakings where the undertakings can prove that its positive effects on competition significantly overweighs its negative effects on competition, or that the concentration of undertakings is in the public interest.

Article 29

Where the Anti-Monopoly Enforcement Authority under the State Council does not prohibit the concentration of undertakings, it may decide to impose restrictive conditions on the concentration of undertakings to reduce anti-competitive effects arising from the concentration.

Article 30

The Anti-Monopoly Enforcement Authority under the State Council shall make a public announcement in a timely manner with respect to a decision to prohibit a concentration of undertakings or a decision to impose restrictive conditions on the concentration of undertakings.

Article 31

With respect to mergers with and acquisitions of domestic enterprises by foreign investors or other forms of concentration involving foreign investors that concern national security, apart from the review of concentration of undertakings under this Law, they shall be examined in accordance with relevant provisions of the State for national security review.

Chapter V Abuse of Administrative Powers to Eliminate or Restrict Competition

Article 32

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to mandate or mandate in disguised form any entities or persons to operate, buy or use only the products supplied by the undertakings designated by them.

Article 33

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers and take any of the following actions that impede the free flow of products among different regions:

(1) To set discriminatory items for fees or charges, implement discriminatory fee standards or fix discriminatory prices for products originated from other regions;

(2) To impose on products originated from other regions technical requirements or inspection standards different from those on similar local products, or require repeated inspection or certification on products originated from other regions, restricting entry of products originated from other regions into the local markets;

(3) To implement administrative license measures as applicable only to products originated from other regions, restricting entry of products originated from other regions into the local markets;

(4) To prevent entry of products originated from other regions into the local markets or the exit/sale of the local products into other regions by setting up checkpoints or other means; or

(5) Other actions which impede the free flow of products among different regions.

Article 34

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict the participation of undertakings from other regions in local bidding activities by such means as prescribing discriminatory qualification requirements or assessment standards, or by not publishing information according to law.

Article 35

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict investment or the establishment of branches in their regions by undertakings from other regions by such means as according treatment unequal to that enjoyed by their local undertakings.

Article 36

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to compel undertakings to engage in monopolistic conducts prohibited by this Law.

Article 37

Administrative agencies shall not abuse their administrative powers to make regulations containing provisions eliminating or restricting competition.

Chapter VI Investigation of Suspected Monopolistic Conducts

Article 38

The Anti-Monopoly Enforcement Authority shall investigate suspected monopolistic conducts in accordance with the law.

Any entity or individual shall have the right to report any suspected monopolistic conducts to the Anti-Monopoly Enforcement Authority. The Anti-monopoly Enforcement Authority shall maintain confidentiality for such entity or individual.

Where such report is in writing and furnished with relevant facts and evidence, the Anti-Monopoly Enforcement Authority shall conduct necessary investigations.

Article 39

In investigating suspected monopolistic conducts, the Anti-monopoly Enforcement Authority may take the following measures:

(1) To enter into the business premises or other places of the investigated undertakings for inspection;

(2) To interview undertakings, interested parties or other relevant entities or individuals being investigated, and request them to explain the relevant facts and circumstances;

(3) To inspect and copy relevant documents and materials of undertakings, interested parties or other relevant entities or individuals being investigated,

such as relevant vouchers and certificates, agreements, accounting books, business correspondence, electronic data;

(4) To seal or seize relevant evidence; and

(5) To examine bank accounts of the undertakings.

Measures in the above paragraph shall be applied only after a written report is submitted to principal responsible persons of the Anti-Monopoly Enforcement Authority and the relevant approval is obtained.

Article 40

For investigation of suspected monopolistic conducts by the Anti-monopoly Enforcement Authority, there shall be at least two enforcement officers attending the investigation, and they shall present the proofs of enforcement certificates.

Enforcement officers shall maintain written record of their inquiries and such written record shall be signed by those being interviewed or investigated.

Article 41

The Anti-Monopoly Enforcement Authority and its staff shall keep confidential the commercial secrets obtained during the course of law enforcement.

Article 42

Undertakings, interested parties , other relevant organizations or individuals being investigated shall cooperate with the Anti-Monopoly Enforcement Authority with respect to the performance of its functions and shall not refuse or hinder the investigation by the Anti-Monopoly Enforcement Authority.

Article 43

Undertakings being investigated and interested parties shall have the right to state their opinions. The Anti-Monopoly Enforcement Authority shall verify the facts, reasons and supporting evidences furnished by the undertakings being investigated or interested parties.

Article 44

After investigations and verification, if the Anti-Monopoly Enforcement Authority considers that the suspected monopolistic conduct constitutes monopolistic conduct, it shall make a decision in accordance with law and may publish the decision to the public.

Article 45

With respect to a suspected monopolistic conduct that is investigated by the Anti-Monopoly Enforcement Authority, if the undertaking being investigated undertakes to take concrete measures to eliminate consequences of such monopolistic conduct within the time limit accepted by the Anti-Monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may decide to suspend the investigation. The decision to suspend the investigation shall expressly state detailed contents of such commitments of the undertaking.

Where the Anti-Monopoly Enforcement Authority decides to suspend the investigation, it shall monitor the undertaking's performance of its commitments. Where the undertaking performed its commitments, the Anti-Monopoly Enforcement Authority may decide to cease the investigation.

In any of the following circumstances, the Anti-monopoly Enforcement Authority shall resume its investigation:

(1) Where the undertaking fails to meet its commitments;

(2) Where material changes have occurred with respect to the facts on which the decision to suspend the investigation is based;

(3) Where the decision to suspend the investigation was made based on incomplete or inaccurate information provided by the undertaking.

Chapter VII Legal Liability

Article 46

For undertakings that enter into any monopoly agreement in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such act, confiscate the illegal gains and impose fines of more than 1% and less than 10% of the turnover in the preceding year; fines of no more than RMB 500,000 yuan may be imposed where the monopolistic agreement has not yet been implemented.

Where any undertaking on its own initiative reports the relevant circumstances of the monopoly agreement and furnishes important evidence to the Anti-monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may in its discretion mitigate or exempt such undertaking from punishment.

For industrial associations that organize the undertakings within their industries to reach monopoly agreements, the Anti-Monopoly Enforcement Authority may impose fines of no more than RMB 500,000 yuan; in serious circumstances, the authority for registration and administration of social organizations may revoke the registration of the industrial associations according to law.

Article 47

For undertakings that abuse their dominant market position in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such an act, confiscate the illegal gains, .and impose fines of more than 1% and less than 10% of the turnover in the preceding year.

Article 48

For undertakings that implement concentrations in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority under the State Council is authorised to order such undertakings to cease the implementation of the concentration, or to dispose of shares or assets or transfer businesses within a given time limit, and take other measures necessary to restore to the state before the concentration of such undertakings, and may impose fines of no more than RMB 500,000 yuan.

Article 49

In determining the specific amount of fines imposed under Articles 46, 47 and 48 of this Law, the Anti-Monopoly Enforcement Authority shall take into account such factors as the nature, extent and duration of an illegal conduct.

Article 50

Undertakings shall be responsible for civil liabilities according to law for losses caused to others as a result of their monopolistic conducts.

Article 51

Where any administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration engages in conducts that eliminate or restrict competition in abuse of their administrative powers, its superior agency shall order it to make correction; the persons directly in charge and others who are directly responsible shall be subject to disciplinary sanctions in accordance with law. The Anti-Monopoly Enforcement Authority may make proposals to the relevant superior agency of the administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration on handling of the case in accordance with law.

Where laws or administrative regulations otherwise make provisions for the regulation of conducts eliminating or restricting competition by administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration in abuse of their administrative powers, such provisions shall prevail.

Article 52

If any individual or entity in an examination and investigation implemented by the Anti-Monopoly Enforcement Authority in accordance with the law, refuses to submit relevant materials or information, submits false materials or information, conceals, destroys or removes evidence, or refuses to be investigated or hinders the

investigation, the Anti-Monopoly Enforcement Authority is authorised to order such individual or entity to cease and desist such act and to impose fines of no more than RMB 20,000 yuan on individuals or fines of no more than RMB 200,000 yuan on entities; in serious circumstances, the Anti-Monopoly Enforcement Authority may impose fines that is between RMB 20,000 yuan and RMB 100,000 yuan on individuals or fines of between RMB 200,000 yuan and RMB 1 million yuan on entities; if the case constitutes a criminal offence, criminal liabilities shall be prosecuted according to law.

Article 53

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with Article 28 and Article 29 of this law may first apply for an administrative review according to law; and, if object to the decision in the administrative review, may file an administrative suit according to law.

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with provisions other than the previous provisions may apply for an administrative review or bring an administrative action according to law.

Article 54

Any working staff of the Anti-Monopoly Enforcement Authority who abuses his powers, neglects his duties, bends the law for personal gains, or divulges business secrets obtained in the process of law enforcement, shall be prosecuted for criminal liabilities according to law if the case constitute a criminal offence, or shall be imposed disciplinary sanctions according to law if the case does not constitute a criminal offence.

Chapter VIII Supplementary Provisions

Article 55

This Law is not applicable to undertakings' conduct in exercise of intellectual property rights pursuant to provisions of laws and administrative regulations relating to intellectual property rights; but this Law is applicable to undertakings' conduct that eliminates or restricts competition by abusing their intellectual property rights.

Article 56

This Law is not applicable to the alliance or concerted actions among farmers and farmers' economic organisations in connection with operational activities such as the production, processing, sales, transportation and storage of agricultural products.

Article 57

This Law is effective as of 1 August 2008.

中华人民共和国反垄断法

（2007年8月30日第十届全国人民代表大会常务委员会第二十九次会议通过）

目　录

第一章 总　则

第一条 为了预防和制止垄断行为，保护市场公平竞争，提高经济运行效率，维护消费者利益和社会公共利益，促进社会主义市场经济健康发展，制定本法。

第二条 中华人民共和国境内经济活动中的垄断行为，适用本法；中华人民共和国境外的垄断行为，对境内市场竞争产生排除、限制影响的，适用本法。

第三条 本法规定的垄断行为包括：

（一）经营者达成垄断协议；

（二）经营者滥用市场支配地位；

（三）具有或者可能具有排除、限制竞争效果的经营者集中。

第四条 国家制定和实施与社会主义市场经济相适应的竞争规则，完善宏观调控，健全统一、开放、竞争、有序的市场体系。

第五条 经营者可以通过公平竞争、自愿联合，依法实施集中，扩大经营规模，提高市场竞争能力。

第六条 具有市场支配地位的经营者，不得滥用市场支配地位，排除、限制竞争。

第七条 国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护，并对经营者的经营行为及其商品和服务的价格依法实施监管和调控，维护消费者利益，促进技术进步。

前款规定行业的经营者应当依法经营，诚实守信，严格自律，接受社会公众的监督，不得利用其控制地位或者专营专卖地位损害消费者利益。

第八条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。

第九条 国务院设立反垄断委员会，负责组织、协调、指导反垄断工作，履行下列职责：

（一）研究拟订有关竞争政策；

（二）组织调查、评估市场总体竞争状况，发布评估报告；

（三）制定、发布反垄断指南；

（四）协调反垄断行政执法工作；

（五）国务院规定的其他职责。

国务院反垄断委员会的组成和工作规则由国务院规定。

第十条 国务院规定的承担反垄断执法职责的机构（以下统称国务院反垄断执法机构）依照本法规定，负责反垄断执法工作。

国务院反垄断执法机构根据工作需要，可以授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。

第十一条 行业协会应当加强行业自律，引导本行业的经营者依法竞争，维护市场竞争秩序。

第十二条 本法所称经营者，是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。

本法所称相关市场，是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。

第二章 垄断协议

第十三条 禁止具有竞争关系的经营者达成下列垄断协议：

（一）固定或者变更商品价格；

（二）限制商品的生产数量或者销售数量；

（三）分割销售市场或者原材料采购市场；

（四）限制购买新技术、新设备或者限制开发新技术、新产品；

（五）联合抵制交易；

（六）国务院反垄断执法机构认定的其他垄断协议。

本法所称垄断协议，是指排除、限制竞争的协议、决定或者其他协同行为。

第十四条 禁止经营者与交易相对人达成下列垄断协议：

（一）固定向第三人转售商品的价格；

（二）限定向第三人转售商品的最低价格；

（三）国务院反垄断执法机构认定的其他垄断协议。

第十五条 经营者能够证明所达成的协议属于下列情形之一的，不适用本法第十三条、第十四条的规定：

（一）为改进技术、研究开发新产品的；

（二）为提高产品质量、降低成本、增进效率，统一产品规格、标准或者实行专业化分工的；

（三）为提高中小经营者经营效率，增强中小经营者竞争力的；

（四）为实现节约能源、保护环境、救灾救助等社会公共利益的；

（五）因经济不景气，为缓解销售量严重下降或者生产明显过剩的；

（六）为保障对外贸易和对外经济合作中的正当利益的；

（七）法律和国务院规定的其他情形。

属于前款第一项至第五项情形，不适用本法第十三条、第十四条规定的，经营者还应当证明所达成的协议不会严重限制相关市场的竞争，并且能够使消费者分享由此产生的利益。

第十六条 行业协会不得组织本行业的经营者从事本章禁止的垄断行为。

第三章 滥用市场支配地位

第十七条 禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为：

（一）以不公平的高价销售商品或者以不公平的低价购买商品；

（二）没有正当理由，以低于成本的价格销售商品；

（三）没有正当理由，拒绝与交易相对人进行交易；

（四）没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易；

（五）没有正当理由搭售商品，或者在交易时附加其他不合理的交易条件；

（六）没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇；

（七）国务院反垄断执法机构认定的其他滥用市场支配地位的行为。

本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

第十八条 认定经营者具有市场支配地位，应当依据下列因素：

（一）该经营者在相关市场的市场份额，以及相关市场的竞争状况；

（二）该经营者控制销售市场或者原材料采购市场的能力；

（三）该经营者的财力和技术条件；

（四）其他经营者对该经营者在交易上的依赖程度；

（五）其他经营者进入相关市场的难易程度；

（六）与认定该经营者市场支配地位有关的其他因素。

第十九条 有下列情形之一的，可以推定经营者具有市场支配地位：

（一）一个经营者在相关市场的市场份额达到二分之一的；

（二）两个经营者在相关市场的市场份额合计达到三分之二的；

（三）三个经营者在相关市场的市场份额合计达到四分之三的。

有前款第二项、第三项规定的情形，其中有的经营者市场份额不足十分之一的，不应当推定该经营者具有市场支配地位。

被推定具有市场支配地位的经营者，有证据证明不具有市场支配地位的，不应当认定其具有市场支配地位。

第四章 经营者集中

第二十条 经营者集中是指下列情形：

（一）经营者合并；

（二）经营者通过取得股权或者资产的方式取得对其他经营者的控制权；

（三）经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经

营者施加决定性影响。

第二十一条 经营者集中达到国务院规定的申报标准的，经营者应当事先向国务院反垄断执法机构申报，未申报的不得实施集中。

第二十二条 经营者集中有下列情形之一的，可以不向国务院反垄断执法机构申报：

（一）参与集中的一个经营者拥有其他每个经营者百分之五十以上有表决权的股份或者资产的；

（二）参与集中的每个经营者百分之五十以上有表决权的股份或者资产被同一个未参与集中的经营者拥有的。

第二十三条 经营者向国务院反垄断执法机构申报集中，应当提交下列文件、资料：

（一）申报书；

（二）集中对相关市场竞争状况影响的说明；

（三）集中协议；

（四）参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告；

（五）国务院反垄断执法机构规定的其他文件、资料。

申报书应当载明参与集中的经营者的名称、住所、经营范围、预定实施集中的日期和国务院反垄断执法机构规定的其他事项。

第二十四条 经营者提交的文件、资料不完备的，应当在国务院反垄断执法机构规定的期限内补交文件、资料。经营者逾期未补交文件、资料的，视为未申报。

第二十五条 国务院反垄断执法机构应当自收到经营者提交的符合本法第二十三条规定的文件、资料之日起三十日内，对申报的经营者集中进行初步审查，作出是否实施进一步审查的决定，并书面通知经营者。国务院反垄断执法机构作出决定前，经营者不得实施集中。

国务院反垄断执法机构作出不实施进一步审查的决定或者逾期未作出决定的，经营者可以实施集中。

第二十六条 国务院反垄断执法机构决定实施进一步审查的，应当自决定之日起九十日内审查完毕，作出是否禁止经营者集中的决定，并书面通知经营者。作出

禁止经营者集中的决定，应当说明理由。审查期间，经营者不得实施集中。

有下列情形之一的，国务院反垄断执法机构经书面通知经营者，可以延长前款规定的审查期限，但最长不得超过六十日：

（一）经营者同意延长审查期限的；

（二）经营者提交的文件、资料不准确，需要进一步核实的；

（三）经营者申报后有关情况发生重大变化的。

国务院反垄断执法机构逾期未作出决定的，经营者可以实施集中。

第二十七条 审查经营者集中，应当考虑下列因素：

（一）参与集中的经营者在相关市场的市场份额及其对市场的控制力；

（二）相关市场的市场集中度；

（三）经营者集中对市场进入、技术进步的影响；

（四）经营者集中对消费者和其他有关经营者的影响；

（五）经营者集中对国民经济发展的影响；

（六）国务院反垄断执法机构认为应当考虑的影响市场竞争的其他因素。

第二十八条 经营者集中具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构应当作出禁止经营者集中的决定。但是，经营者能够证明该集中对竞争产生的有利影响明显大于不利影响，或者符合社会公共利益的，国务院反垄断执法机构可以作出对经营者集中不予禁止的决定。

第二十九条 对不予禁止的经营者集中，国务院反垄断执法机构可以决定附加减少集中对竞争产生不利影响的限制性条件。

第三十条 国务院反垄断执法机构应当将禁止经营者集中的决定或者对经营者集中附加限制性条件的决定，及时向社会公布。

第三十一条 对外资并购境内企业或者以其他方式参与经营者集中，涉及国家安全的，除依照本法规定进行经营者集中审查外，还应当按照国家有关规定进行国家安全审查。

第五章 滥用行政权力排除、限制竞争

第三十二条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品。

第三十三条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品在地区之间的自由流通：

（一）对外地商品设定歧视性收费项目、实行歧视性收费标准，或者规定歧视性价格；

（二）对外地商品规定与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验、重复认证等歧视性技术措施，限制外地商品进入本地市场；

（三）采取专门针对外地商品的行政许可，限制外地商品进入本地市场；

（四）设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出；

（五）妨碍商品在地区之间自由流通的其他行为。

第三十四条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制外地经营者参加本地的招标投标活动。

第三十五条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，采取与本地经营者不平等待遇等方式，排斥或者限制外地经营者在本地投资或者设立分支机构。

第三十六条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，强制经营者从事本法规定的垄断行为。

第三十七条 行政机关不得滥用行政权力，制定含有排除、限制竞争内容的规定。

第六章 对涉嫌垄断行为的调查

第三十八条 反垄断执法机构依法对涉嫌垄断行为进行调查。

对涉嫌垄断行为，任何单位和个人有权向反垄断执法机构举报。反垄断执法机构应当为举报人保密。

举报采用书面形式并提供相关事实和证据的，反垄断执法机构应当进行必要的调查。

第三十九条 反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：

（一）进入被调查的经营者的营业场所或者其他有关场所进行检查；

（二）询问被调查的经营者、利害关系人或者其他有关单位或者个人，要求其说明有关情况；

（三）查阅、复制被调查的经营者、利害关系人或者其他有关单位或者个人的有关单证、协议、会计账簿、业务函电、电子数据等文件、资料；

（四）查封、扣押相关证据；

（五）查询经营者的银行账户。

采取前款规定的措施，应当向反垄断执法机构主要负责人书面报告，并经批准。

第四十条 反垄断执法机构调查涉嫌垄断行为，执法人员不得少于二人，并应当出示执法证件。

执法人员进行询问和调查，应当制作笔录，并由被询问人或者被调查人签字。

第四十一条 反垄断执法机构及其工作人员对执法过程中知悉的商业秘密负有保密义务。

第四十二条 被调查的经营者、利害关系人或者其他有关单位或者个人应当配合反垄断执法机构依法履行职责，不得拒绝、阻碍反垄断执法机构的调查。

第四十三条 被调查的经营者、利害关系人有权陈述意见。反垄断执法机构应当对被调查的经营者、利害关系人提出的事实、理由和证据进行核实。

第四十四条 反垄断执法机构对涉嫌垄断行为调查核实后，认为构成垄断行为的，应当依法作出处理决定，并可以向社会公布。

第四十五条 对反垄断执法机构调查的涉嫌垄断行为，被调查的经营者承诺在反垄断执法机构认可的期限内采取具体措施消除该行为后果的，反垄断执法机构可以决定中止调查。中止调查的决定应当载明被调查的经营者承诺的具体内容。

反垄断执法机构决定中止调查的，应当对经营者履行承诺的情况进行监督。经营者履行承诺的，反垄断执法机构可以决定终止调查。

有下列情形之一的，反垄断执法机构应当恢复调查：

（一）经营者未履行承诺的；

（二）作出中止调查决定所依据的事实发生重大变化的；

（三）中止调查的决定是基于经营者提供的不完整或者不真实的信息作出的。

第七章 法律责任

第四十六条 经营者违反本法规定，达成并实施垄断协议的，由反垄断执法机构

责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；尚未实施所达成的垄断协议的，可以处五十万元以下的罚款。

经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的，反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。

行业协会违反本法规定，组织本行业的经营者达成垄断协议的，反垄断执法机构可以处五十万元以下的罚款；情节严重的，社会团体登记管理机关可以依法撤销登记。

第四十七条 经营者违反本法规定，滥用市场支配地位的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款。

第四十八条 经营者违反本法规定实施集中的，由国务院反垄断执法机构责令停止实施集中、限期处分股份或者资产、限期转让营业以及采取其他必要措施恢复到集中前的状态，可以处五十万元以下的罚款。

第四十九条 对本法第四十六条、第四十七条、第四十八条规定的罚款，反垄断执法机构确定具体罚款数额时，应当考虑违法行为的性质、程度和持续的时间等因素。

第五十条 经营者实施垄断行为，给他人造成损失的，依法承担民事责任。

第五十一条 行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力，实施排除、限制竞争行为的，由上级机关责令改正；对直接负责的主管人员和其他直接责任人员依法给予处分。反垄断执法机构可以向有关上级机关提出依法处理的建议。

法律、行政法规对行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力实施排除、限制竞争行为的处理另有规定的，依照其规定。

第五十二条 对反垄断执法机构依法实施的审查和调查，拒绝提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者有其他拒绝、阻碍调查行为的，由反垄断执法机构责令改正，对个人可以处二万元以下的罚款，对单位可以处二十万元以下的罚款；情节严重的，对个人处二万元以上十万元以下的罚款，对单位处二十万元以上一百万元以下的罚款；构成犯罪的，依法追究刑事责任。

第五十三条 对反垄断执法机构依据本法第二十八条、第二十九条作出的决定不服的，可以先依法申请行政复议；对行政复议决定不服的，可以依法提起行政诉讼。

对反垄断执法机构作出的前款规定以外的决定不服的，可以依法申请行政复议或者提起行政诉讼。

第五十四条 反垄断执法机构工作人员滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的商业秘密，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

第八章 附则

第五十五条 经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法。

第五十六条 农业生产者及农村经济组织在农产品生产、加工、销售、运输、储存等经营活动中实施的联合或者协同行为，不适用本法。

第五十七条 本法自2008年8月1日起施行。

Labour Law of The People's Republic of China

Contents

Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution in order to protect the legitimate rights and interests of laborers, readjust labor relationship, establish and safeguard a labor system suited to the socialist market economy, and promote economic development and social progress.

Article 2 This Law applies to all enterprises and individual economic organizations (hereinafter referred to as employing units) within the boundary of the People"s Republic of China and laborers who form a labor relationship therewith.

State organs, institutional organizations and societies as well as laborers who form a labor contract relationship therewith shall follow this Law.

Article 3 Laborers shall have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labor, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training in vocational skills, enjoy social insurance and welfare, and submit applications for settlement of labor disputes, and other rights relating to labor as stipulated by law.

Laborers shall fulfill their labor tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labor discipline and professional ethics.

Article 4 The employing units shall establish and perfect rules and regulations in accordance with the law so as to ensure that laborers enjoy the right to work and fulfill labor obligations.

Article 5 The State shall take various measures to promote employment, develop vocational education, lay down labor standards, regulate social incomes, perfect social insurance system, coordinate labor relationship, and gradually raise the living standard of laborers.

Article 6 The State shall advocate the participation of laborers in social voluntary labor and the development of their labor competitions and activities of forwarding rational proposals, encourage and protect the scientific research and technical renovation engaged by laborers, as well as their inventions and creations; and commend and award labor models and advanced workers.

Article 7 Laborers shall have the right to participate in and organize trade unions in accordance with the law.

Trade unions shall represent and safeguard the legitimate rights and interests of laborers, and independently conduct their activities in accordance with the law.

Article 8 Laborers shall, through the assembly of staff and workers or their congress, or other forms in accordance with the provisions of laws, rules and regulations, take part in democratic management or consult with the employing units on an equal footing about protection of the legitimate rights and interests of laborers.

Article 9 The labor administrative department of the State Council shall be in charge of the management of labor of the whole country.

The labor administrative departments of the local people"s governments at or above the county level shall be in charge of the management of labor in the administrative areas under their respective jurisdiction.

Chapter II Promotion of Employment

Article 10 The State shall create conditions for employment and increase opportunities for employment by means of the promotion of economic and social development.

The State shall encourage enterprises, institutional organizations, and societies to initiate industries or expand businesses for the increase of employment within the scope of the stipulations of laws, and administrative rules and regulations.

The State shall support laborers to get jobs by organizing themselves on a voluntary basis or by engaging in individual businesses.

Article 11 Local people"s governments at various levels shall take measures to develop various kinds of job-introduction agencies and provide employment services.

Article 12 Laborers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief.

Article 13 Females shall enjoy equal rights as males in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding females from employment or to raise recruitment standards for the females, except for the types of work or posts that are not suitable for females as stipulated by the State.

Article 14 Where there are special stipulations in laws, rules and regulations on the employment of the disabled, the personnel of national minorities, and demobilized armymen, such special stipulations shall apply.

Article 15 No employing units shall be allowed to recruit juveniles under the age of 16.

Units of literature and art, physical culture and sport, and special arts and crafts that need to recruit juveniles under the age of 16 must go through the formalities of examination and approval according to the relevant provisions of the State and guarantee their right to compulsory education.

Chapter III Labor Contracts and Collective Contracts

Article 16 A labor contract is the agreement reached between a laborer and an employing unit for the establishment of the labor relationship and the definition of the rights, interests and obligations of each party.

A labor contract shall be concluded where a labor relationship is to be established.

Article 17 Conclusion and modification of a labor contract shall follow the principles of equality, voluntariness and unanimity through consultation, and shall not run counter to the stipulations of laws, administrative rules and regulations.

A labor contract once concluded in accordance with the law shall possess legal binding force. The parties involved must fulfill the obligations as stipulated in the labor contract.

Article 18 The following labor contracts shall be invalid:

(1) labor contracts concluded in violation of laws, administrative rules and regulations; and

(2) labor contracts concluded by resorting to such measures as cheating and intimidation.

An invalid labor contract shall have no legal binding force from the very beginning of its conclusion. Where a part of a labor contract is confirmed as invalid and where the validity of the remaining part is not affected, the remaining part shall remain valid.

The invalidity of a labor contract shall be confirmed by a labor dispute arbitration committee or a people"s court.

Article 19 A labor contract shall be concluded in written form and contain the

following clauses:

(1) term of a labor contract;

(2) contents of work;

(3) labor protection and working conditions;

(4) labor remuneration;

(5) labor disciplines;

(6) conditions for the termination of a labor contract; and

(7) responsibility for the violation of a labor contract.

Apart from the required clauses specified in the preceding paragraph, other contents in a labor contract may be agreed upon through consultation by the parties involved.

Article 20 The term of a labor contract shall be divided into fixed term, flexible term or taking the completion of a specific amount of work as a term.

In case a laborer has kept working in a same employing unit for ten years or more and the parties involved agree to extend the term of the labor contract, a labor contract with a flexible term shall be concluded between them if the laborer so requested.

Article 21 A probation period may be agreed upon in a labor contract. The longest probation period shall not exceed six months.

Article 22 The parties involved in a labor contract may reach an agreement in their labor contract on matters concerning keeping the commercial secrets of the employing unit.

Article 23 A labor contract shall terminate upon the expiration of its term or the emergence of the conditions for the termination of the labor contract as agreed upon by the parties involved.

Article 24 A labor contract may be revoked upon agreement reached between the parties involved through consultation.

Article 25 The employing unit may revoke the labor contract with a laborer in any of the following circumstances:

(1) to be proved not up to the requirements for recruitment during the probation period;

(2) to seriously violate labor disciplines or the rules and regulations of the employing unit;

(3) to cause great losses to the employing unit due to serious dereliction of duty

or engagement in malpractice for selfish ends; and

(4) to be investigated for criminal responsibilities in accordance with the law.

Article 26 In any of the following circumstances, the employing unit may revoke a labor contract but a written notification shall be given to the laborer 30 days in advance:

(1) where a laborer is unable to take up his original work or any new work arranged by the employing unit after the completion of his medical treatment for illness or injury not suffered from at work;

(2) where a laborer is unqualified for his work and remains unqualified even after receiving a training or an adjustment to an other work post; and

(3) no agreement on modification of the labor contract can be reached through consultation by the parties involved when the objective conditions taken as the basis for the conclusion of the contract have greatly changed so that the original labor contract can no longer be carried out.

Article 27 During the period of statutory consolidation when the employing unit comes to the brink of bankruptcy or runs deep into difficulties in production and management, and if reduction of its personnel becomes really necessary, the unit may make such reduction after it has explained the situation to the trade union or all of its staff and workers 30 days in advance, solicited opinions from them and reported to the labor administrative department.

Where the employing unit is to recruit personnel six months after the personnel reduction effected according to the stipulations of thisArticle , the reduced personnel shall have the priority to be re-employed.

Article 28 The employing unit shall make economic compensations in accordance with the relevant provisions of the State if it revokes its labor contracts according to the stipulations inArticle 24,Article 26 andArticle 27 of this Law.

Article 29 The employing unit shall not revoke its labor contract with a laborer in accordance with the stipulations inArticle 26 andArticle 27 of this Law in any of the following circumstances:

(1) to be confirmed to have totally or partially lost the ability to work due to occupational diseases or injuries suffered from at work;

(2) to be receiving medical treatment for diseases or injuries within the prescribed period of time;

(3) to be a female staff member or worker during pregnant, puerperal, or breast-feeding period; or

(4) other circumstances stipulated by laws, administrative rules and regulations.

Article 30 The trade union of an employing unit shall have the right to air its opinions

if it regards as inappropriate the revocation of a labor contract by the unit. If the employing unit violates laws, rules and regulations or labor contracts, the trade union shall have the right to request for reconsideration. Where the laborer applies for arbitration or brings in a lawsuit, the trade union shall render him support and assistance in accordance with the law.

Article 31 A laborer who intends to revoke his labor contract shall give a written notice to the employing unit 30 days in advance.

Article 32 A laborer may notify at any time the employing unit of his decision to revoke the labor contract in any of the following circumstances:

(1) within the probation period;

(2) where the employing unit forces the laborer to work by resorting to violence, intimidation or illegal restriction of personal freedom; or

(3) failure on the part of the employing unit to pay labor remuneration or to provide working conditions as agreed upon in the labor contract.

Article 33 The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labor remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption.

A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise.

Article 34 A collective contract shall be submitted to the labor administrative department after its conclusion. The collective contract shall go into effect automatically if no objections are raised by the labor administrative department within 15 days from the date of the receipt of a copy of the contract.

Article 35 Collective contracts concluded in accordance with the law shall have binding force to both the enterprise and all of its staff and workers. The standards on working conditions and labor payments agreed upon in labor contracts concluded between individual laborers and the enterprise shall not be lower than those as stipulated in collective contracts.

Chapter IV Working Hours, Rest and Vacations

Article 36 The State shall practise a working hour system under which laborers shall work for no more than eight hours a day and no more than 44 hours a week on the average.

Article 37 In case of laborers working on the basis of piecework, the employing unit shall rationally fix quotas of work and standards on piecework remuneration in

accordance with the working hour system stipulated inArticle 36 of this Law.

Article 38 The employing unit shall guarantee that its staff and workers have at least one day off in a week.

Article 39 Where an enterprise can not follow the stipulations inArticle 36 andArticle 38 of this Law due to its special production nature, it may adopt other rules on working hours and rest with the approval of the labor administrative department.

Article 40 The employing unit shall arrange holidays for laborers in accordance with the law during the following festivals:

(1) the New Year"s Day;

(2) the Spring Festival;

(3) the International Labor Day;

(4) the National Day; and

(5) other holidays stipulated by laws, rules and regulations.

Article 41 The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and laborers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of laborers is guaranteed. However, the total extension in a month shall not exceed thirty six hours.

Article 42 The extension of working hours shall not be subject to restriction of the provisions ofArticle 41 of this Law under any of the following circumstances:

(1) where emergent dealing is needed in the event of natural disaster, accident or other reason that threatens the life, health and the safety of property of laborers;

(2) where prompt rush repair is needed in the event of breakdown of production equipment, transportation lines or public facilities that affects production and public interests; and

(3) other circumstances as stipulated by laws, administrative rules and regulations.

Article 43 The employing unit shall not extend working hours of laborers in violation of the provisions of this Law.

Article 44 The employing unit shall, according to the following standards, pay laborers remunerations higher than those for normal working hours under any of the following circumstances:

(1) to pay no less than 150 per cent of the normal wages if the extension of working hours is arranged;

(2) to pay no less than 200 per cent of the normal wages if the extended hours are

arranged on days of rest and no deferred rest can be taken; and

(3) to pay no less than 300 per cent of the normal wages if the extended hours are arranged on statutory holidays.

Article 45 The State shall practise a system of annual vacation with pay.

Laborers who have kept working for one year and more shall be entitled to annual vacation with pay. The concrete measures shall be formulated by the State Council.

Chapter V Wages

Article 46 The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work.

The level of wages shall be gradually raised on the basis of economic development. The State shall exercise macro-regulations and control over the total payroll.

Article 47 The employing unit shall independently determine its form of wage distribution and wage level for its own unit according to law and based on the characteristics of its production and business and economic results.

Article 48 The State shall implement a system of guaranteed minimum wages. Specific standards on minimum wages shall be determined by the people"s governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record.

Wages paid to laborers by the employing unit shall not be lower than the local standards on minimum wages.

Article 49 The determination and readjustment of the standards on minimum wages shall be made with reference to the following factors in a comprehensive manner:

(1) the lowest living expenses of laborers themselves and the average family members they support;

(2) the average wage level of the society as a whole;

(3) labor productivity;

(4) the situation of employment; and

(5) the different levels of economic development between regions.

Article 50 Wages shall be paid monthly to laborers themselves in cash. The wages paid to laborers shall not be deducted or delayed without justification.

Article 51 The employing unit shall pay wages according to law to laborers who observe statutory holidays, take leaves during the periods of marriage or funeral, or participate in social activities in accordance with the law.

Chapter VI Occupational Safety and Health

Article 52 The employing unit must establish and perfect the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate laborers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards.

Article 53 Facilities of occupational safety and health must meet the standards stipulated by the State.

Facilities of occupational safety and health installed in new projects and projects to be rebuilt or expanded must be designed, constructed and put into operation and use at the same time as the main projects.

Article 54 The employing unit must provide laborers with occupational safety and health conditions conforming to the provisions of the State and necessaryArticle s of labor protection, and provide regular health examination for laborers engaged in work with occupational hazards.

Article 55 Laborers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations.

Article 56 Laborers must strictly abide by rules of safe operation in the process of their work.

Laborers shall have the right to refuse to operate if the management personnel of the employing unit command the operation in violation of rules and regulations or force laborers to run risks in operation; laborers shall have the right to criticize, report or file charges against the acts endangering the safety of their life and health.

Article 57 The State shall establish a system for the statistics, reports and dispositions of accidents of injuries and deaths, and cases of occupational diseases. The labor administrative departments and other relevant departments of the people"s governments at or above the county level and the employing unit shall, according to law, compile statistics, report and dispose of accidents of injuries and deaths that occurred in the process of their work and cases of occupational diseases.

Chapter VII Special Protection for Female and Juvenile Workers

Article 58 The State shall provide female workers and juvenile workers with special protection.

"Juvenile workers" hereby refer to laborers at the age of 16 but not 18 yet.

Article 59 It is prohibited to arrange female workers to engage in work down the pit of mines, or work with Grade IV physical labor intensity as stipulated by the State, or other work that female workers should avoid.

Article 60 Female workers during their menstrual periods shall not be arranged to engage in work high above the ground, under low temperature, or in cold water or work with Grade III physical labor intensity as stipulated by the State.

Article 61 Female workers during their pregnancy shall not be arranged to engage in work with Grade III physical labor intensity as stipulated by the State or other work that they should avoid in pregnancy. Female workers pregnant for seven months or more shall not be arranged to extend their working hours or to work night shifts.

Article 62 After childbirth, female workers shall be entitled to no less than ninety days of maternity leaves with pay.

Article 63 Female workers during the period of breast-feeding their babies less than one year old shall not be arranged to engage in work with Grade III physical labor intensity as stipulated by the State or other labor that they should avoid during their breast-feeding period, or to extend their working hours or to work night shifts.

Article 64 No juvenile workers shall be arranged to engage in work down the pit of mines, work that is poisonous or harmful, work with Grade IV physical labor intensity as stipulated by the State, or other work that they should avoid.

Article 65 The employing unit shall provide regular physical examinations to juvenile workers.

Chapter VIII Vocational Training

Article 66 The State shall take various measures through various channels to expand vocational training undertakings so as to develop professional skills of laborers, improve their qualities, and raise their employment capability and work ability.

Article 67 People"s governments at various levels shall incorporate the development of vocational training in the plans of social and economic development, encourage and support all enterprises, institutional organizations, societies and individuals, where conditions permit, to sponsor all kinds of vocational training.

Article 68 The employing unit shall establish a system for vocational training, raise and use funds for vocational training in accordance with the provisions of the State, and provide laborers with vocational training in a planned way and in the light of the actual situation of the unit.

Laborers to be engaged in technical work must receive pre-job training before taking up their posts.

Article 69 The State shall determine occupational classification, set up professional skill standards for the occupations classified, and practise a system of vocational qualification certificates. Examination and verification organizations authorized by the government are in charge of the examination and verification of the professional skills of laborers.

Chapter IX Social Insurance and Welfare

Article 70 The State shall develop social insurance undertakings, establish a social insurance system, and set up social insurance funds so that laborers may receive assistance and compensations under such circumstances as old age, illness,

work-related injury, unemployment and child-bearing.

Article 71 The level of social insurance shall be in proportion to the level of social and economic development and the social affordability.

Article 72 The sources of social insurance funds shall be determined according to the categories of insurance, and an overall pooling of insurance funds from the society shall be introduced step by step. The employing unit and laborers must participate in social insurance and pay social insurance premiums in accordance with the law.

Article 73 Laborers shall, in accordance with the law, enjoy social insurance benefits under the following circumstances:

(1) retirement;

(2) illness or injury;

(3) disability caused by work-related injury or occupational disease;

(4) unemployment; and

(5) child-bearing.

The survivors of the insured laborers shall be entitled to subsidies for survivors in accordance with the law.

The conditions and standards for laborers to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

The social insurance amount that laborers are entitled to, must be timely paid in full.

Article 74 The agencies in charge of social insurance funds shall collect, expend, manage and operate the funds in accordance with the stipulations of laws, and assume the responsibility to maintain and raise the value of these funds.

The supervisory organizations of social insurance funds shall exercise supervision over the revenue and expenditure, management and operation of social insurance funds in accordance with the stipulations of laws.

The establishment and function of the agencies in charge of social insurance funds and the supervisory organizations of social insurance funds shall be stipulated by laws.

No organization or individual shall be allowed to misappropriate social insurance funds.

Article 75 The State shall encourage the employing unit to set up supplementary insurance for laborers according to its practical situations.

The State shall advocate that laborers practise individual insurance in form of saving account.

Article 76 The State shall develop social welfare undertakings, construct public welfare facilities, and provide laborers with conditions for taking rest, recuperation and rehabilitation.

The employing unit shall create conditions so as to improve collective welfare and raise welfare treatment of laborers.

Chapter X Labor Disputes

Article 77 Where a labor dispute between the employing unit and laborers takes place, the parties concerned may apply for mediation or arbitration or take legal proceedings according to law, or may seek for a settlement through consultation.

The principle of mediation shall apply to the procedures of arbitration and lawsuit.

Article 78 The settlement of a labor dispute shall follow the principle of legality, fairness and promptness so as to safeguard in accordance with the law the legitimate rights and interests of the parties involved.

Article 79 Where a labor dispute takes place, the parties involved may apply to the labor dispute mediation committee of their unit for mediation; if the mediation fails and one of the parties requests for arbitration, that party may apply to the labor dispute arbitration committee for arbitration. Either party may also directly apply to the labor dispute arbitration committee for arbitration. If one of the parties is not satisfied with the adjudication of arbitration, the party may bring the case to a people"s court.

Article 80 A labor dispute mediation committee may be established inside the employing unit. The committee shall be composed of representatives of the staff and workers, representatives of the employing unit, and representatives of the trade union. The chairman of the committee shall be held by a representative of the trade union.

Agreements reached on labor disputes through mediation shall be implemented by the parties involved.

Article 81 A labor dispute arbitration committee shall be composed of representatives of the labor administrative department, representatives from the trade union at the corresponding level, and representatives of the employing unit. The chairman of the committee shall be held by a representative of the labor administrative department.

Article 82 The party that requests for arbitration shall file a written application to a labor dispute arbitration committee within 60 days starting from the date of the occurrence of a labor dispute. The arbitration committee may generally make an adjudication within 60 days from the date of receiving the application. The parties involved must implement the adjudication if no objections are raised.

Article 83 Where a party involved in a labor dispute is not satisfied with the adjudication, the party may bring a lawsuit to a people"s court within 15 days from the date of receiving the ruling of arbitration. Where one of the parties involved

neither brings a lawsuit nor implements the adjudication of arbitration within the statutory time limit, the other party may apply to a people"s court for compulsory implementation.

Article 84 Where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned, the labor administrative department of the local people"s government may organize the relevant departments to handle the case in coordination.

Where a dispute arises from the implementation of a collective contract and no settlement can be reached through consultation by the parties concerned, the dispute may be submitted to the labor dispute arbitration committee for arbitration. Any party that is not satisfied with the adjudication of arbitration may bring a lawsuit to a people"s court within 15 days from the date of receiving the adjudication.

Chapter XI Supervision and Inspection

Article 85 The labor administrative departments of people"s governments at or above the county level shall, in accordance with the law, supervise and inspect the implementation of laws, rules and regulations on labor by the employing unit, and have the power to stop any acts that run counter to laws, rules and regulations on labor and order the rectification thereof.

Article 86 The inspectors from the labor administrative departments of people"s governments at or above the county level shall, while performing their public duties, have the right to enter the employing units to make investigations about the implementation of laws, rules and regulations on labor, examine necessary data and inspect labor sites.

The inspectors from the labor administrative departments of people"s governments at or above the county level must show their certifications while performing public duties, impartially enforce laws, and abide by relevant stipulations.

Article 87 Relevant departments of people"s governments at or above the county level shall, within the scope of their respective duties and responsibilities, supervise the implementation of laws, rules and regulations on labor by the employing units.

Article 88 Trade unions at various levels shall, in accordance with the law, safeguard the legitimate rights and interests of laborers, and supervise the implementation of laws, rules and regulations on labor by the employing units.

Any organizations or individuals shall have the right to expose and accuse any acts in violation of laws, rules and regulations on labor.

Chapter XII Legal Responsibility

Article 89 Where the rules and regulations on labor formulated by the employing unit run counter to the provisions of laws, rules and regulations, the labor administrative department shall give a warning to the unit, order it to make corrections; where any harms have been caused to laborers, the unit shall be liable for compensations.

Article 90 Where the employing unit extends working hours of laborers in violation of the stipulations of this Law, the labor administrative department shall give it a warning, order it to make corrections, and may impose a fine.

Article 91 Where an employing unit infringes in any of the following ways the legitimate rights and interests of laborers, the labor administrative department shall order it to pay laborers remuneration or to make up for economic losses, and may also order it to pay compensations:

(1) to deduct wages or delay in paying wages to laborers without reason;

(2) to refuse to pay laborers remuneration for the extended working hours;

(3) to pay laborers wages below the local standard on minimum wages; or

(4) to fail to provide laborers with economic compensations in accordance with the provisions of this Law after revocation of labor contracts.

Article 92 Where the occupational safety facilities and health conditions of an employing unit do not comply with the provisions of the State or the unit fails to provide laborers with necessary labor protectionArticle s and labor protection facilities the labor administrative department or other relevant departments shall order it to make corrections, and may impose a fine. If circumstances are serious, the above-said departments shall apply to a people"s government at or above the county level for a decision to order the unit to stop production for consolidation. If the unit fails to take measures against potential accident which later leads to the occurrence of a serious accident and the losses of laborers" lives and properties, criminal responsibilities shall be investigated against the persons in charge mutatis mutandis the stipulations ofArticle 187 of the Criminal Law.

Article 93 Where an employing unit forces laborers to operate with risks in violation of the rules and regulations, causing thus major accident of injuries and deaths, and serious consequences, criminal responsibilities of the person in charge shall be investigated according to law.

Article 94 Where an employing unit illegally recruits juveniles under the age of 16, the labor administrative department shall order it to make corrections, and impose a fine. If circumstances are serious, the administrative department for industry and commerce shall revoke its business license.

Article 95 Where an employing unit encroaches upon the legitimate rights and interests of female and juvenile workers in violation of the stipulations of this Law on their protection, the labor administrative department shall order it to make corrections, and impose a fine. If harms to female and juvenile workers have been caused, the unit shall assume the responsibility for compensations.

Article 96 Where an employing unit commits one of the following acts, the person in charge shall be taken by a public security organ into custody for 15 days or less, or fined, or given a warning; and criminal responsibilities shall be investigated against

the person in charge according to law if the act constitutes a crime:

(1) to force laborers to work by resorting to violence, intimidation or illegal restriction of personal freedom; or

(2) humiliating, giving corporal punishment, beating, illegally searching or detaining laborers.

Article 97 The employing unit shall bear the responsibility for compensation if the conclusion of any invalid contracts is attributed to the unit and have caused damages to laborers.

Article 98 The employing unit that revokes labor contracts or purposely delays the conclusion of labor contracts in violation of the conditions specified in this Law shall be ordered by the labor administrative department to make corrections and shall bear the responsibility for compensation if damages have been caused to laborers.

Article 99 The employing unit that recruits laborers whose labor contracts have not yet been revoked shall, according to law, assume joint responsibility for compensation if economic losses have been caused to the original employing unit of the laborers.

Article 100 The employing unit that fails to pay social insurance premium without reason shall be ordered by the labor administrative department to pay within fixed period of time. If the unit still fails to make the payment beyond the time limit, an additional arrear payment may be demanded.

Article 101 Where an employing unit unjustifiably obstructs the labor administrative department and other relevant departments as well as their functionaries from exercising the powers of supervision and inspection or retaliates informers, the labor administrative department or other relevant departments shall impose fines upon the unit. If a crime is constituted, the person in charge shall be investigated for criminal responsibilities according to law.

Article 102 Laborers who revoke labor contracts in violation of the conditions specified in this Law or violate terms on secret-keeping matters agreed upon in the labor contracts and thus have caused economic losses to the employing unit shall be liable for compensation in accordance with the law.

Article 103 The functionaries of the labor administrative department or other relevant departments who abuse their functions and powers, neglect their duties, and engage in malpractices for selfish ends, shall be investigated for criminal responsibilities according to law if a crime is constituted, or shall be given an administrative sanction if the offenses do not yet constitute a crime.

Article 104 The functionaries of the State or the agencies in charge of social insurance funds who misappropriate the social insurance funds, shall be investigated for criminal responsibilities according to law if a crime is constituted.

Article 105 Where other laws or administrative rules and regulations have already specified punishments for the encroachment of the legitimate rights and interests of

laborers that also violate the stipulations of this Law, punishments shall be given in accordance with the stipulations of those laws or administrative rules and regulations.

Chapter XIII Supplementary Provisions

Article 106 People"s governments of provinces, autonomous regions and municipalities directly under the Central Government shall work out the implementing measures for the labor contract system according to this Law and in light of their local conditions, and report the measures to the State Council for the record.

Article 107 This Law shall enter into force as of January 1,1995.

１９９４年７月５日第八届全国人民代表大会常务委员会第八次会议通过

１９９４年７月５日中华人民共和国主席令第二十八号公布

自１９９５年１月１日起施行

第一章　总　　则

第一条　为了保护劳动者的合法权益，调整劳动关系，建立和维护适应社会主义市场经济的劳动制度，促进经济发展和社会进步，根据宪法，制定本法。

第二条　在中华人民共和国境内的企业、个体经济组织（以下统称用人单位）和与之形成劳动关系的劳动者，适用本法。

国家机关、事业组织、社会团体和与之建立劳动合同关系的劳动者，依照本法执行。

第三条　劳动者享有平等就业和选择职业的权利、取得劳动报酬的权利、休息休假的权利、获得劳动安全卫生保护的权利、接受职业技能培训的权利、享受社会保险和福利的权利、提请劳动争议处理的权利以及法律规定的其他劳动权利。

劳动者应当完成劳动任务，提高职业技能，执行劳动安全卫生规程，遵守劳动纪律和职业道德。

第四条　用人单位应当依法建立和完善规章制度，保障劳动者享有劳动权利和履行劳动义务。

第五条　国家采取各种措施，促进劳动就业，发展职业教育，制定劳动标准，调节社会收入，完善社会保险，协调劳动关系，逐步提高劳动者的生活水平。

第六条　国家提倡劳动者参加社会义务劳动，开展劳动竞赛和合理化建议活动，鼓励和保护劳动者进行科学研究、技术革新和发明创造，表彰和奖励劳动模范和先进工作者。

第七条　劳动者有权依法参加和组织工会。

工会代表和维护劳动者的合法权益，依法独立自主地开展活动。

第八条　劳动者依照法律规定，通过职工大会、职工代表大会或者其他形式，参与民主管理或者就保护劳动者合法权益与用人单位进行平等协商。

第九条　国务院劳动行政部门主管全国劳动工作。

县级以上地方人民政府劳动行政部门主管本行政区域内的劳动工作。

第二章　促进就业

第十条　国家通过促进经济和社会发展，创造就业条件，扩大就业机会。

国家鼓励企业、事业组织、社会团体在法律、行政法规规定的范围内兴办产业或者拓展经营，增加就业。

国家支持劳动者自愿组织起来就业和从事个体经营实现就业。

第十一条　地方各级人民政府应当采取措施，发展多种类型的职业介绍机构，提供就业服务。

第十二条　劳动者就业，不因民族、种族、性别、宗教信仰不同而受歧视。

第十三条　妇女享有与男子平等的就业权利。在录用职工时，除国家规定的不适合妇女的工种或者岗位外，不得以性别为由拒绝录用妇女或者提高对妇女的录用标准。

第十四条　残疾人、少数民族人员、退出现役的军人的就业，法律、法规有特别规定的，从其规定。

第十五条　禁止用人单位招用未满十六周岁的未成年人。

文艺、体育和特种工艺单位招用未满十六周岁的未成年人，必须依照国家有关规定，履行审批手续，并保障其接受义务教育的权利。

第三章　劳动合同和集体合同

第十六条　劳动合同是劳动者与用人单位确立劳动关系、明确双方权利和义务的协议。

建立劳动关系应当订立劳动合同。

第十七条　订立和变更劳动合同，应当遵循平等自愿、协商一致的原则，不得违反法律、行政法规的规定。

劳动合同依法订立即具有法律约束力，当事人必须履行劳动合同规定的义务。

第十八条　下列劳动合同无效：

（一）违反法律、行政法规的劳动合同；

（二）采取欺诈、威胁等手段订立的劳动合同。

无效的劳动合同，从订立的时候起，就没有法律约束力。确认劳动合同部分无效的，如果不影响其余部分的效力，其余部分仍然有效。

劳动合同的无效，由劳动争议仲裁委员会或者人民法院确认。

第十九条　劳动合同应当以书面形式订立，并具备以下条款：

（一）劳动合同期限；

（二）工作内容；

（三）劳动保护和劳动条件；

（四）劳动报酬；

（五）劳动纪律；

（六）劳动合同终止的条件；

（七）违反劳动合同的责任。

劳动合同除前款规定的必备条款外，当事人可以协商约定其他内容。

第二十条　劳动合同的期限分为有固定期限、无固定期限和以完成一定的工作为期限。

劳动者在同一用人单位连续工作满十年以上，当事人双方同意续延劳动合同的，如果劳动者提出订立无固定期限的劳动合同，应当订立无固定期限的劳动合同。

第二十一条　劳动合同可以约定试用期。试用期最长不得超过六个月。

第二十二条　劳动合同当事人可以在劳动合同中约定保守用人单位商业秘密的有关事项。

第二十三条　劳动合同期满或者当事人约定的劳动合同终止条件出现，劳动合同即行终止。

第二十四条　经劳动合同当事人协商一致，劳动合同可以解除。

第二十五条　劳动者有下列情形之一的，用人单位可以解除劳动合同：

（一）在试用期间被证明不符合录用条件的；

（二）严重违反劳动纪律或者用人单位规章制度的；

（三）严重失职，营私舞弊，对用人单位利益造成重大损害的；

（四）被依法追究刑事责任的。

第二十六条　有下列情形之一的，用人单位可以解除劳动合同，但是应当提前三十日以书面形式通知劳动者本人：

（一）劳动者患病或者非因工负伤，医疗期满后，不能从事原工作也不能从事由用人单位另行安排的工作的；

（二）劳动者不能胜任工作，经过培训或者调整工作岗位，仍不能胜任工作的；

（三）劳动合同订立时所依据的客观情况发生重大变化，致使原劳动合同无法履行，经当事人协商不能就变更劳动合同达成协议的。

第二十七条　用人单位濒临破产进行法定整顿期间或者生产经营状况发生严重困难，确需裁减人员的，应当提前三十日向工会或者全体职工说明情况，听取工会或者职工的意见，经向劳动行政部门报告后，可以裁减人员。

用人单位依据本条规定裁减人员，在六个月内录用人员的，应当优先录用被裁减的人员。

第二十八条　用人单位依据本法第二十四条、第二十六条、第二十七条的规定解除劳动合同的，应当依照国家有关规定给予经济补偿。

第二十九条　劳动者有下列情形之一的，用人单位不得依据本法第二十六条、第二十七条的规定解除劳动合同：

（一）患职业病或者因工负伤并被确认丧失或者部分丧失劳动能力的；

（二）患病或者负伤，在规定的医疗期内的；

（三）女职工在孕期、产期、哺乳期内的；

（四）法律、行政法规规定的其他情形。

第三十条　用人单位解除劳动合同，工会认为不适当的，有权提出意见。如果用人单位违反法律、法规或者劳动合同，工会有权要求重新处理；劳动者申请仲裁或者提起诉讼的，工会应当依法给予支持和帮助。

第三十一条　劳动者解除劳动合同，应当提前三十日以书面形式通知用人单位。

第三十二条　有下列情形之一的，劳动者可以随时通知用人单位解除劳动合同：

（一）在试用期内的；

（二）用人单位以暴力、威胁或者非法限制人身自由的手段强迫劳动的；

（三）用人单位未按照劳动合同约定支付劳动报酬或者提供劳动条件的。

第三十三条　企业职工一方与企业可以就劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利等事项，签订集体合同。集体合同草案应当提交职工代表大会或者全体职工讨论通过。

集体合同由工会代表职工与企业签订；没有建立工会的企业，由职工推举的代表与企业签订。

第三十四条　集体合同签订后应当报送劳动行政部门；劳动行政部门自收到集体合同文本之日起十五日内未提出异议的，集体合同即行生效。

第三十五条　依法签订的集体合同对企业和企业全体职工具有约束力。职工个人与企业订立的劳动合同中劳动条件和劳动报酬等标准不得低于集体合同的规定。

第四章　工作时间和休息休假

第三十六条　国家实行劳动者每日工作时间不超过八小时、平均每周工作时间不超过四十四小时的工时制度。

第三十七条　对实行计件工作的劳动者，用人单位应当根据本法第三十六条规定的工时制度合理确定其劳动定额和计件报酬标准。

第三十八条　用人单位应当保证劳动者每周至少休息一日。

第三十九条　企业因生产特点不能实行本法第三十六条、第三十八条规定的，经劳动行政部门批准，可以实行其他工作和休息办法。

第四十条　用人单位在下列节日期间应当依法安排劳动者休假：

（一）元旦；

（二）春节；

（三）国际劳动节；

（四）国庆节；

（五）法律、法规规定的其他休假节日。

第四十一条　用人单位由于生产经营需要，经与工会和劳动者协商后可以延长工作时间，一般每日不得超过一小时；因特殊原因需要延长工作时间的，在保障劳动者身体健康的条件下延长工作时间每日不得超过三小时，但是每月不得超过三十六小时。

第四十二条　有下列情形之一的，延长工作时间不受本法第四十一条的限制：

（一）发生自然灾害、事故或者因其他原因，威胁劳动者生命健康和财产安全，需要紧急处理的；

（二）生产设备、交通运输线路、公共设施发生故障，影响生产和公众利益，必须及时抢修的；

（三）法律、行政法规规定的其他情形。

第四十三条　用人单位不得违反本法规定延长劳动者的工作时间。

第四十四条　有下列情形之一的，用人单位应当按照下列标准支付高于劳动者正常工作时间工资的工资报酬：

（一）安排劳动者延长工作时间的，支付不低于工资的百分之一百五十的工资报酬；

（二）休息日安排劳动者工作又不能安排补休的，支付不低于工资的百分之二百的工资报酬；

（三）法定休假日安排劳动者工作的，支付不低于工资的百分之三百的工资报酬。

第四十五条　国家实行带薪年休假制度。

劳动者连续工作一年以上的，享受带薪年休假。具体办法由国务院规定。

第五章　工　　资

第四十六条　工资分配应当遵循按劳分配原则，实行同工同酬。

工资水平在经济发展的基础上逐步提高。国家对工资总量实行宏观调控。

第四十七条　用人单位根据本单位的生产经营特点和经济效益，依法自主确定本单位的工资分配方式和工资水平。

第四十八条　国家实行最低工资保障制度。最低工资的具体标准由省、自治区、直辖市人民政府规定，报国务院备案。

用人单位支付劳动者的工资不得低于当地最低工资标准。

第四十九条　确定和调整最低工资标准应当综合参考下列因素：

（一）劳动者本人及平均赡养人口的最低生活费用；

（二）社会平均工资水平；

（三）劳动生产率；

（四）就业状况；

（五）地区之间经济发展水平的差异。

第五十条　工资应当以货币形式按月支付给劳动者本人。不得克扣或者无故拖欠劳动者的工资。

第五十一条　劳动者在法定休假日和婚丧假期间以及依法参加社会活动期间，用人单位应当依法支付工资。

第六章　劳动安全卫生

第五十二条　用人单位必须建立、健全劳动安全卫生制度，严格执行国家劳动安全卫生规程和标准，对劳动者进行劳动安全卫生教育，防止劳动过程中的事故，减少职业危害。

第五十三条　劳动安全卫生设施必须符合国家规定的标准。

新建、改建、扩建工程的劳动安全卫生设施必须与主体工程同时设计、同时施工、同时投入生产和使用。

第五十四条　用人单位必须为劳动者提供符合国家规定的劳动安全卫生条件和必要的劳动防护用品，对从事有职业危害作业的劳动者应当定期进行健康检查。

第五十五条　从事特种作业的劳动者必须经过专门培训并取得特种作业资格。

第五十六条　劳动者在劳动过程中必须严格遵守安全操作规程。

劳动者对用人单位管理人员违章指挥、强令冒险作业，有权拒绝执行；对危害生命安全和身体健康的行为，有权提出批评、检举和控告。

第五十七条　国家建立伤亡事故和职业病统计报告和处理制度。县级以上各级人民政府劳动行政部门、有关部门和用人单位应当依法对劳动者在劳动过程中发生的伤亡事故和劳动者的职业病状况，进行统计、报告和处理。

第七章　女职工和未成年工特殊保护

第五十八条　国家对女职工和未成年工实行特殊劳动保护。

未成年工是指年满十六周岁未满十八周岁的劳动者。

第五十九条　禁止安排女职工从事矿山井下、国家规定的第四级体力劳动强度的劳动和其他禁忌从事的劳动。

第六十条　不得安排女职工在经期从事高处、低温、冷水作业和国家规定的第三级体力劳动强度的劳动。

第六十一条　不得安排女职工在怀孕期间从事国家规定的第三级体力劳动强度的劳动和孕期禁忌从事的劳动。对怀孕七个月以上的女职工，不得安排其延长工作时间和夜班劳动。

第六十二条　女职工生育享受不少于九十天的产假。

第六十三条　不得安排女职工在哺乳未满一周岁的婴儿期间从事国家规定的第三级体力劳动强度的劳动和哺乳期禁忌从事的其他劳动，不得安排其延长工作时间和夜班劳动。

第六十四条　不得安排未成年工从事矿山井下、有毒有害、国家规定的第四级体力劳动强度的劳动和其他禁忌从事的劳动。

第六十五条　用人单位应当对未成年工定期进行健康检查。

第八章　职业培训

第六十六条　国家通过各种途径，采取各种措施，发展职业培训事业，开发劳动者的职业技能，提高劳动者素质，增强劳动者的就业能力和工作能力。

第六十七条　各级人民政府应当把发展职业培训纳入社会经济发展的规划，鼓励和支持有条件的企业、事业组织、社会团体和个人进行各种形式的职业培训。

第六十八条　用人单位应当建立职业培训制度，按照国家规定提取和使用职业培训经费，根据本单位实际，有计划地对劳动者进行职业培训。

从事技术工种的劳动者，上岗前必须经过培训。

第六十九条　国家确定职业分类，对规定的职业制定职业技能标准，实行职业资格证书制度，由经过政府批准的考核鉴定机构负责对劳动者实施职业技能考核鉴定。

第九章　社会保险和福利

第七十条　国家发展社会保险事业，建立社会保险制度，设立社会保险基金，使劳动者在年老、患病、工伤、失业、生育等情况下获得帮助和补偿。

第七十一条　社会保险水平应当与社会经济发展水平和社会承受能力相适应。

第七十二条　社会保险基金按照保险类型确定资金来源，逐步实行社会统筹。用人单位和劳动者必须依法参加社会保险，缴纳社会保险费。

第七十三条　劳动者在下列情形下，依法享受社会保险待遇：

（一）退休；

（二）患病、负伤；

（三）因工伤残或者患职业病；

（四）失业；

（五）生育。

劳动者死亡后，其遗属依法享受遗属津贴。

劳动者享受社会保险待遇的条件和标准由法律、法规规定。

劳动者享受的社会保险金必须按时足额支付。

第七十四条　社会保险基金经办机构依照法律规定收支、管理和运营社会保险基金，并负有使社会保险基金保值增值的责任。

社会保险基金监督机构依照法律规定，对社会保险基金的收支、管理和运营实施监督。

社会保险基金经办机构和社会保险基金监督机构的设立和职能由法律规定。

任何组织和个人不得挪用社会保险基金。

第七十五条　国家鼓励用人单位根据本单位实际情况为劳动者建立补充保险。

国家提倡劳动者个人进行储蓄性保险。

第七十六条　国家发展社会福利事业，兴建公共福利设施，为劳动者休息、休养和疗养提供条件。

用人单位应当创造条件，改善集体福利，提高劳动者的福利待遇。

第十章　劳动争议

第七十七条　用人单位与劳动者发生劳动争议，当事人可以依法申请调解、仲裁、提起诉讼，也可以协商解决。

调解原则适用于仲裁和诉讼程序。

第七十八条　解决劳动争议，应当根据合法、公正、及时处理的原则，依法维护劳动争议当事人的合法权益。

第七十九条　劳动争议发生后，当事人可以向本单位劳动争议调解委员会申请调解；调解不成，当事人一方要求仲裁的，可以向劳动争议仲裁委员会申请仲裁。当事人一方也可以直接向劳动争议仲裁委员会申请仲裁。对仲裁裁决不服的，可以向人民法院提起诉讼。

第八十条　在用人单位内，可以设立劳动争议调解委员会。劳动争议调解委员会由职工代表、用人单位代表和工会代表组成。劳动争议调解委员会主任由工会代表担任。

劳动争议经调解达成协议的，当事人应当履行。

第八十一条　劳动争议仲裁委员会由劳动行政部门代表、同级工会代表、用人单位方面的代表组成。劳动争议仲裁委员会主任由劳动行政部门代表担任。

第八十二条　提出仲裁要求的一方应当自劳动争议发生之日起六十日内向劳动争议仲裁委员会提出书面申请。仲裁裁决一般应在收到仲裁申请的六十日内作出。对仲裁裁决无异议的，当事人必须履行。

第八十三条　劳动争议当事人对仲裁裁决不服的，可以自收到仲裁裁决书之日起十五日内向人民法院提起诉讼。一方当事人在法定期限内不起诉又不履行仲裁裁决的，另一方当事人可以申请人民法院强制执行。

第八十四条　因签订集体合同发生争议，当事人协商解决不成的，当地人民政府劳动行政部门可以组织有关各方协调处理。

因履行集体合同发生争议，当事人协商解决不成的，可以向劳动争议仲裁委员会申请仲裁；对仲裁裁决不服的，可以自收到仲裁裁决书之日起十五日内向人民法院提起诉讼。

第十一章　监督检查

第八十五条　县级以上各级人民政府劳动行政部门依法对用人单位遵守劳动法律、法规的情况进行监督检查，对违反劳动法律、法规的行为有权制止，并责令改正。

第八十六条　县级以上各级人民政府劳动行政部门监督检查人员执行公务，有权进入用人单位了解执行劳动法律、法规的情况，查阅必要的资料，并对劳动场所进行检查。

县级以上各级人民政府劳动行政部门监督检查人员执行公务，必须出示证件，秉公执法并遵守有关规定。

第八十七条　县级以上各级人民政府有关部门在各自职责范围内，对用人单位遵守劳动法律、法规的情况进行监督。

第八十八条　各级工会依法维护劳动者的合法权益，对用人单位遵守劳动法律、法规的情况进行监督。

任何组织和个人对于违反劳动法律、法规的行为有权检举和控告。

第十二章　法律责任

第八十九条　用人单位制定的劳动规章制度违反法律、法规规定的，由劳动行政部门给予警告，责令改正；对劳动者造成损害的，应当承担赔偿责任。

第九十条　用人单位违反本法规定，延长劳动者工作时间的，由劳动行政部门给予警告，责令改正，并可以处以罚款。

第九十一条　用人单位有下列侵害劳动者合法权益情形之一的，由劳动行政部门责令支付劳动者的工资报酬、经济补偿，并可以责令支付赔偿金：

（一）克扣或者无故拖欠劳动者工资的；

（二）拒不支付劳动者延长工作时间工资报酬的；

（三）低于当地最低工资标准支付劳动者工资的；

（四）解除劳动合同后，未依照本法规定给予劳动者经济补偿的。

第九十二条　用人单位的劳动安全设施和劳动卫生条件不符合国家规定或者未向劳动者提供必要的劳动防护用品和劳动保护设施的，由劳动行政部门或者有关部门责令改正，可以处以罚款；情节严重的，提请县级以上人民政府决定责令停产整顿；对事故隐患不采取措施，致使发生重大事故，造成劳动者生命和财产损失的，对责任人员比照刑法第一百八十七条的规定追究刑事责任。

第九十三条　用人单位强令劳动者违章冒险作业，发生重大伤亡事故，造成严重后果的，对责任人员依法追究刑事责任。

第九十四条　用人单位非法招用未满十六周岁的未成年人的，由劳动行政部门责令改正，处以罚款；情节严重的，由工商行政管理部门吊销营业执照。

第九十五条　用人单位违反本法对女职工和未成年工的保护规定，侵害其合法权益的，由劳动行政部门责令改正，处以罚款；对女职工或者未成年工造成损害的，应当承担赔偿责任。

第九十六条　用人单位有下列行为之一，由公安机关对责任人员处以十五日以下拘留、罚款或者警告；构成犯罪的，对责任人员依法追究刑事责任：

（一）以暴力、威胁或者非法限制人身自由的手段强迫劳动的；

（二）侮辱、体罚、殴打、非法搜查和拘禁劳动者的。

第九十七条　由于用人单位的原因订立的无效合同，对劳动者造成损害的，应当承担赔偿责任。

第九十八条　用人单位违反本法规定的条件解除劳动合同或者故意拖延不订立劳动合同的，由劳动行政部门责令改正；对劳动者造成损害的，应当承担赔偿责任。

第九十九条　用人单位招用尚未解除劳动合同的劳动者，对原用人单位造成经济损失的，该用人单位应当依法承担连带赔偿责任。

第一百条　用人单位无故不缴纳社会保险费的，由劳动行政部门责令其限期缴纳，逾期不缴的，可以加收滞纳金。

第一百零一条　用人单位无理阻挠劳动行政部门、有关部门及其工作人员行使监督检查权，打击报复举报人员的，由劳动行政部门或者有关部门处以罚款；构成犯罪的，对责任人员依法追究刑事责任。

第一百零二条　劳动者违反本法规定的条件解除劳动合同或者违反劳动合同中约定的保密事项，对用人单位造成经济损失的，应当依法承担赔偿责任。

第一百零三条　劳动行政部门或者有关部门的工作人员滥用职权、玩忽职守、徇私舞弊，构成犯罪的，依法追究刑事责任；不构成犯罪的，给予行政处分。

第一百零四条　国家工作人员和社会保险基金经办机构的工作人员挪用社会保险基金，构成犯罪的，依法追究刑事责任。

第一百零五条　违反本法规定侵害劳动者合法权益，其他法律、法规已规定处罚的，依照该法律、行政法规的规定处罚。

第十三章　附　则

第一百零六条　省、自治区、直辖市人民政府根据本法和本地区的实际情况，规定劳动合同制度的实施步骤，报国务院备案。

第一百零七条　本法自１９９５年１月１日起施行。

Order of the president of the People's Republic of China

(No.31)

The Arbitration Law of the People's Republic of China, which was adopted at the 9th session of the Standing Committee of the Eighth National People's Congress on August 31, 1994, is hereby promulgated and shall come into force on September 1, 1995.

President of the People's Republic of China: Jiang Zemin

August 31, 1994

Arbitration Law of the People's Republic of China

Adopted by the 9th Meeting of the Standing Committee of the eighth National People's Congress on August 31, 1994 And promulgated by the Decree No.31 of the president of the People's Republic of China on August 31, 1994

Chapter I General Provisions

Article 1 The law is formulated with a view to ensure fair and timely arbitration of economic disputes, reliable protection to legitimate rights and interests of parties concerned and a healthy development of the socialist market economy.

Article 2 Contractual disputes between citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration.

Article 3 The following disputes cannot be put to arbitration:

1. Disputes arising from marriage, adoption, guardianship, bringing up of children and inheritance.

2. Disputes that have been stipulated by law to be settled by administrative organs.

Article 4 In settling disputes through arbitration, an agreement to engage in arbitration should first of all be reached by parties concerned upon free will. Without such an agreement, the arbitration commission shall refuse to accept the application for arbitration by any one single party.

Article 5 Whereas the parties concerned have reached an agreement for arbitration, the people's court shall not accept the suit brought to the court by any one single party involved, except in case where the agreement for arbitration is invalid.

Article 6 The members of the arbitration commission shall be chosen by the parties concerned.

Arbitration shall not be subject to the jurisdiction of administrative departments at any level and region.

Article 7 Arbitration shall be made based on true facts and relative laws to give out a fair and reasonable settlement for parties concerned.

Article 8 Arbitration shall be conducted independently according to law, free from interference of administrative organs, social groups or individuals.

Article 9 The arbitration award is final. After the award is given, the arbitration commission or the people’s court shall not accept the re- application of the suit concerning the same dispute by any of the parties concerned.

Whereas the award cancelled or put in void under a rule by the people’s court, the parties concerned for the dispute may reach another agreement for arbitration and apply for arbitration or bring a suit in the people’s court.

Chapter II Arbitration Commission and Arbitration Association

Article 10 An arbitration commission may be set up in the domicile of the people’s governments of municipalities directly under the Central Government (hereinafter referred to as "municipalities"), provinces and autonomous regions or in other places according to needs. It shall not be set up according to administrative levels.

An arbitration commission shall be set up by the relevant departments and chambers of commerce under the coordination of the people’s governments of the cities prescribed in the preceding paragraph.

The establishment of an arbitration commission shall be registered with the judicial administrative departments of provinces, autonomous regions and municipalities.

Article 11 An arbitration commission shall meet the following requirements:

1. It shall have its own name, residence and statute.

2. It shall have necessary property.

3. It shall have its own members.

4. It shall have appointed arbitrators.

The statute of an arbitration commission shall be formulated according to this law.

Article 12 An arbitration commission shall be composed of a chairman, two to four vice-chairmen and 7 to 11 members.

The chairman, vice-chairmen and members of an arbitration commission shall be experts in law and economy and trade with practical work experience. Of the composition of an arbitration commission, experts in law, economy and trade shall be no less than two-thirds.

Article 13 Members of an arbitration commission shall be appointed from among the people who are fair and justice.

An arbitrator shall meet one of the following requirements:

1. At least eight years of work experience in arbitration.

2. At least eight years of experience as a lawyer.

3. At least eight years of experience as a judge.

4. Engaging in law research and teaching, with a senior academic title.

An arbitration commission shall prepare the list of arbitrators according to different specialities.

Article 14 An arbitration commission shall be independent of any administrative organ, without any subordinate relationship with administrative organs. Neither would there be any subordinate relations thereof.

Article 15 The China Arbitration Association is an institutional legal person with all the separate arbitration commissions as its members. The statute of the China Arbitration Association shall be formulated by the national congress of the association.

The China Arbitration Association is a self-disciplinary organization for arbitration commissions to supervise over the latters and their members and arbitrators therein.

The China Arbitration Association shall formulate arbitration rules according to this law and the civil procedure law.

Chapter III Agreement for Arbitration

Article 16 An agreement for arbitration shall include the arbitration clauses stipulated in the contracts or other written agreements for arbitration reached before or after a dispute occurs.

An arbitration agreement shall contain the following:

1. The expression of application for arbitration.

2. Matters for arbitration.

3. The arbitration commission chosen.

Article 17 An agreement for arbitration shall be invalid in one of the following cases:

1. The matters agreed for arbitration exceed the scope of arbitration provided by law.

2. Agreements concluded by people being incapable or restricted in civil acts.

3. An agreement forced upon a party by the other party by means of coercion.

Article 18 Whereas an agreement for arbitration fails to specify or specify clearly matters concerning arbitration or the choice of arbitration commission, parties concerned may conclude a supplementary agreement. If a supplementary agreement cannot be reached, the agreement for arbitration is invalid.

Article 19 The effect of an agreement for arbitration shall stand independently and shall not be affected by the alteration, dissolution, termination or invalidity of a contract.

An arbitration tribunal has the right to establish the validity of a contract.

Article 20 Whereas parties concerned have doubt on the validity of an agreement for arbitration, a request can be made to the arbitration commission for a decision or to the people’s court for a ruling. If one party requests the arbitration commission for a decision while the other

party requests the people's court for a ruling, the people's court shall pass a ruling.

A doubt to the effectiveness of an arbitration agreement, should be raised before the first hearing at the arbitration tribunal.

Chapter IV Arbitration Procedure

Section I Application and Acceptance

Article 21 The parties concerned should meet the following requirements in applying for arbitration:

1. There is an agreement for arbitration.

2. There are specific requests for arbitration and facts and reasons.

3. The matters to be pur to arbitration shall fall into the limits of the authority of the arbitration commission.

Article 22 In applying for arbitration, the parties concerned shall submit the agreement and the application for arbitration and their copies.

Article 23 The application for arbitration shall specify the following matters:

1. Name, sex, age, profession, work unit and residence of parties concerned; the name, residence of legal persons or other organizations and the name and position of the legal representatives or principal leading members.

2. The claimants's claim and the facts and evidence on which the claim is based.

3. Evidence and sources of evidence and name and residence of witnesses.

Article 24 An arbitration commission shall accept the application within five days after the application is received if it deems the application conforming to requirements and notify the parties concerned. If it deems the application unconformable to requirements, it shall notify the parties concerned in writing and state the reasons.

Article 25 After an arbitration commission has accepted an arbitration application, it shall deliver the arbitration rules and the list of the panel of arbitrators to the claimant within the time limit prescribed in the arbitration rules and send the copies of the arbitration application and the arbitration rules and the list of the panel of arbitrators to the respondent.

After the respondent has received the copy of the application for arbitration, the aforesaid respondent shall file a counter-claim with the arbitration commission. After the arbitration commission has received the counter-claim of the respondent, it shall deliver the counter-claim to the claimant within the time limit set in the arbitration rules. If a respondent fails to submit a counter-claim, it does not affect the arbitration proceedings.

Article 26 When parties concerned have reached an agreement for arbitration but one party brings a suit in the people's court without notifying the court that there is an agreement for arbitration and, after the people's court has accepted the case, the other party submits the agreement for arbitration before the opening of the arbitration tribunal, the people's court shall

reject the suit, except in the case that the agreement for arbitration is invalid. If the other party fails to raise objection to the acceptance of the case by the court before first hearing, it shall be regarded as having forfeited the agreement for arbitration and the people's court shall continue the hearing.

Article 27 A claimant may give up or alter its claims. The respondent may acknowledge or refute the claims and has the right to raise counter- claims.

Article 28 Whereas due to the acts of the other party or other reasons, the arbitration award cannot be or is hard to be executed, the parties concerned may apply for putting the property under custody.

Whereas a claimant has applied for a custody to the property, the arbitration commission shall, according to the relevant provisions of the Civil Procedure Law, submit the application of the claimant to the people's court.

Whereas there are errors in the application, the claimant shall compensate to the respondent for the losses arising from the custody to the property.

Article 29 The parties concerned or legal attorneys may entrust lawyers or other attorneys to handle matters relating to arbitration. In the case where lawyers or other attorneys are entrusted with the handling of arbitration matters, the attorneys shall produce a power of attorney to the arbitration commission.

Section II Composition of Arbitration Tribunal

Article 30 An arbitration tribunal may be composed of three arbitrators or one arbitrator. In the case of three arbitrators, there should be a chief arbitrator.

Article 31 Whereas the parties concerned agree that the arbitration tribunal is composed of three arbitrators, each of them shall chose one arbitrator or entrust the appointment to the chairman of the arbitration commission, with the third arbitrator jointly chosen by the parties concerned or appointed by the chairman of the arbitration commission jointly entrusted by the two parties. The third arbitrator shall be the chief arbitrator.

Whereas the parties concerned agree to have the arbitration tribunal composed of one arbitrator, the two parties shall jointly choose the arbitrator or entrust the choice of the arbitrator to the chairman of the arbitration commission.

Article 32 Whereas the parties concerned fail to decide on the composition of the arbitration tribunal or fail to choose arbitrators within the time limit prescribed in the arbitration rules, the chairman of the arbitration commission shall make the decision.

Article 33 After the formation of an arbitration tribunal, the arbitration commission shall notify in writing the composition of the arbitration tribunal matters.

Article 34 An arbitrator shall be withdrawn and the parties concerned have the right to request withdrawal, whereas:

1. The arbitrator is a party involved in the case or a blood relation or relative of the parties concerned or their attorneys.

2. the arbitrator has vital personal interests in the case.

3. the arbitrator has other relations with the parties or their attorneys involved in the case that might effect the fair ruling of the case.

4. the arbitrator meets the parties concerned or their attorneys in private or has accepted gifts or attended banquets hosted by the parties concerned or their attorneys.

Article 35 In requesting for withdrawal, the parties concerned shall state reasons before the first hearing of the tribunal. If the reasons are known only after the first hearing, they may be stated before the end of the last hearing.

Article 36 The withdrawal of an arbitrator shall be decided upon by the chairman of the arbitration commission. Whereas the chairman of the arbitration commission serves as an arbitrator, the withdrawal shall be decided upon collectively by the arbitration commission.

Article 37 Whereas an arbitrator is withdrawn or unable to perform his duty due to other reasons, another arbitrator shall be chosen or appointed according to the relevant provisions of this law.

Whereas re-selection or re-appointment of an arbitrator is made due to withdrawal, the parties concerned may apply for the re-start of the arbitration proceedings, but the final decision shall be made by the arbitration tribunal. The arbitration tribunal may also make its own decision as to whether or not the arbitration proceedings will restart.

Article 38 Whereas a case provided for in 4. of Article 34 of this law is found with an arbitration and the case is very serious or a case provided for in 6. of Article 58 of this law is found with an arbitrator, the arbitrator shall bear the legal responsibility according to law and the arbitration commission shall remove him from the panel of arbitrators.

Section III Hearing and Ruling

Article 39 An arbitration tribunal shall hold oral hearings to hear a case.

Whereas the parties concerned agree not to hold oral hearings, the arbitration tribunal may give the award based on the arbitration application, claims and counter-claims and other documents.

Article 40 The arbitration tribunal may not hear a case in open sessions. But when parties concerned agree to have the case heard in open sessions, the hearing may be held openly, except cases that involve State secrets.

Article 41 The arbitration commission shall notify the parties concerned the date of hearing within the time limit prescribed in the arbitration rules. With justifiable reasons, a party concerned may request the postponement of the hearing within the time limit set in the arbitration rules. Whether or not the hearing is postponed shall be decided upon by the arbitration tribunal.

Article 42 Whereas a claimant is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may be regarded as a withdrawal of claims.

Whereas a respondent is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may give the award by default.

Article 43 The parties concerned shall provide evidence to support their respective claims.

Whereas an arbitration tribunal deems it necessary to collect evidence, it may collect it on its own initiative.

Article 44 Whereas an arbitration tribunal deems it necessary to have the specialized issues appraised, it may submit them to the appraisal department chosen by the parties concerned by agreement or to the appraisal department designated by the arbitration tribunal.

At the request of the parties concerned or of the arbitration tribunal, the appraisal department shall send appraisers to the hearing. Parties concerned may, with the permission of the arbitration tribunal, raise questions to the appraisers.

Article 45 Evidence shall be produced during the course of hearing and the parties concerned may question or substantiate their evidence.

Article 46 Whereas evidences are vulnerable to be destroyed or missing and would be heard to be recovered, the parties concerned may apply to put the evidences on custody: When a party applies for custody of evidences, the arbitration commission shall submit the evidences of the party concerned to the people’s court at the place where the evidences are obtained.

Article 47 The parties concerned have the right to debate during the process of hearing. At the end of the debate, the chief arbitrator or the sole arbitrator shall ask the parties concerned for the final statement.

Article 48 The arbitration tribunal shall record the hearings in writing. Whereas the parties concerned or other people involved in the arbitration find something in their statements left out in the recording or recorded incorrectly, they have the right to apply for correction. Whereas corrections are not made, the application shall be recorded.

The written records of the hearings shall be signed or affixed with seals by the arbitrators, minute keepers, the parties concerned and other people participating in the arbitration.

Article 49 After the parties have applied for arbitration, they may reach reconciliation on their own initiative. Whereas a reconciliation agreement has been reached, a request may be made to the arbitration tribunal for an award based on the reconciliation agreement or the application for arbitration may be withdrawn.

Article 50 Whereas the parties concerned have gone back on their word after they have reached a reconciliation agreement, they may apply for arbitration according to the arbitration agreement.

Article 51 The arbitration tribunal may reconciliate a case before passing the award. Whereas the parties concerned accept the reconciliation effort of their own accord, the arbitration tribunal may conduct the reconciliation. Should the reconciliation fail, the arbitration tribunal shall pass the ruling in time.

Whereas an agreement is reached through reconciliation, the arbitration tribunal shall compile the reconciliation document or make an award based on the results of the agreement. The document of reconciliation and the arbitral award are equally binding legally.

Article 52 The document of reconciliation shall specify the arbitration claims and the result of the agreement between the parties concerned. The document of reconciliation shall be signed by the arbitrator and affixed with the seal of the arbitration commission before being delivered to the parties concerned.

The document of reconciliation becomes legally binding immediately upon received by parties concerned.

If any party concerned has gone back on his word after receiving the document of reconciliation, the arbitration tribunal shall make a timely ruling.

Article 53 An arbitral award shall be decided by the majority of the arbitrators and the views of the minority can be written down in the record. Whereas a majority vote cannot be reached, the award shall be decided based on the opinion of the chief arbitrator.

Article 54 The arbitral award shall specify the arbitration claims, facts in disputes, reasons for the award, result of the award, arbitration expenses and date of the award given. Whereas parties concerned object to the specification of the facts in dispute and reasons for the ruling, such specification and reasons may be omitted. The arbitral award shall be signed by arbitrators and affixed with the seals of the arbitration commission. An arbitrator holding differences of views may sign or may not sign the award.

Article 55 In arbitrating disputes, the arbitration tribunal may pass the ruling on part of the facts that have already been made clear.

Article 56 An arbitration tribunal should correct the errors involving context or computation and add things that have been omitted in the rulings in the arbitral award. The parties concerned may apply for correction with the arbitration tribunal within 30 days after the receipt of the award.

Article 57 The arbitral award takes legal effect upon its issuing.

Chapter V Application for Cancelling Arbitral Ruling

Article 58 If parties concerned have evidences to substantiate one of the following, they may apply for the cancellation of arbitral award with the intermediate people’s court at the place where the arbitration commission resides.

1. There is no agreement for arbitration.

2. The matters ruled are out the scope of the agreement for arbitration or the limits of authority of an arbitration commission.

3. The composition of the arbitration tribunal or the arbitration proceedings violate the legal proceedings.

4. The evidences on which the ruling is based are forged.

5. Things that have an impact on the impartiality of ruling have been discovered concealed by

the opposite party.

6. Arbitrators have accepted bribes, resorted to deception for personal gains or perverted the law in the ruling.

The people's court shall form a collegial bench to verify the case. Whereas one of the aforesaid cases should be found, arbitral award should be ordered to be cancelled by the court.

Whereas the people's court establishes that an arbitral award goes against the public interests, the award should be cancelled by the court.

Article 59 An application filed by the parties concerned for the cancellation of an arbitral award should be sent within six months starting from the date of receipt of the award.

Article 60 The people's court should rule to cancel the award or reject the application within two months after the application for cancellation of an award is received.

Article 61 After the people's court has accepted an application for the cancellation of an arbitral award and deems it necessary for the arbitration tribunal to make a new award, it shall notify the arbitration tribunal for a new ruling within a certain limit of time and order the termination of the cancellation pr-ocedure. In the case when the arbitration tribunal refuses a new ruling, the people's court shall rule that the cancellation procedure be restored.

Chapter VI Enforcement

Article 62 The parties concerned shall execute the arbitral award. If one of the parties refuses to execute the award, the other party may apply for enforcement with the people's court according to the relevant provisions of the Civil Procedure Law. The people's court with which the application is filed should enforce it.

Article 63 If the respondent has produced evidences to substantiate one of the following cases provided for in the second paragraph of Article 217 of the Civil Procedure Law, the award shall not be enforced after the verification by the collegiate bench of the people's court.

Article 64 Whereas one party applies for an enforcement while the other applies for a cancellation of a award, the people's court shall order the termination of the performance of the award.

Whereas the people's court has ordered the cancellation of an award, it should also order the termination of performance of the award. Whereas an application for the cancellation of an award is rejected, the people's court shall order the restoration of the performance of the award.

Chapter VII Special Provision on Arbitration Involving Foreign Interests

Article 65 The provisions in this chapter apply to arbitration of disputes arising from foreign economic cooperation and trade, transportation and maritime matters. Matters not covered by this chapter shall be handled according to other relevant provisions of this law.

Article 66 Foreign arbitration commissions may be formed by the China International Chamber of Commerce.

A foreign arbitration commission is composed of a chairman, a number of vice-chairmen and members.

The chairman, vice-chairmen and members of a foreign arbitration commission shall be appointed by the China International Chamber of Commerce.

Article 67 Members of a foreign arbitration commission may appoint arbitrators from among foreign nationals with specialized knowledge in law, economy and trade, science and technology.

Article 68 Whereas the parties involved in a foreign arbitration case apply for the custody of evidences, the foreign arbitration commission shall submit the application to the intermediate people's court at places where the evidences are produced.

Article 69 The foreign arbitration tribunal may write down its hearings on records or summary of records. The records shall be signed or affixed with the seals of the parties concerned and other people participating in the arbitration.

Article 70 Whereas the claimant has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the People's court shall form a collegiate bench to verify the facts and order the cancellation of the award.

Article 71 Whereas the respondent has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the people's court shall form a collegiate bench to verify the facts and order the non-performance of the award.

Article 72 Whereas a party involved in a foreign arbitration case applies for the enforcement of the award that has taken legal effect, the party shall apply directly with a foreign law court with the jurisdiction for recognition and enforcement if the party that should implement the award or its property is not in the territory of the People's Republic of China.

Article 73 The rules for foreign arbitration shall be formulated by the China International Chamber of Commerce according to this law and the relevant provisions of the Civil Procedure Law.

Chapter VIII Supplementary Provisions

Article 74 Whereas there is a limited effective period for the arbitration stipulated in the law, the limit shall apply. Whereas there is not a limited effective period for the arbitration stipulated by the law, the provisions about limits for proceedings shall apply.

Article 75 Before the China Arbitration Association has formulated arbitration rules, arbitration commissions may formulate interim rules for arbitration according to this law and the relevant provisions of the Civil Procedure Law.

Article 76 Parties concerned shall pay arbitration fees according to provisions.

The schedule of arbitration fees shall be submitted for approval by the pricing administrative department.

Article 77 The arbitration of labor disputes and disputes arising from the farm work contract inside the collective agricultural organizations shall be formulated separately.

Article 78 Whereas the relevant arbitration regulations formulated before the enforcement of this law come into conflict with the provisions of this law, the provisions of this law shall prevail.

Article 79 The arbitration organization set up in cities where the people's governments of the municipalities, provinces and autonomous regions are located and other cities which have districts shall be reorganized according to the relevant provisions of this law. Those not reorganized shall be terminated in one year's time starting from the date of the implementation of this law.

Other arbitration organizations set up before the implementation of this law and are not in conformity to the provisions of this law shall be terminated starting from the date of the implementation of this law.

Article 80 The law shall enter into force as of September 1, 1995.

Attachment:Relevant Provisions of the Civil Procedure Law

Article 217 Whereas the party against whom the application is made provides evidences which have proved that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order not to perform the arbitration award:

1. The parties have not stipulated clauses on arbitration in the contracts, or have not subsequently reached a written agreement for arbitration;

2. Matters proposed for arbitration are out of scope of the agreement for arbitration or the limits of authority of the arbitration agency;

3. The composition of the arbitration division or the procedure for arbitration is not in conformity with the legal procedure;

4. The main evidences are not sufficient to substantiate the facts;

5. There are errors in the cited law; or

6. The arbitrators committed acts of malpractice for personal benefits and perverted the law in the arbitration of the case.

Article 260 Whereas the person against whom the application is made provides evidences which prove that the arbitration award made by the foreign affairs arbitration agency of the People's Republic of China involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order to stop the execution of the award:

1. The parties concerned have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement for arbitration;

2. The person against whom the application is made is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the said person fails to state its opinions due to reasons for which he is not held responsible;

3. The composition of the arbitration division or the procedure for arbitration is not in conformity with the rules of arbitration; or

4. Matters for arbitration are out of the scope of the agreement for arbitration or the limits of authority of the arbitration agency.

中华人民共和国主席令

（第 31 号）

《中华人民共和国仲裁法》已由中华人民共和国第八届全国人民代表大会常务委员会第九次会议于 1994 年 8 月 31 日通过，现予公布，自 1995 年 9 月 1 日起施行。

中华人民共和国主席　江泽民

1994 年 8 月 31 日

中华人民共和国仲裁法

（1994 年 8 月 31 日第八届全国人民代表

大会常务委员会第九次会议通过）

第一章　总则

第一条　【立法目的】为保证公正、及时地仲裁经济纠纷，保护当事人的合法权益，保障社会主义市场经济健康发展，制定本法。

第二条　【适用范围】平等主体的公民、法人和其他组织之间发生的合同纠纷和其他财产权益纠纷，可以仲裁。

第三条　【适用范围的例外】下列纠纷不能仲裁：

（一）婚姻、收养、监护、扶养、继承纠纷；

（二）依法应当由行政机关处理的行政争议。

第四条　【自愿仲裁原则】当事人采用仲裁方式解决纠纷，应当双方自愿，达成仲裁协议。没有仲裁协议，一方申请仲裁的，仲裁委员会不予受理。

第五条　【或裁或审原则】当事人达成仲裁协议，一方向人民法院起诉的，人民法院不予受理，但仲裁协议无效的除外。

第六条　【仲裁机构的选定】仲裁委员会应当由当事人协议选定。

仲裁不实行级别管辖和地域管辖。

第七条　【依据事实和法律仲裁原则】仲裁应当根据事实，符合法律规定，公平合理地解决纠纷。

第八条　【独立仲裁原则】仲裁依法独立进行，不受行政机关、社会团体和个人的干涉。

第九条　【一裁终局制】仲裁实行一裁终局的制度。裁决作出后，当事人就同一纠纷再申请仲裁或者向人民法院起诉的，仲裁委员会或者人民法院不予受理。

裁决被人民法院依法裁定撤销或者不予执行的，当事人就该纠纷可以根据双方重新达成的仲裁协议申请仲裁，也可以向人民法院起诉。

第二章　仲裁委员会和仲裁协会

第十条　【仲裁委员会的设置】仲裁委员会可以在直辖市和省、自治区人民政府所在地的市设立，也可以根据需要在其他设区的市设立，不按行政区划层层设立。

仲裁委员会由前款规定的市的人民政府组织有关部门和商会统一组建。

设立仲裁委员会，应当经省、自治区、直辖市的司法行政部门登记。

第十一条　【仲裁委员会的设立条件】仲裁委员会应当具备下列条件：

（一）有自己的名称、住所和章程；

（二）有必要的财产；

（三）有该委员会的组成人员；

（四）有聘任的仲裁员。

仲裁委员会的章程应当依照本法制定。

第十二条　【仲裁委员会的组成成员】仲裁委员会由主任一人、副主任二至四人和委员七至十一人组成。

仲裁委员会的主任、副主任和委员由法律、经济贸易专家和有实际工作经验的人员担任。仲裁委员会的组成人员中，法律、经济贸易专家不得少于三分之二。

第十三条　【仲裁员的条件】仲裁委员会应当从公道正派的人员中聘任仲裁员。

仲裁员应当符合下列条件之一：

（一）从事仲裁工作满八年的；

（二）从事律师工作满八年的；

（三）曾任审判员满八年的；

（四）从事法律研究、教学工作并具有高级职称的；

（五）具有法律知识、从事经济贸易等专业工作并具有高级职称或者具有同等专业水平的。

仲裁委员会按照不同专业设仲裁员名册。

第十四条　【仲裁委员会的独立性】仲裁委员会独立于行政机关，与行政机关没有隶属关系。仲裁委员会之间也没有隶属关系。

第十五条　【中国仲裁协会】中国仲裁协会是社会团体法人。仲裁委员会是中国仲裁协会的会员。中国仲裁协会的章程由全国会员大会制定。

中国仲裁协会是仲裁委员会的自律性组织，根据章程对仲裁委员会及其组成人员、仲裁员的违纪行为进行监督。

中国仲裁协会依照本法和民事诉讼法的有关规定制定仲裁规则。

第三章　仲裁协议

第十六条　【仲裁协议的形式和内容】仲裁协议包括合同中订立的仲裁条款和以其他书面方式在纠纷发生前或者纠纷发生后达成的请求仲裁的协议。

仲裁协议应当具有下列内容：

（一）请求仲裁的意思表示；

（二）仲裁事项；

（三）选定的仲裁委员会。

第十七条　【仲裁协议的无效】有下列情形之一的，仲裁协议无效：

（一）约定的仲裁事项超出法律规定的仲裁范围的；

（二）无民事行为能力人或者限制民事行为能力人订立的仲裁协议；

（三）一方采取胁迫手段，迫使对方订立仲裁协议的。

第十八条　【内容不明确的仲裁协议的处理】仲裁协议对仲裁事项或者仲裁委员会没有约定或者约定不明确的，当事人可以补充协议；达不成补充协议的，仲裁协议无效。

第十九条　【仲裁条款效力的独立性】仲裁协议独立存在，合同的变更、解除、终止或者无效，不影响仲裁协议的效力。

仲裁庭有权确认合同的效力。

第二十条　【仲裁协议异议的处理】当事人对仲裁协议的效力有异议的，可以请求仲裁委员会作出决定或者请求人民法院作出裁定。一方请求仲裁委员会作出决定，另一方请求人民法院作出裁定的，由人民法院裁定。

当事人对仲裁协议的效力有异议，应当在仲裁庭首次开庭前提出。

第四章　仲裁程序

第一节　申请和受理

第二十一条　【申请仲裁的条件】当事人申请仲裁应当符合下列条件：

（一）有仲裁协议；

（二）有具体的仲裁请求和事实、理由；

（三）属于仲裁委员会的受理范围。

第二十二条　【申请仲裁的文件】当事人申请仲裁，应当向仲裁委员会递交仲裁协议、仲裁申请书及副本。

第二十三条　【仲裁申请书内容】仲裁申请书应当载明下列事项：

（一）当事人的姓名、性别、年龄、职业、工作单位和住所，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务；

（二）仲裁请求和所根据的事实、理由；

（三）证据和证据来源、证人姓名和住所。

第二十四条　【仲裁申请的受理与不受理】仲裁委员会收到仲裁申请书之日起五日内，认为符合受理条件的，应当受理，并通知当事人；认为不符合受理条件的，应当书面通知当事人不予受理，并说明理由。

第二十五条　【受理后的准备工作】仲裁委员会受理仲裁申请后，应当在仲裁规则规定的期限内将仲裁规则和仲裁员名册送达申请人，并将仲裁申请书副本和仲裁规则、仲裁员名册送达被申请人。

被申请人收到仲裁申请书副本后，应当在仲裁规则规定的期限内向仲裁委员会提交答辩书。仲裁委员会收到答辩书后，应当在仲裁规则规定的期限内将答辩书副本送达申请人。被申请人未提交答辩书的，不影响仲裁程序的进行。

第二十六条　【仲裁当事人起诉的处理】当事人达成仲裁协议，一方向人民法院起诉未声明有仲裁协议，人民法院受理后，另一方在首次开庭前提交仲裁协议的，人民法院应当驳回起诉，但仲裁协议无效的除外；另一方在首次开庭前未对人民法院受理该案提出异议的，视为放弃仲裁协议，人民法院应当继续审理。

第二十七条　【仲裁请求变动】申请人可以放弃或者变更仲裁请求。被申请人可以承认或者反驳仲裁请求，有权提出反请求。

第二十八条　【财产保全】一方当事人因另一方当事人的行为或者其他原因，可能使裁决不能执行或者难以执行的，可以申请财产保全。

当事人申请财产保全的，仲裁委员会应当将当事人的申请依照民事诉讼法的有关规定提交人民法院。

申请有错误的，申请人应当赔偿被申请人因财产保全所遭受的损失。

第二十九条　【仲裁代理】当事人、法定代理人可以委托律师和其他代理人进行仲裁活动。委托律师和其他代理人进行仲裁活动的，应当向仲裁委员会提交授权委托书。

第二节　仲裁庭的组成

第三十条　【仲裁庭的组成】仲裁庭可以由三名仲裁员或者一名仲裁员组成。由三名仲裁员组成的，设首席仲裁员。

第三十一条　【仲裁员的选任】当事人约定由三名仲裁员组成仲裁庭的，应当各自选定或者各自委托仲裁委员会主任指定一名仲裁员，第三名仲裁员由当事人共同选定或者共同委托仲裁委员会主任指定。第三名仲裁员是首席仲裁员。

当事人约定由一名仲裁员成立仲裁庭的，应当由当事人共同选定或者共同委托仲裁委员会主任指定仲裁员。

第三十二条　【仲裁员的指定】当事人没有在仲裁规则规定的期限内约定仲裁庭的组成方式或者选定仲裁员的，由仲裁委员会主任指定。

第三十三条　【仲裁庭组成情况的通知】仲裁庭组成后，仲裁委员会应当将仲裁庭的组成情况书面通知当事人。

第三十四条　【回避的适用范围】仲裁员有下列情形之一的，必须回避，当事人也有权提出回避申请：

（一）是本案当事人或者当事人、代理人的近亲属；

（二）与本案有利害关系；

（三）与本案当事人、代理人有其他关系，可能影响公正仲裁的；

（四）私自会见当事人、代理人，或者接受当事人、代理人的请客送礼的。

第三十五条　【当事人申请回避】当事人提出回避申请，应当说明理由，在首次开庭前提出。回避事由在首次开庭后知道的，可以在最后一次开庭终结前提出。

第三十六条　【回避的决定】仲裁员是否回避，由仲裁委员会主任决定；仲裁委员会主任担任仲裁员时，由仲裁委员会集体决定。

第三十七条　【仲裁员的重新确定】仲裁员因回避或者其他原因不能履行职责的，应当依照本法规定重新选定或者指定仲裁员。

因回避而重新选定或者指定仲裁员后，当事人可以请求已进行的仲裁程序重新进行，是否准许，由仲裁庭决定；仲裁庭也可以自行决定已进行的仲裁程序是否重新进行。

第三十八条　【仲裁员的除名】仲裁员有本法第三十四条第四项规定的情形，情节严重的，或者有本法第五十八条第六项规定的情形的，应当依法承担法律责任，仲裁委员会应当将其除名。

第三节　开庭和裁决

第三十九条　【仲裁审理的方式】仲裁应当开庭进行。当事人协议不开庭的，仲裁庭可以根据仲裁申请书、答辩书以及其他材料作出裁决。

第四十条　【仲裁不公开原则】仲裁不公开进行。当事人协议公开的，可以公开进行，但涉及国家秘密的除外。

第四十一条　【开庭通知与延期审理】仲裁委员会应当在仲裁规则规定的期限内将开庭日期通知双方当事人。当事人有正当理由的，可以在仲裁规则规定的期限内请求延期开庭。是否延期，由仲裁庭决定。

第四十二条　【视为撤回申请和缺庭判决】申请人经书面通知，无正当理由不到庭或者未经仲裁庭许可中途退庭的，可以视为撤回仲裁申请。

被申请人经书面通知，无正当理由不到庭或者未经仲裁庭许可中途退庭的，可以缺席裁决。

第四十三条　【举证责任】当事人应当对自己的主张提供证据。

仲裁庭认为有必要收集的证据，可以自行收集。

第四十四条　【专门性问题的鉴定】仲裁庭对专门性问题认为需要鉴定的，可以交由当事人约定的鉴定部门鉴定，也可以由仲裁庭指定的鉴定部门鉴定。

根据当事人的请求或者仲裁庭的要求，鉴定部门应当派鉴定人参加开庭。当事人经仲裁庭许可，可以向鉴定人提问。

第四十五条　【证据出示和质证】证据应当在开庭时出示，当事人可以质证。

第四十六条　【证据保全】在证据可能灭失或者以后难以取得的情况下，当事人可以申请证据保全。当事人申请证据保全的，仲裁委员会应当将当事人的申请提交证据所在地的基层人民法院。

第四十七条　【当事人的辩论】当事人在仲裁过程中有权进行辩论。辩论终结时，首席仲裁员或者独任仲裁员应当征询当事人的最后意见。

第四十八条　【仲裁笔录】仲裁庭应当将开庭情况记入笔录。当事人和其他仲裁参与人认为对自己陈述的记录有遗漏或者差错的，有权申请补正。如果不予补正，应当记录该申请。

笔录由仲裁员、记录人员、当事人和其他仲裁参与人签名或者盖章。

第四十九条　【仲裁和解】当事人申请仲裁后，可以自行和解。达成和解协议的，可以请求仲裁庭根据和解协议作出裁决书，也可以撤回仲裁申请。

第五十条　【和解后反悔的处理】当事人达成和解协议，撤回仲裁申请后反悔的，可以根据仲裁协议申请仲裁。

第五十一条　【仲裁调解】仲裁庭在作出裁决前，可以先行调解。当事人自愿调解的，仲裁庭应当调解。调解不成的，应当及时作出裁决。

调解达成协议的，仲裁庭应当制作调解书或者根据协议的结果制作裁决书。调解书与裁决书具有同等法律效力。

第五十二条　【仲裁调解书】调解书应当写明仲裁请求和当事人协议的结果。调解书由仲裁员签名，加盖仲裁委员会印章，送达双方当事人。

调解书经双方当事人签收后，即发生法律效力。

在调解书签收前当事人反悔的，仲裁庭应当及时作出裁决。

第五十三条　【仲裁裁决的作出】裁决应当按照多数仲裁员的意见作出，少数仲裁员的不同意见可以记入笔录。仲裁庭不能形成多数意见时，裁决应当按照首席仲裁员的意见作出。

第五十四条　【裁决书的内容】裁决书应当写明仲裁请求、争议事实、裁决理由、裁决结果、仲裁费用的负担和裁决日期。当事人协议不愿写明争议事实和裁决理由的，可以不写。裁决书由仲裁员签名，加盖仲裁委员会印章。对裁决持不同意见的仲裁员，可以签名，也可以不签名。

第五十五条　【先行裁决】仲裁庭仲裁纠纷时，其中一部分事实已经清楚，可以就该部分先行裁决。

第五十六条　【裁决书的补正】对裁决书中的文字、计算错误或者仲裁庭已经裁决但在裁决书中遗漏的事项，仲裁庭应当补正；当事人自收到裁决书之日起三十日内，可以请求仲裁庭补正。

第五十七条　【裁决书的生效】裁决书自作出之日起发生法律效力。

第五章　申请撤销裁决

第五十八条　【申请撤销裁决条件】当事人提出证据证明裁决有下列情形之一的，可以向仲裁委员会所在地的中级人民法院申请撤销裁决：

（一）没有仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁委员会无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）裁决所根据的证据是伪造的；

（五）对方当事人隐瞒了足以影响公正裁决的证据的；

（六）仲裁员在仲裁该案时有索贿受贿，徇私舞弊，枉法裁决行为的。

人民法院经组成合议庭审查核实裁决有前款规定情形之一的，应当裁定撤销。

人民法院认定该裁决违背社会公共利益的，应当裁定撤销。

第五十九条　【申请撤销裁决的期限】当事人申请撤销裁决的，应当自收到裁决书之日起六个月内提出。

第六十条　【撤销与否的期限】人民法院应当在受理撤销裁决申请之日起两个月内作出撤销裁决或者驳回申请的裁定。

第六十一条　【申请撤销裁决的后果】人民法院受理撤销裁决的申请后，认为可以由仲裁庭重新仲裁的，通知仲裁庭在一定期限内重新仲裁，并裁定中止撤销程序。仲裁庭拒绝重新仲裁的，人民法院应当裁定恢复撤销程序。

第六章　执行

第六十二条　【仲裁裁决的执行】当事人应当履行裁决。一方当事人不履行的，另一方当事人可以依照民事诉讼法的有关规定向人民法院申请执行。受申请的人民法院应当执行。

第六十三条　【仲裁裁决不予执行】被申请人提出证据证明裁决有民事诉讼法第二百一十七条第二款规定的情形之一的，经人民法院组成合议庭审查核实，裁定不予执行。

第六十四条　【裁决中止、终结与恢复执行】一方当事人申请执行裁决，另一方当事人申请撤销裁决的，人民法院应当裁定中止执行。

人民法院裁定撤销裁决的，应当裁定终结执行。撤销裁决的申请被裁定驳回的，人民法院应当裁定恢复执行。

第七章　涉外仲裁的特别规定

第六十五条　【涉外仲裁的范围】涉外经济贸易、运输和海事中发生的纠纷的仲裁，适用本章规定。本章没有规定的，适用本法其他有关规定。

第六十六条　【涉外仲裁委员会的设立】涉外仲裁委员会可以由中国国际商会组织设立。

涉外仲裁委员会由主任一人、副主任若干人和委员若干人组成。

涉外仲裁委员会的主任、副主任和委员可以由中国国际商会聘任。

第六十七条　【涉外仲裁委员会仲裁员聘任】涉外仲裁委员会可以从具有法律、经济贸易、科学技术等专门知识的外籍人士中聘任仲裁员。

第六十八条　【涉外仲裁的证据保全】涉外仲裁的当事人申请证据保全的，涉外仲裁委

员会应当将当事人的申请提交证据所在地的中级人民法院。

第六十九条　【涉外仲裁的开庭笔录】涉外仲裁的仲裁庭可以将开庭情况记入笔录，或者作出笔录要点，笔录要点可以由当事人和其他仲裁参与人签字或者盖章。

第七十条　【涉外仲裁裁决的撤销】当事人提出证据证明涉外仲裁裁决有民事诉讼法第二百六十条第一款规定的情形之一的，经人民法院组成合议庭审查核实，裁定撤销。

第七十一条　【裁决的不予执行】被申请人提出证据证明涉外仲裁裁决有民事诉讼法第二百六十条第一款规定的情形之一的，经人民法院组成合议庭审查核实，裁定不予执行。

第七十二条　【仲裁裁决在外国的承认和执行】涉外仲裁委员会作出的发生法律效力的仲裁裁决，当事人请求执行的，如果被执行人或者其财产不在中华人民共和国领域内，应当由当事人直接向有管辖权的外国法院申请承认和执行。

第七十三条　【涉外仲裁规则】涉外仲裁规则可以由中国国际商会依照本法和民事诉讼法的有关规定制定。

第八章　附则

第七十四条　【仲裁时效】法律对仲裁时效有规定的，适用该规定。法律对仲裁时效没有规定的，适用诉讼时效的规定。

第七十五条　【涉外仲裁规则规定】中国仲裁协会制定仲裁规则前，仲裁委员会依照本法和民事诉讼法的有关规定可以制定仲裁暂行规则。

第七十六条　【仲裁费用】当事人应当按照规定交纳仲裁费用。

收取仲裁费用的办法，应当报物价管理部门核准。

第七十七条　【不适应本法的两类合同】劳动争议和农业集体经济组织内部的农业承包合同纠纷的仲裁，另行规定。

第七十八条　【本法实行前有关仲裁规定的效力】本法施行前制定的有关仲裁的规定与本法的规定相抵触的，以本法为准。

第七十九条　【新旧仲裁机构的衔接过渡】本法施行前在直辖市、省、自治区人民政府所在地的市和其他设区的市设立的仲裁机构，应当依照本法的有关规定重新组建；未重新组建的，自本法施行之日起届满一年时终止。

本法施行前设立的不符合本法规定的其他仲裁机构，自本法施行之日起终止。

第八十条　【生效日期】本法自 1995 年 9 月 1 日起施行。

附：　　民事诉讼法有关条款

第二百一十七条　被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）认定事实的主要证据不足的；

（五）适用法律确有错误的；

（六）仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

第二百六十条　对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

Civil Procedure Law of the People's Republic of China（2007）

(Adopted on April 9, 1991 at the Fourth Session of the Seventh National People's Congress, and revised according to the Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China as adopted at the 30th Session of the Standing Committee of the 10th National People's Congress)

Table of Contents

Part One General Principles

Chapter 1 Purposes, Scope of Regulation and Basic Principles

Article 1 The Civil Procedure Law of the People's Republic of China is formulated according to the Constitution and in the light of the experience and actual conditions of adjudicating civil cases in our country.

Article 2 The purposes of the Civil Procedure Law of the People's Republic of China are to protect the litigation rights exercised by the parties, to ensure that the people's courts find facts, to distinguish right from wrong, to apply the law correctly, to try civil cases promptly, to affirm the rights and obligations in civil affairs, to impose sanctions for civil wrong doings, to protect the lawful rights and interests of the parties, to educate citizens to voluntarily abide by the law, to maintain the social and economic order, and to guarantee the smooth progress of the socialist construction.

Article 3 The provisions of this Law shall apply to all the civil litigation accepted by people's courts regarding disputes over the status of property and personal relations among citizens, legal persons, or other organizations respectively and mutually between citizens, legal persons, or other organizations.

Article 4 All those who involve in civil lawsuits within the territory of the People's Republic of China must abide by this Law.

Article 5 Foreign nationals, stateless persons, foreign enterprises, or organizations, which initiate or respond to lawsuits in people's courts, shall have the same litigation rights and obligations as the citizens, legal persons, or other organizations of the People's Republic of China.
Should the courts of a foreign country impose restrictions on the civil litigation rights of the citizens, legal persons, or other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall follow the principle of reciprocity regarding the civil litigation rights of the citizens, enterprises, or organizations of that foreign country.

Article 6 The adjudication authority over civil cases shall be exercised by the people's courts only.
The people's courts shall adjudicate civil cases independently according to law, and shall not be subject to any interference from an administrative organ, public organization, or individual.

Article 7 The people's courts must take the facts as the basis and take the law as the criterion when adjudicating civil cases.

Article 8 All parties to a civil litigation shall have equal litigation rights. The people's courts shall, when adjudicating civil

cases, guarantee and facilitate all parties to exercise their litigation rights, and apply the law equally to all parties.

Article 9 When adjudicating civil cases, the people's courts may mediate the disputes according to the principles of voluntariness and lawfulness; if a mediation agreement can not be reached, the courts shall render judgments without delay.

Article 10 When adjudicating civil cases, the people's courts shall apply the systems of collegial panel, recusal, public trial, and "two trials and the second one is final".

Article 11 Chinese citizens of all ethnicities shall have the right to use their native spoken and written languages in civil proceedings.
In the areas where an ethnic minority is concentrated or a number of different ethnic nationalities live together, the people's courts shall conduct hearings and publish legal documents in the spoken and written languages commonly used by these people.
The people's courts shall provide translations for any litigation participants who are not familiar with the spoken or written languages commonly used by the local people.

Article 12 When adjudicating civil cases by the people's court, the parties shall have the right to engage in argument.

Article 13 The parties to a civil litigation shall be entitled, within the scope stipulated by law, to dispose their rights of civil affairs and litigation.

Article 14 The people's procuratorates shall have the right to exercise legal supervision over the civil proceedings.

Article 15 If the civil rights and interests of the state, a collective, or an individual have been infringed, a state organ, public organization, enterprise, or institution may support the injured unit or individual to initiate legal action in a people's court.

Article 16 The People's Conciliation Committees are the organizations for mass to mediate civil disputes derived from private citizens under the guidance of basic people's governments and the basic people's courts.
The People's Conciliation Committees shall conduct all mediations according to legal provisions and the principle of voluntariness. All concerned parties shall enforce mediation agreement. Where any concerned parties refuse mediation, fail to reach a mediation agreement, or retract a mediation agreement, they may initiate legal proceedings in a people's court.
If a People's Conciliation Committee violates the law when mediating civil disputes, the people's court shall correct it.

Article 17 The people's congresses of the national autonomous areas may formulate some accommodating or supplementary provisions according to the principles of the Constitution and this Law and based on the specific circumstances of their localities. Such provisions made by an autonomous region shall be submitted to the Standing Committee of the National People's Congress for approval. The provisions made by an autonomous prefecture or autonomous county shall be submitted to the standing committee of the people's congress of the relevant autonomous region or province for approval and to the Standing Committee of the National People's Congress for the record.

Chapter 2 Jurisdiction

Section 1 Jurisdiction by Levels of Courts

Article 18 A basic people's court shall have jurisdiction as the court of first instance over civil cases, unless otherwise stipulated in this Law.

Article 19 An intermediate people's court shall have jurisdiction as courts of first instance over the following civil cases:
(1)Major cases involving foreign elements;
(2)Cases that have major impacts in the area of its jurisdiction; and

(3)Cases under the jurisdiction of the intermediate people's courts as determined by the Supreme People's Court.

Article 20 A higher people's courts shall have jurisdiction as the court of first instance over civil cases that have major impacts on the areas of its jurisdiction.

Article 21 The Supreme People's Court shall have jurisdiction as the court of first instance over the following civil cases:
(1)Cases that have major impacts on the whole country; and
(2)Cases that the Supreme People's Court deems should be adjudicated by itself.

Section 2 Territorial Jurisdiction

Article 22 A civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court located in the place where the defendant has his domicile; if the defendant's domicile is different from his habitual residence, the lawsuit shall be under the jurisdiction of the people's court located in the place of his habitual residence.
A civil lawsuit brought against a legal person or an organization shall be under the jurisdiction of the people's court located in the place where the defendant has its domicile.
Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit.

Article 23 The civil litigations described below shall be under the jurisdiction of the people's court located in the place where the plaintiff has his domicile; if the plaintiff's domicile is different from his habitual residence, the lawsuit shall be under the jurisdiction of the people's court located in the place of the plaintiff's habitual residence. The relevant civil litigations are:
(1)Litigations concerning the status of persons who do not reside within the territory of the People's Republic of China;
(2)Litigations concerning the status of persons whose whereabouts are unknown or whom have been declared missing;
(3)Litigations brought against the persons who are undergoing reeducation through labor; and
(4)Litigations brought against persons who are in imprisonment.

Article 24 A lawsuit brought about a contract dispute shall be under the jurisdiction of the people's court located in the place where the defendant has his domicile or where the contract is performed.

Article 25 The parties to a contract may, through the written contract, choose a people's court, which located in the place where the defendant would have his domicile, the contract would be performed, the contract would be signed, the plaintiff would have his domicile, or the subject of the contract would be located, to have jurisdiction over the case, as long as this jurisdiction choice does not violate the provisions of this Law regarding the Jurisdiction by Level and the Exclusive Jurisdiction.

Article 26 A lawsuit brought for insurance contract dispute shall be under the jurisdiction of the people's court located in the place where the defendant has his domicile or where the insured subject matter is located.

Article 27 A lawsuit brought for a negotiable instrument dispute shall be under the jurisdiction of the people's court located in the place where the negotiable instrument is to be paid or where the defendant has his domicile.

Article 28 A lawsuit brought for a dispute over transportation contract via railway, highway, water, air, or combined transportation shall be under the jurisdiction of the people's court located in the place of the departure or the destination, or where the defendant has his domicile.

Article 29 A lawsuit brought for a tortious act shall be under the jurisdiction of the people's court located in the place where the infringing act took place or where the defendant has his domicile.

Article 30 A lawsuit to claim damages caused by a railway, highway, water, or aviation transportation accident shall be under the jurisdiction of the people's court located in the place where the accident took place, where the vehicle or ship

first arrived after the accident, where the aircraft first landed after the accident, or where the defendant has his domicile.

Article 31 A lawsuit brought for damages caused by a ship collision or any other maritime accident shall be under the jurisdiction of the people's court located in the place where the collision took place or where the collision ship first docked after the accident or where the ship at fault was detained, or where the defendant has his domicile.

Article 32 A lawsuit brought for a maritime salvage shall be under the jurisdiction of the people's court located in the place where the salvage took place or where the salvaged vessel first docked after the disaster.

Article 33 A lawsuit brought for a general average shall be under the jurisdiction of the people's court located in the place where the ship first docked after the general average adjustment took place or the adjustment thereof was conducted or where the voyage ended.

Article 34 The following cases shall be under the exclusive jurisdiction of the people's courts herein specified:
(1)A lawsuit brought for real estate shall be under the jurisdiction of the people's court located in the place where the real estate is located;
(2)A lawsuit concerning harbor operations shall be under the jurisdiction of the people's court located in the place where the harbor is located; and
(3)A lawsuit concerning an inheritance shall be under the jurisdiction of the people's court located in the place where the decedent had his domicile upon his death, or where the principal portion of his estate is located.

Article 35 When two or more people's courts have jurisdiction over a lawsuit, the plaintiff may bring his lawsuit in one of these people's courts; if the plaintiff brings the lawsuit in two or more people's courts that have jurisdiction over the lawsuit, it shall be handled by the people's court that accepts the case first.

Section 3 Jurisdiction by Transfer and Jurisdiction by Designation

Article 36 If a people's court discovers that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that does have jurisdiction over the case. The people's court to which a case has been transferred shall accept the case, and if it considers that, according to relevant regulations, the transferred case is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not transfer the case to another people's court without authorization.

Article 37 If a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for a special reason, the superior people's court shall designate another court to exercise the jurisdiction.
If there is a dispute over a jurisdiction among people's courts, it shall be resolved by the disputing parties through consultation; if the dispute cannot be resolved through consultation, the disputing courts shall ask their superior people's court to designate the jurisdiction.

Article 38 If a party rejects the jurisdiction of his case after the case was accepted by a people's court, the party shall raise the rejection during the period for submitting briefs. The people's court shall examine such objection. If the objection is tenable, the people's court shall rule that the case be transferred to the people's court that does have jurisdiction over the case; if the rejection is untenable, the people's court shall overrule the objection.

Article 39 People's courts at higher levels shall have the authority to try civil cases over which people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer civil cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for adjudication.
If a people's court at a lower level deems it necessary for a civil case of first instance under its jurisdiction to be tried by a people's court at a higher level, it may request such a people's court to adjudicate the case.

Chapter 3 Trial Organization

Article 40 Civil cases of first instance shall be tried in a people's court by a collegial bench consisting of both judges and assessors or of judges alone. The numbers of members of a collegial bench shall be odd.
Civil cases to which summary procedure is applied shall be tried by a single judge alone.
When carrying out their duties as assessors, the assessors shall have equal rights and obligations as the judges.

Article 41 Civil cases of second instance shall be tried in a people's court by a collegial bench of judges. The numbers of members of a collegial bench shall be odd.
For the retrial of a remanded case, the people's court of first instance shall form a new collegial bench according to the procedure of first instance.
If a case for retrial was originally tried at first instance, a new collegial bench shall be formed according to the procedure of first instance; if the case was originally tried at second instance or was removed to a people's court at a higher level for trial, a new collegial bench shall be formed according to the procedure of second instance.

Article 42 The president of the court or the chief judge of a division shall designate a judge to serve as the presiding judge of the collegial bench; if the president or the chief judge participates in trial, he himself shall serve as the presiding judge.

Article 43 When deliberating a case, a collegial bench shall observe the principle of minority obeying majority. The deliberations shall be recorded in writing, and the transcript shall be signed by the members of the collegial bench. The dissenting opinions in the deliberations shall be truthfully recorded in the transcript.

Article 44 The adjudicating personnel shall handle the case impartially and according to law.
The adjudicating personnel shall not accept a treat or gift from the parties or their agents.
Any adjudicating personnel who commits embezzlement, accepts bribes, practices favoritism for himself or relatives, twists the law in rendering judgment shall be investigated for legal responsibility; if a crime is committed, the offender shall be investigated for criminal responsibility according to law.

Chapter 4 Recusal of Adjudicating Personnel

Article 45 Any member of the adjudicating personnel in any of the following circumstances shall be disqualified, and the litigation parties shall also have the right to request, orally or in writing, such an adjudicator to be withdrawn from this case.
The relevant circumstances are:
(1)He is a party or a near relative of a party or a near relative of a litigation representative to the case;
(2)He has a personal interest in the case; or
(3)He has some other relationship with a party to the case, which could influence the impartial adjudication.
The above provisions shall also apply to clerks, interpreters, expert witnesses, and examiners.

Article 46 When a party makes a request to disqualify an adjudicator, he shall make an explanation and submit the request at the beginning of the proceedings; a request for recusal may also be submitted before the end of court debate if the recusal reason is uncovered after the proceeding begins.
If a recusal decision is waiting for a people's court to decide, the personnel who have been requested to be disqualified shall temporarily be suspended from participating in the proceedings, but with the exception of cases that require emergency measures.

Article 47 The recusal of a court president who serves as the presiding judge shall be decided by the adjudicating committee; the recusal of adjudicators shall be decided by the court president; the recusal of other personnel shall be decided by the presiding judge.

Article 48 The decision of a people's court on a request for recusal shall be made orally or in writing within three days after the request was made. If a party is not satisfied with a recusal decision, it may apply for reconsideration once. During the period of reconsideration, the personnel who have been requested to be disqualified shall not be suspended from

participating in the proceedings. The decision of a people's court on an application for reconsideration shall be made within three days after receiving the application and the person who has made the application for reconsideration shall be notified of the decision.

Chapter 5 Litigation Participants

Section 1 Parties

Article 49 Any citizen, legal person or any other organization may become a party to a civil lawsuit.
Legal persons shall be represented by their legal representatives in litigation. Other organizations shall be represented by their principal leading personnel in litigation.

Article 50 The parties shall have the right to appoint representatives, request recusals of adjudicating personnel, collect and provide evidence, engage in debate, request mediation, file an appeal, and apply for an enforcement of judgments.
The parties may consult the materials relating to the court proceedings of the case and copy the materials and other legal documents pertaining to the case. However, materials involving state secrets, trade secrets, or the private affairs of individuals shall be exceptions.
The parties must exercise their litigation rights according to the law, observe litigation procedures and carry out legally effective written judgments or orders and mediation statements.

Article 51 The two parties may reach a settlement agreement on their own.

Article 52 The plaintiff may relinquish or modify his claim. The defendant may confirm or repudiate the claim and shall have the right to file a counterclaim.

Article 53 When one party or both parties consist of two or more persons and the subject matter of the action is the same or under the same category, the people's court may adjudicate them together upon the consent of all the parties. Such adjudication is called joint litigation.
If a party of two or more persons of a joint litigation who have the common rights and obligations with respect to the subject matter of action and the act of any of them is recognized by the others of the party, such an act shall bind the rest of the party; if a party of two or more persons have no common rights and obligations with respect to the subject matter of action, any acts taken by any one of them shall not bind the rest of the party.

Article 54 A joint litigation in which one party has numerous litigants may be brought by the representatives elected by the litigants of the party. The act of litigation taken by these representatives shall bind all litigants of the party whom they represent. However, any substitution of representatives, relinquishing claims, acceptance of claims of the opposing party, or negotiating settlement shall be approved by the litigants of the party.

Article 55 Where the subject matters of an action is under the same category and one of the parties has numerous litigants but the exact number of the litigants is uncertain when the lawsuit is filed, the people's court may issue a public notice to explain the nature of the case and the claims of the litigation and informing those interested persons who are entitled to the claim to register their rights with the people's court within a fixed period of time.
Those who have registered their rights with the people's court may elect representatives from among themselves to proceed with the litigation; if the election fails its purpose, such representatives may be determined by the people's court through consultation with those who have registered their rights with the court.
The acts of litigation taken by these representatives shall bind all litigants of the party whom they represent. However, any substitution of representatives, relinquishing claims, acceptance of claims of the opposing party, or negotiating settlement shall be approved by the litigants of the party.
The judgments or written orders rendered by the people's court shall bind all those interested persons who have registered their rights with the court. Such judgments or written orders shall apply to those who have not registered their

rights but have instituted legal proceedings during the time of the statute of limitation.

Article 56 If a third party considers that he has the independent right to claim the subject matter of the action of both parties, he shall have the right to bring an action.
If a third party does not have the independent right to claim the subject matter of the action of both parties but the outcome of the case will affect his legal interest, it may file a request to join the litigation or the people's court may notify him to join the litigation. If a people's court holds a third party to bear a civil liability, such a third party shall have the litigation rights as a party to the litigation.

Section 2 Litigation Representatives

Article 57 For litigation-incompetent persons, their guardians shall be their legal representative in their litigations. If all legal representatives try to avoid their duties of representation, the people's court may appoint one of them as the litigation represent.

Article 58 Each party or legal representative may appoint one or two persons to act as his litigation representatives. Lawyers, a party's near relatives, persons recommended by relevant public organizations or the units to which a party belongs, or any other citizens approved by a people's court may be entrusted as the party's litigation representatives.

Article 59 When a party entrusts a person to be his litigation representative, he shall submit a power of attorney bearing his signature or seal to the people's court.
The power of attorney must specify the matters and authority scopes entrusted. A litigation representative must possess special authorization from his principal to be able to accept, relinquish, or modify the claim, to reach a settlement, or bring a counterclaim or an appeal.
When a citizen of the People's Republic of China, who is residing abroad, mails or entrusts someone to deliver a power of attorney to China, he shall have the power of attorney certified by the Chinese embassy or consulate to that country. If there is no Chinese embassy or consulate in that country, he shall have the power of attorney certified by an embassy or a consulate of a third country, which has diplomatic relations with the People's Republic of China and is stationed in the country, and then be transferred to the embassy or consulate of the People's Republic of China stationed in that third state for verification; he may have the power of attorney certified by a local patriotic overseas Chinese organization.

Article 60 A party who changes or revokes the authority of his litigation representative shall inform the people's court in writing and the court shall notify the other party of the change or revocation.

Article 61 Lawyers who serve as litigation representatives or other litigation representatives shall have the right to investigate and collect evidence, and may consult relevant materials to the case. The scopes and measures of consulting relevant materials to a case shall be regulated by the Supreme People's Court.

Article 62 For a divorce case in which a party has appointed a litigation representative, that party shall appear in court in person unless he is incapable of expressing his own opinion. A party who is truly unable to appear in court due to a special reason shall submit his opinion in writing to the people's court.

Chapter 6 Evidence

Article 63 Evidence shall be classified as follows:
(1)documentary evidence;
(2)physical evidence;
(3)audio and visual material;
(4)testimony of witnesses;
(5)statements of involving parties;
(6)conclusions of expert witnesses; and

(7)transcripts of inspection and examination.
Any of the above-mentioned evidence must be verified before it can be taken as a basis for finding a fact.

Article 64 A party shall have the responsibility to provide evidence in support of its own propositions.
For the evidence that cannot be obtained by any parties or their litigation representatives because of some realistic reasons or for the evidence that the people's court considers necessary for adjudicating the case, the people's court shall investigate and collect such evidence.
The people's court shall, according to the procedure prescribed by law, collect and examine evidence comprehensively and objectively.

Article 65 The people's court shall have the authority to obtain evidence from any relevant units or individuals, and such units or individuals may not refuse to provide evidence.
The people's court shall verify and determine the validity of documentary evidence provided by relevant units or individuals.

Article 66 Evidence shall be presented in the court and cross-examined by parties, however, evidence that involves state secrets, trade secrets, or individual privacy shall not be presented in an open court session.

Article 67 The people's court shall admit the legal acts, legal facts and documents that are notarized according to legal procedures as a basis for finding facts, except when there is contrary evidence that is sufficient to invalidate the notarization.

Article 68 Any document submitted as evidence shall be the original one. Physical evidence shall also be original. If it is truly difficult to present the original document or physical evidence, then duplications, photographs, copies, or extracts of the original evidence may be admitted.
If a document in a foreign language is submitted as evidence, a Chinese translation shall be appended.

Article 69 The people's court shall authenticate audio and visual materials and decide whether they can be admitted as a basis for finding the facts after examining them and comparing them with other evidence of the same case.

Article 70 All units and individuals who have information about a case shall have the obligation to testify in court. The responsible persons of relevant units shall encourage the witnesses to give testimony. When it is truly too difficult for a witness to appear in court, he may, with the approval of the people's court, submit a written testimony.
Any person who is incapable of expressing his opinion properly shall not testify.

Article 71 The people's court shall examine the statements of the parties in connection with other evidence of the case to decide whether such statements can be taken as a basis for finding the facts.
The refusal of a party to make a statement shall not prevent the people's court from finding the facts of a case based on other evidence.

Article 72 When a people's court deems it necessary to make an evaluation of a specialized issue, it shall refer the issue to an authentication department authorized by law for the evaluation. In the absence of such department, the people's court shall appoint an authentication department to make the evaluation.
The authentication department and the expert witness designated by the department shall have the right to consult the case materials necessary for the evaluation and direct inquiries to the parties and witnesses when circumstances require.
An authentication department and expert witness shall present its or his conclusion of the evaluation in writing and sign it or put his seal on it. With respect to an evaluation made by an expert witness, the unit to which the expert witness belongs shall certify his status by affixing its seal to the expert conclusion.

Article 73 When inspecting or examining physical evidence on site, the inspector must show his credentials issued by a people's court. He shall invite the local basic organization or the relevant unit to send personnel to participate in the

inspection. The parties concerned or the adult members of their families shall be present; however, their refusal to appear on the scene shall not prevent the inspection from proceeding.
Upon notification by the people's court, the relevant units and individuals shall have the obligation to preserve the site and provide assistance for the inspection.
The inspector and examiner shall prepare a written record for the circumstances and results of the inspection or examination. The inspector, examiner, the party concerned and the invited participants shall affix their signatures or seals to the record.

Article 74 Under circumstances where there is a likely-hood that evidence may be destroyed, lost or too difficult to obtain later on, any litigation participants may apply to the people's court for the preservation of the evidence. The people's court may also take initiative to preserve such evidence.

Chapter 7 Time Periods and Service

Section 1 Time Periods

Article 75 Time periods shall include those prescribed by law and those designated by a people's court.
Time periods shall be computed by hour, day, month, and year. The hour and day from which a time period begins shall not be computed as within that time period.
If the expiration date of a time period falls on a holiday, the day immediately following the holiday shall be regarded as the expiration date.
A statutory time period shall not include the time spent in transmittal of documents. A litigation document that is mailed before a deadline shall not be regarded as overdue.

Article 76 If a party fails to meet a deadline due to reasons beyond his control or other justifiable reasons, he may petition for an extension of the time limit within 10 days after the obstacle is removed. The requested extension shall be subject to approval by a people's court.

Section 2 Service

Article 77 A receipt shall be required for every litigation document that is served and it shall bear the signature or seal of the recipient of the service and the date of receipt.
The date of receipt as signed by the recipient of the service shall be regarded as the date the document is served.

Article 78 Litigation documents shall be served directly on the recipient of the service. If the recipient of the service is a citizen, the documents may, in the case of his absence, be served on an adult member of the recipient's family who lives with him. If the recipient of the service is a legal person or any other organization, the document shall be served on the legal representatives of the legal person, the principal leading personnel of any other organization, the personnel of the legal person or any other organization in charge of receiving such documents; If the recipient of the service has a litigation representative, the documents may be served on the litigation representative. If the recipient of the service has designated an agent to receive his litigation documents and has informed the people's court of it, the documents may be served on the agent.
The date of receipt as signed by the adult family member living with the recipient of service, or persons in charge of receiving documents of the legal persons or other organizations, or litigation representative, or agents designated to receive his documents shall be regarded as the date the document is served.

Article 79 If the recipient of a service or any of his adult family members living with him refuses to accept a legal document, the person serving the document shall ask the representatives of the relevant basic organization or unit to which the recipient of the service belongs to appear on the scene, explain the situation to them, and record the reasons of the refusal and the date on the receipt. After the person serving the document and the witnesses have affixed their

signatures or seals on the receipt, the document may be left at the place where the recipient of the service stays and the service shall be considered completed.

Article 80 If direct delivery service of a litigation document proves too difficult, such a service may be entrusted to the other people's court, or it may be served by postal service. If a document is served by post, the date as stated on the receipt shall be regarded as the date the document is served.

Article 81 If the recipient of a service is in the military, the document shall be forwarded to him via the political organ at or above the regimen level in the unit to which the recipient belongs.

Article 82 If the recipient of the service is undergoing imprisonment, the document shall be forwarded to him via the prison or the unit of rehabilitation through labor where he is serving his sentence.
If the recipient of the service is undergoing reeducation through labor, the document shall be forwarded to him via the unit supervising his reeducation through labor.

Article 83 Any organization or unit that receives a litigation document to be forwarded must immediately deliver it to the recipient of the service for a receipt. The date as stated on the receipt shall be regarded as the date the document is served.

Article 84 If the whereabouts of a recipient is unknown, or if a document cannot be served by the other methods prescribed in this section, the document shall be served by public announcement. Sixty days after the date of the public announcement, the document shall be deemed to have been served.
The reasons for service by public announcement and the procedures taken shall be recorded in the case files.

Chapter 8 Mediation

Article 85 In handling civil cases, the people's court may distinguish between right and wrong and mediate disputes according to the principle of parties' voluntariness and based on clear facts.

Article 86 When a people's court conducts mediation, a single judge or a collegial bench may preside in the mediation. Mediations shall be conducted locally whenever possible.
When a people's court conducts mediation, it may employ simplified methods to notify the parties and witnesses to appear in court.

Article 87 When a people's court conducts mediation, it may request assistance from relevant units or individuals. The invited units or individuals shall assist the people's court in mediation.

Article 88 A mediation agreement must be based on voluntariness of both parties, and shall not be reached through compulsion. The content of the mediation agreement may not contravene the law.

Article 89 When a mediation agreement is reached, the people's court shall draw up a written mediation agreement. A mediation agreement shall clearly set forth the claims of the action, the facts about the case, and the result of the mediation.
The mediation statement shall be signed by the judge and the court clerk, sealed by the people's court, and served on both parties.
Once the mediation agreement is signed and exchanged by both parties, it shall become legally binding.

Article 90 The people's court need not draw up a mediation agreement for the following cases when an agreement is reached through mediation:
(1)Divorce cases in which both parties have become reconciled after mediation;
(2)Adoption cases in which adoptive relationship has been retained through mediation;
(3)Cases in which the claims can be immediately satisfied; and

(4)Other cases that do not require mediation statements.
Any agreement that does not require a mediation agreement shall be entered into the transcript and become legally effective after the transcript is signed or sealed by both parties, the judge, and the court clerk.

Article 91 If no agreement is reached through mediation or if one party retracts his reconciliation before the mediation agreement is served, the people's court shall render a judgment without delay.

Chapter 9 Property Preservation and Advance Enforcement

Article 92 If it becomes impossible or difficult to enforce a judgment because of the acts taken by one of the parties or for other reasons, the people's court may, upon the request of the other party, make an order to preserve the property. In the absence of such requests, the people's court may, when necessary, also order to adopt property preservation measures.
When a people's court has decided to adopt property preservation, it may instruct the applicant to provide a surety; if the applicant fails to do so, his application may be rejected.
After receiving a party's application, if the case is urgent, the people's court must make an order regarding property preservation within 48 hours; if a people's court makes an order for property preservation, it shall enforce the preservation immediately.

Article 93 Any interested party whose lawful rights and interests, due to urgent circumstances, would suffer from un-remediable harms if he fails to petition for property preservation immediately, may, before filing the lawsuit, petition to the people's court for the adoption of property preservation measures. The petitioner shall provide a surety; if the petitioner fails to do so, his petition may be rejected.
After receiving a party's petition for property preservation, the people's court shall make a ruling within 48 hours; if property preservation is granted by a ruling, the preservation thereof shall be enforced immediately.
If the petitioner fails to file a lawsuit within 15 days after the people's court has adopted the preservation measures, the people's court shall cancel the property preservation.

Article 94 Property preservation shall be limited to the scope of the claim or to the property related to the case.
The measures of property preservation may include seizure, detain, freeze, or other methods as prescribed by law.
When a people's court freezes a property, it shall notify the person whose property is frozen.
Those properties that have already been seized, detained, or frozen shall not be seized or frozen again.

Article 95 If the defending party whose property is preserved provides a security, the people's court shall cancel the property preservation.

Article 96 Where a petition is wrongfully made, the petitioner shall compensate the defending party for any loss incurred from the property preservation.

Article 97 The people's court may, at the request of a party, order the measures for the following cases to be enforced in advance:
(1)Cases involving claims of alimonies, supports for children or elders, pension for the disabled or the family of a decedent, or expenses for medical care;
(2)Cases involving claims of wages; and
(3)Cases involving urgent circumstances that require enforcement in advance.

Article 98 The people's court shall make sure the following conditions are met before making a ruling to enforce the property preservation in advance:
(1)The relationship of rights and obligations between the parties is definite, and the refusal of advance enforcement would seriously affect the life or business operation of petitioners; and
(2)The defending party whose property would be preserved is capable of fulfilling the obligations involved in the advance

enforcement.
The people's court may order the petitioners to provide sureties; if a petitioner fails to do so, his petition may be rejected. If the petitioner loses the lawsuit, he shall compensate the defending party whose property was preserved for any loss incurred from the advance enforcement.

Article 99 If a party is not satisfied with an order on property preservation or advance enforcement, he may petition for reconsideration that can be granted only once. However, the enforcement of the order shall not be suspended during the time of reconsideration.

Chapter 10 Compulsory Measures against Obstruction of Civil Actions

Article 100 If a defendant who is required to appear in court has been served twice with subpoena but still refuses to appear in court without legitimate reason, the people's court may summon him to court by force.

Article 101 All litigation participants and other persons shall abide by the court rules.
For those persons who violate the court rules, the people's courts may reprimand them, evict them from the courts, or impose a fine or detention on them.
For those persons who create uproars, disturb courtrooms, insult, slander, threat, or assault adjudicating personnel, or seriously disrupt the order of courtrooms, the people's court shall investigate them for criminal liabilities according to law; if the circumstances are minor, a fine or detention may be imposed on the offender.

Article 102 Where any litigation participants or any other persons commit any of the following acts, the people's courts shall impose a fine or detention on them based on the circumstances; if a crime is committed, the people's court shall investigate them for criminal liabilities according to law.
(1)Forging or destroying significant evidence, which would obstruct the a people's court's adjudication of a case;
(2)Using violence, threats, or bribery to hinder a witness from giving testimony, or instigating, bribing, or coercing others to commit perjury;
(3)Concealing, transferring, selling, or destroying any properties that have been seized or detained, or any properties that have been inventoried and ordered by a court under the offenders' custody, or transferring the property that has been frozen;
(4)Insulting, slandering, incriminating with false charges, beating up, or retaliating adjudicating personnel, litigation participants, witnesses, interpreters, experts witnesses, inspectors, or personnel assisting in enforcement; or
(5)Using violence, threats, or other means to hinder adjudicating personnel from performing their duties; or
(6)Refusing to comply with legally effective judgments or orders rendered by a people's court.
Where a unit commits any of the following acts stipulated in the preceding paragraph, the people's courts may impose a fine or detention on the principal leading personnel of the unit or the person directly responsible; if a crime is committed, the people's court shall investigate them for criminal liabilities according to law.

Article 103 If a unit that has an obligation to assist in judicial investigation or enforcement commits any of the following acts, the people's court may order the unit to perform its obligation but also impose a fine on the unit:
(1)Refusing or obstructing a people's court from investigation or collecting evidence;
(2)Where the unit is a bank, credit union, or other institution engaging in saving deposit business, refusing to assist in inquiring, freezing, or transferring funds after receiving a notification from the people's court for enforcement assistance;
(3)After receiving a notification on assistance in enforcement from the people's court, refusing to assist in withholding the income of a defending party whom is ordered to pay or handling the transfer of property titles, relevant negotiable instruments, certificates and licenses, or other properties; or
(4)Refusing to provide other assistance in enforcement order by court.
With respect to a unit that commits any of the acts specified in the preceding paragraph, the people's court may impose a fine on the principal leading personnel of the unit or the person directly responsible; and may detain them if they still fail to

perform the obligation to provide assistance; and may also make judicial suggestions to the supervisory organ or other relevant organs on imposing a disciplinary sanction on the unit.

Article 104 A fine on an individual shall be not more than Renminbi 10, 000 Yuan. A fine on a unit shall be not less than Renminbi 10,000 Yuan and not more than Renminbi 300,000 Yuan.
A detention period shall not be longer than fifteen days.
The people's court shall deliver detainees to a public security organ for custody. The people's court may decide to grant the detainee an early release if he admits and is willing to correct his wrongdoing.

Article 105 Any summons by force, fines, or detentions shall be approved by the president of a people's court.
A warrant shall be issued before carrying out a summon by force.
The rulings of fines and detentions shall be issued in written letter form. If a party does not agree with a decision, he may apply to a people's court at a higher level for reconsideration and the reconsideration can be granted only once. However, the enforcement of the decision shall not be suspended during the time of reconsideration.

Article 106 Any decision on the adoption of compulsory measures against obstruction of civil actions shall be made by the people's court. Any unit or individual pressing a debt payment by unlawfully detaining a person or illegally seizing other people's property shall be investigated for criminal liabilities according to law or may be punished by detention or fine.

Chapter 11 Litigation Expenses

Article 107 Any party filing a civil lawsuit shall pay a case handling fee according to relevant regulations. For cases involving property, the party shall pay other litigation expenses, in addition to case handling fee.
Parties who truly have difficulties to pay litigation expenses may, according to relevant regulations, petition the people's court to postpone, reduce, or wave the payment.
Procedures for the payment of litigation expenses shall be formulated separately.

Part Two Trial Procedure

Chapter 12 Ordinary Procedure of First Instance

Section 1 Filing and Accepting Lawsuits

Article 108 The following conditions must be met before a lawsuit is filed:
(1)The plaintiff must be a citizen, legal person, or an organization having a direct interest with the case;
(2)There must be a specific defendant;
(3)There must be a concrete claim, a factual basis, and a cause for the lawsuit; and
(4)The lawsuit must be within the scope of civil lawsuits to be accepted by the people's courts and within the jurisdiction of the people's court to which the lawsuit is filed.

Article 109 When filing a lawsuit, the motion of complaint shall be submitted to the people's court with enough copies of the motion for all members of defendants.
If a plaintiff is truly difficult to write a motion of complaint, he may file his complaint orally, and the court shall record his complain in the transcript and inform the other party.

Article 110 A motion of complaint shall clearly state the following items:
(1)The name, sex, age, ethnicity, occupation, working unit, and address of parties or, if the parties are legal persons or organizations, their names and addresses and the names and positions of their legal representatives or principal leading personnel;
(2)The claims of the lawsuit and the facts and grounds on which the lawsuit is based; and
(3)Evidence and its source, as well as the names and addresses of witnesses.

Article 111 People's courts shall accept the lawsuits filed in conformity with the provisions of Article 108 of this Law. For the lawsuits described below, people's courts shall handle them according to their specific circumstances:
(1)For the cases within the scope of administrative lawsuits according to the provisions of the Administrative Procedure Law, the plaintiffs shall be informed to file administrative lawsuits;
(2)For the cases where both parties have voluntarily reached a written agreement according to law to submit their contract disputes to an arbitration agency for an arbitration, no one shall file a lawsuit in a people's court and the plaintiffs shall be notified to submit the disputes to the arbitration agencies for arbitration;
(3)For the disputes which, according to law, should be handled by other organs, the plaintiffs shall be notified to petition the relevant organs for settlement;
(4)For the cases that are not within their jurisdictions, the people's courts shall notify the plaintiffs to bring their lawsuits to the proper people's courts that have the jurisdictions;
(5)Where one side of the parties file lawsuits against the same cases in which their judgments or orders have become legally effective, the people's courts shall notify the plaintiffs to file a grievance instead except those cases in which the orders rendered by the people's courts to allow the lawsuits to be withdrawn;
(6)If cases that are not permitted by law to be filed within a specified period of time are filed during the same period of time, they shall not be accepted by any courts; or
(7)For those divorce cases in which the judgments did not grant divorce or both parties have become reconciled after mediation and for those adoption cases in which the judgments have been given to maintain the adoptive relationship or that have been mediated to maintain the adoptive relationship, if there is no new developments or reasons, the plaintiffs are bared from filing new lawsuits regarding the same cases in six months.

Article 112 When a people's court receives a motion of complaint or an oral complaint and finds the complaint meets the requirements of a civil lawsuit after reviewing the complaint, the court shall accept the case within seven days and notify the parties involved; if the complaint does not meet the requirements of a civil lawsuit, the court shall, within seven days, make a ruling to reject the complaint. If the plaintiff does not agree with the ruling, he may appeal on the ruling.

Section 2 Pretrial Preparation

Article 113 The people's court shall deliver a copy of a motion of complaint to the defendant within five days from its acceptance of a case, and the defendant shall file a motion of defense within 15 days after receiving the copy of the motion of complaint.
If the defendant files a motion of defense, the people's court shall deliver a copy of the motion of defense to the plaintiff within five days after receiving the motion of defense. If the defendant fails to file a motion of defense, it shall not prevent the case from being heard by the people's court.

Article 114 When a people's court decides to accept a case, the court shall inform the parties orally or in the notice of case acceptance or in the notice of litigation response, with their rights and obligations to the litigation.

Article 115 The parties shall be promptly notified after the members of a collegial bench are decided.

Article 116 The adjudicating personnel shall carefully examine the case materials and carry out investigation and collection of necessary evidence.

Article 117 The personnel sent by a people's court to conduct an investigation shall first show their credentials to the person being investigated. The written record of an investigation shall be checked by the person investigated and then signed or sealed by both the investigator and the investigated.

Article 118 A people's court may, when necessary, entrust a people's court in another locality to conduct an investigation. The entrusting people's court shall clearly set out the matters and requirements of the entrusted investigation. The entrusted people's court may, on its own initiative, conduct further investigation.

The entrusted people's court shall complete the investigation within 30 days after receiving the letter to entrust the investigation. If for some reasons the entrusted court cannot complete the investigation, it shall notify the entrusting people's court in writing within the 30 days.

Article 119 When a party who must appear in a joint litigation but fails to do so, the people's court shall notify him to participate in the proceeding.

Section 3 Courtroom Trial

Article 120 Civil cases adjudicated by people's courts shall usually be heard publicly, except for the cases that involve state secrets or the private affairs of individuals, or are otherwise provided by law.
A divorce case or a case involving trade secrets may not be heard publicly if a party so requests.

Article 121 When adjudicating civil cases, the people's courts may, whenever necessary and possible, send out circuit tribunals to hold trials on the spot.

Article 122 The people's court shall notify the parties and other participants in a civil case three days before the opening of a court session. If a case is to be heard publicly, the names of the parties, the cause of action, and the time and location of the court session shall be announced publicly.

Article 123 Before a court session is called to order, the court clerk shall find whether or not the parties and other participants of the case are present and announce the rules of court order.
At the beginning of a trial, the presiding judge shall check the identities of parties who appear in court, announce the cause of action and the names of the adjudicating personnel and court clerks, inform the parties of their relevant litigation rights and obligations, and ask the parties whether or not they wish to apply for the withdrawal of any court personnel.

Article 124 Courtroom investigation shall be conducted in the following order:
(1)Opening statements presented by both parties;
(2)Informing the witnesses of their rights and obligations, testimonies given by the witnesses, and reading the statements of absentee witnesses;
(3)Presenting documentary evidence, physical evidence, and audio and visual reference material;
(4)Reading the conclusions of expert witnesses; and
(5)Reading the transcripts of investigation and examination.

Article 125 The parties may present new evidence during a court session.
With the permission of the court, the parties may cross-examine witnesses, expert witnesses, and inspectors.
The parties may request a new investigation, expert evaluation, or inspection and such requests are subject to the approval of the people's court.

Article 126 The additional claims of a plaintiff, the counterclaims of a defendant, and the claims of any third-party related to the same case may be combined and tried together.

Article 127 Courtroom debates shall be conducted in the following order:
(1)Opening statement presented by the plaintiff and his litigation representative;
(2)Responding statement presented by the defendant and his litigation representative;
(3)Statements or defending statements presented by third parties and their litigation representatives; and
(4)Debate between the two sides.
At the end of a courtroom debate, the presiding judge shall ask each side to present his final opinions in the order of plaintiff going first, defendant second, and third party last.

Article 128 At the end of a courtroom debate, a judgment shall be made according to law. Where mediation is possible

prior to the rendering of a judgment, a session of mediation may be conducted; if mediation proves to be unsuccessful, a judgment shall be made without delay.

Article 129 If a plaintiff who has been served with a legal subpoena from a people's court refuses to appear in court without proper reason, or if he walks out during a court session without the permission of the court, the court may consider the plaintiff has withdrawn his complaint; under these two circumstances, if the defendant files a counterclaim, the court may enter a default judgment.

Article 130 If a defendant who has been served with a legal subpoena from a people's court refuses to appear in court without proper reason, or if he walks out during a court session without the permission of the court, the court may enter a default judgment.

Article 131 If a plaintiff applies to withdraw his complaints before a judgment is pronounces, the people's court shall make a ruling regarding the application.
If a people's court decides to reject an application of withdrawing a complaint and the plaintiff who has been served with a subpoena refuses to appear in court without proper reason, the people's court may enter a default judgment.

Article 132 Under any of the following circumstances, their trail at courtroom may be postponed:
(1)Parties and other litigation participants who must appear in court fail to appear in court without proper reasons;
(2)A party requests the recusal of an adjudicating personnel without an advance notice;
(3)It is necessary to summon new witnesses to court, collect new evidence, make a new expert evaluation, hold another examination, or make a supplementary investigation; or
(4)Their circumstances that warrant the postponement.

Article 133 The court clerk shall record the entire court proceedings into a transcript and the transcript shall be signed by the adjudicating personnel and the court clerk.
The courtroom transcript shall be read out in court or the parties and other litigation participants may be notified to read the transcript while in court or come to court to read the transcript within five days. If a party or other litigation participants consider that there are omissions or errors in the transcript regarding their statements, they shall have the right to apply for additions or corrections. If such additions or corrections are not made, their application shall be recorded into the case file.
The courtroom transcript shall be signed or sealed by the parties and other litigation participants. If there is any refusal to do so, the refusal shall be recorded in a note to be attached to the file.

Article 134 People's courts shall publicly pronounce their judgments in all case regardless if the cases were tried publicly or privately.
If a judgment is pronounced in court, the written judgment shall be issued and delivered within ten days; if a judgment is pronounced later on a fixed date, the written judgment shall be issued immediately after the pronouncement.
Upon pronouncement of a judgment, the parties must be informed of their right of appeal, the time limit for appeal, and the court to which they may appeal.
Upon pronouncement of a divorce judgment, the parties must be informed that none of them can marry another person before the judgment takes legal effect.

Article 135 A people's court shall complete the adjudication of a case to which ordinary procedure is applied within six months after the case is accepted. Where an extension of the term is necessary for special circumstances, a six-month extension may be given upon the approval of the president of the court. Any further extension shall be reported to the people's court at a higher level for approval.

Section 4 Lawsuit Suspension and Conclusion

Article 136 A lawsuit shall be suspended if it involves any of the following circumstances:

(1)One of the parties dies and it is necessary to wait for his successor to express whether he would participate in the proceedings;
(2)One of the parties has lost the capacity to engage in litigation and his litigation representative has not been designated;
(3)The legal person or any other organization as one of the parties has terminated, and the person succeeding to its rights and obligations has not been determined;
(4)One of the parties is unable to participate in the proceedings for reasons of force majeure;
(5)The current case is dependent on the results of the trial of another case that has not yet been concluded; or
(6)Other circumstances warrant the suspension of the lawsuit.
The proceedings shall resume after the causation of suspension is eliminated.

Article 137 A lawsuit shall be ended, if it involves any of the following circumstances:
(1)The plaintiff dies without a successor, or the heir waives his right of litigation;
(2)The defendant dies without estate or anyone to assume his obligations;
(3)In a divorce case, one of the parties dies, or
(4)In a case involving claims for overdue alimony, support of children or elders, or a claim for the termination of adoptive relationship, one of the parties dies.

Section 5 Judgments and Rulings

Article 138 A judgment shall clearly set forth the following:
(1) The cause of action, claims, and the facts and reasons of disputes;
(2) The facts and reasons on which the judgment is based and the laws to which are applied;
(3) The consequences of a judgment and the obligation of litigation costs; and
(4) The time limit for filing an appeal and the appellate court with which the appeal shall be filed.
The judgment shall be signed by the adjudicating personnel and the court clerk, and the seal of the people's court shall be affixed to it.

Article 139 If some of the facts in a case being adjudicated by a people's court have already been clear, the court may render judgments regarding these facts first.

Article 140 Rulings shall be applicable to the following:
(1) Rejection of a lawsuit;
(2) Objection to the jurisdiction of a court;
(3) Rejection of a complaint;
(4) Property preservation and advance enforcement;
(5) Approval or disapproval of withdrawal of a lawsuit;
(6) Suspension or ending of a lawsuit;
(7) Correction of typos in a judgment;
(8) Suspension or termination of enforcement;
(9) Cancellation or refusal of enforcing an arbitration award;
(10) Refusal of enforcing a document of creditor's rights issued by a notary office; or
(11) Other matters to be decided by a ruling.
An appeal may be filed against a ruling against items 1, 2, or 3 of the preceding paragraph.
A written ruling shall be signed by the adjudicating personnel and the court clerk, and the seal of the people's court shall be affixed to it. If an order is issued orally, it shall be entered into the record.

Article 141 All judgments and rulings rendered by the Supreme People's Court, as well as judgments and rulings against which shall not be appealed according to law or have not been appealed within the prescribed time limit, shall be legally effective.

Chapter 13 Summary Procedure

Article 142 When adjudicating simple civil cases in which facts are clear, the relations of rights and obligations are definite, and disputes are minor, the basic people's courts or their dispatched tribunals may apply the summary procedure stipulated in this Chapter.

Article 143 For simple civil cases, their plaintiffs may file their complaints orally.
Both parties may appear at the same time in a basic people's court or its dispatched tribunal for a solution of their dispute. The basic people's court or its dispatched tribunal may adjudicate the case immediately or set a date for the trial.

Article 144 When adjudicating a simple civil case, the basic people's court or its dispatched tribunal may, at any time, use simplified methods to summon the parties and witnesses.

Article 145 A simple civil case shall be tried by one judge alone and the trial of such cases shall not be restricted by the provisions of Articles 123, 125, and 128 of this Law.

Article 146 The people's court shall complete the adjudication of a case to which the summary procedure is applied within three months after the case is accepted.

Chapter 14 Procedure of Second Instance

Article 147 If a party disagrees with a judgment rendered by a local people's court of first instance, he shall have the right to file an appeal with the people's court at the next higher level within 15 days from the date when the written judgment is served.
If a party disagrees with a ruling made by a local people's court of first instance, he shall have the right to file an appeal with a people's court at the next higher level within 10 days from the date when the written ruling is served.

Article 148 When filing an appeal, a motion of appeal shall be submitted. A motion of appeal shall include the names of all parties, the names of legal persons and their legal representatives, or the names of other organizations and their principal leading personnel; the name of the people's court where the case was originally tried, the docket number, and the cause of action; and the claims and reasons of appeal.

Article 149 A motion of appeal shall be submitted via the people's court that originally tried the case and the copies of the motion shall be prepared according to the number of people or representatives in the opposing party.
If a party appeals directly to a people's court of second instance, the court shall, within five days, transfer the motion of appeal to the people's court that originally tried the case.

Article 150 Within five days after receiving a motion of appeal, the people's court that originally tried the case shall deliver the copies of the motion of appeal to the appellee. After receiving the copies of the motion of appeal, the appellee shall submit its motion of defense within 15 days. The people's court shall, within five days from receiving the motion defense, deliver the copies of the motion of defense to the appellant. Failure by the appellee to submit a motion of defense shall not prevent the case from being adjudicated by the people's court.
After receiving the motion of appeal and the motion of defense, the people's court that originally tried the case shall, within five days, deliver them together with the entire case file and evidence to the people's court of second instance.

Article 151 A people's court of second instance shall review the facts and the law used in an appellate case.

Article 152 When handling an appellate case, the people's court of second instance shall form a collegial bench to adjudicate the case. After verifying the facts of the appellate case by consulting the files, making necessary investigations, and questioning the parties, if the collegial bench believes that it is not necessary to hold a trial, it may make a judgment or ruling without a trial.
A people's court of second instance may try an appellate case in its own courthouse or in the place where the case

originated or where the people's court that originally tried the case is located.

Article 153 After hearing an appellate case, the people's court of second instance shall handle the case respectively according to the following circumstances:
(1) If the facts were clearly found and the law was correctly applied in the original judgment, the appeal shall be rejected by a judgment and the original judgment shall be sustained;
(2) If the law was incorrectly applied in the original judgment, the judgment shall be amended according to law;
(3) If in the original judgment the facts were incorrectly found or were not clearly found and the evidence was inconclusive, the judgment shall be rescinded and the case remanded by an order to the original people's court for a retrial, or the people's court of second instance may amend the judgment after investigating and clarifying the facts; or
(4) If in the original judgment a violation of the prescribed procedure may have affected the correctness of the judgment, the judgment shall be rescinded and the case remanded by an order to the original people's court for a retrial.
The parties may appeal against the judgment or ruling rendered in a retrial of their case.

Article 154 A people's court of second instance shall use rulings to rule on all appellate cases that appealed against the rulings made by the people's court of first instance.

Article 155 When adjudicating an appellate case, the people's court of second instance may offer mediation for the parties. If an agreement is reached through mediation, a mediation statement shall be made and signed by the adjudicating personnel and the court clerk, and the seal of the people's court shall be affixed to it. After the mediation statement has been delivered, the judgment rendered by the people's court that originally tried the case shall be considered rescinded.

Article 156 If an appellant requests to withdraw his appeal before the people's court of second instance pronounces its judgment, the court shall rule to approve or disapprove such a request.

Article 157 When a people's court of second instance adjudicates an appeal, it shall apply the ordinary procedure of first instance unless otherwise stipulated in this Chapter.

Article 158 The judgments and rulings of a people's court of second instance shall be final.

Article 159 When adjudicating an appeal from a judgment, the people's court shall make a final judgment within three months after the appeal was accepted for an adjudication of second instance. Any extension of the term necessitated by special circumstances shall be subject to the approval of the president of the court.
When adjudicating an appeal from a ruling, the people's court shall make a final ruling within 30 days after the case was accepted for an adjudication of second instance.

Chapter 15 Special Procedure

Section 1 General Stipulations

Article 160 When a people's court adjudicates cases concerning the credentials of voters, the declaration of a missing or dead person, the civil capacity of a citizen (incompetent or limited capacity in civil conduct), or the ownership of unclaimed property, the provisions of this Chapter shall be applicable. For matters not covered in this Chapter, the relevant provisions of this Law and other laws shall be applicable.

Article 161 For cases to be adjudicated according to the procedure stipulated in this Chapter, the system of one trial to conclude a case shall be applied. A collegial bench of judges shall be formed for the adjudication of any cases involving the credentials of voters, or any major, difficult, or complicated cases; and all the other kinds of cases shall be tried by one judge alone.

Article 162 If a people's court, while adjudicating a case according to the procedure stipulated in this Chapter, discovers that the case involves a dispute over civil rights and interests, it shall make a ruling to terminate the special procedure and

inform the interested parties that they may bring a new lawsuit.

Article 163 When adjudicating a case to which special procedure is applied, the people's court shall conclude the adjudication within one month after the case is accepted or within one month from expiration of the term set forth in the public announcement. Any extension of the term necessitated by special circumstances shall be subject to the approval of the president of the court. However, this article does not apply to the adjudication of voters' credentials.

Section 2 Cases Concerning the Credentials of Voters

Article 164 If citizens refuse to accept an election committee's decision on an appeal concerning the credentials of voters, they may, in five days before the election day, bring a lawsuit in the basic people's court located in their electoral districts.

Article 165 After a people's court has accepted a case concerning the credentials of voters, it must conclude the case before the election day.
The plaintiff, the representative of the election committee, and the relevant citizens shall participate in the proceedings.
The written judgment of the people's court shall be delivered to the election committee and the plaintiff before the election day, and the relevant citizens shall be notified of the judgment.

Section 3 Cases Concerning the Declaration of Missing or Dead Persons

Article 166 Where a citizen whose whereabouts have been unknown for two years and the interested party pleads for the declaration of the person to be missing, the pleading shall be filed with the basic people's court in the locality where the missing person has his domicile.
The pleading shall clearly state the facts and time of the disappearance as well as the action requested, and documentary evidence from a public security organ or other relevant organs concerning the disappearance of the citizen shall be appended.

Article 167 Where a citizen whose whereabouts have been unknown for four years or whose whereabouts have been unknown for two years after an accident in which he was involved, or whose whereabouts have been unknown after an accident in which he was involved and whose surviving chance is impossible based on the evaluation of a relevant authority, and if the interested party pleads for the declaration of the citizen to be dead, the pleading shall be filed with the basic people's court in the locality where the missing person has his domicile.
The pleading shall clearly state the facts and time of the disappearance as well as the action requested, and documentary evidence from a public security organ or other relevant organs concerning the disappearance of this citizen shall be appended.

Article 168 After accepting a case concerning a declaration of a missing or dead person, the people's court shall issue a public announcement to search for the missing person. The time period to declare a person is missing shall last for three months, and the time period to declare a person is dead shall last for one year. Where a citizen's whereabouts have been unknown after an accident in which he was involved and his surviving chance is impossible based on the evaluation of a relevant authority, the time limit to declare such a person is dead shall be three months.
Upon the expiration of the time period for the public announcement, the people's court shall, depending on whether the facts about the missing or death of a person can be confirmed, make a judgment to declare the person is missing or dead, or make a judgment to reject such a pleading.

Article 169 Should a citizen who was declared as a missing or dead person by a people's court reappear, the people's court shall, upon the application of that person or an interested party, make a new judgment to nullify the previous one.

Section 4 Cases Concerning the Determination of Citizens' Capacities in Civil Conducts

Article 170 A pleading for determining if a citizen has limited capacity or does not have capacity in civil conduct shall be

filed by the citizen's close relatives or any other interested party with the basic people's court in the locality where the citizen has his domicile.
The pleading shall clearly state the facts and grounds on which the citizen's incompetence or limited capacity in civil conducts is claimed.

Article 171 After accepting such a pleading, the people's court shall, when necessary, appoint an expert to perform an evaluation on the citizen whom is pleaded to have incompetent or limited capacity in civil conducts; if the petitioner has already provided an evaluation conclusion, the people's court shall review the conclusion.

Article 172 When a people's court adjudicates a case to determine if a citizen has incompetent or with limited capacity in civil conduct, a close relative of the citizen shall be the litigation representative unless he is also the petitioner. If none of the close relatives are willing to assume the responsibility as the litigation representative, the people's court shall appoint one of them as a litigation representative for the citizen. If the citizen's state of health permits, the people's court may also question the citizen.
If the people's court is convinced, after adjudication, that the pleading is based on facts, it shall make a judgment to determine the citizen has incompetent or limited capacity in civil conduct; if the court finds that the pleading is not based on facts, it shall make a judgment to reject the plead.

Article 173 Based on a pleading filed by a person who was found to have incompetent or limited capacity in civil conduct or filed by his guardian, if the people's court finds that the causation that makes the person to have incompetent or limited capacity in civil conduct has disappeared, it shall make a new judgment to nullify the previous one.

Section 5 Cases Concerning the Determination of Ownerless Property

Article 174 A petition for determining a property to be ownerless shall be filed by a citizen, legal person, or an organization with the basic people's court located in the place where the property is located.
The petition shall clearly state the type and quantity of the property and the grounds on which the petition for determining the property to be ownerless is filed.

Article 175 After accepting such a petition, the people's court shall review and verify the petition and then issue a public announcement to see if anyone would claim the property. If no one claims the property for a year after the public announcement was issued, the people's court shall make a judgment to declare the property is ownerless and turn the property over to the treasury of the state or a collective unit.

Article 176 After a property was determined by a judgment to be ownerless, if the owner of the property or his successor emerges, he may claim the property within the statutory limitation proscribed in the General Principle of Civil Law, the people's court shall, after examination and verification, make a new judgment to nullify the previous one.

Chapter 16 Procedure of Adjudication Supervision

Article 177 If the president of a people's court at any level finds some definite errors in a legally effective judgment or ruling rendered by his court and deems it is necessary to have the case re-adjudicated, he shall refer the case to the adjudication committee for discussion and decision.
If the Supreme People's Court finds some definite errors in a legally effective judgment or rulings rendered by a local people's court at any level, or if a people's court at a higher level finds some definite errors in a legally effective judgment or ruling of a people's court at a lower level, the Supreme People's Court or the people's court at the higher level shall have the power to bring the case up to be re-adjudicated by itself or direct the people's court at a lower level to conduct a re-adjudication.

Article 178 If a party considers that a legally effective judgment or ruling has some errors, he may petition the people's court at the next higher level for retrial; however, the enforcement of the judgment or ruling shall not be suspended.

Article 179 If a petition for retrial made by a party involves any of the following circumstances, the people's court shall retry the case:
(1) There is new evidence which is conclusive enough to overrule the original judgment or ruling;
(2) The main evidence used in the original judgment or ruling to find the facts was insufficient;
(3) The main evidence used in the original judgment or ruling to find the facts was forged;
(4) The main evidence used in the original judgment or ruling to find the facts was not cross-examined;
(5) Any party to a lawsuit is unable to obtain the evidence necessary for adjudicating the case because of some realistic reasons and has applied to the people's court for investigation and collection of such evidence in writing, but the people's court fails to investigate and collect such evidence;
(6) There was an error in the application of the law in the original judgment or ruling;
(7) The jurisdiction was in violation of legal provisions and was improper;
(8) The trial organization was unlawfully formed or the adjudicators that should withdraw have not done so;
(9) The person incapable of action is not represented by a legal agent, or the party that should participate in the litigation failed to do so because of the reasons not attributable to himself or his legal agent;
(10) The party's right to debate was deprived of in violation of the law;
(11) The default judgment in the absence of the party was made whereas that party was not served with summons;
(12) Some claims were omitted or exceeded in the original judgment or ruling; or
(13) The legal document on which the original judgment or ruling was made is cancelled or revised.
With respect to a violation of the legal procedure by a people's court that may have affected the correctness of the judgment or ruling in the case or the situation that adjudicating personnel involved themselves in any conduct of embezzlement, bribery, practicing favoritism for himself or relatives, or twisting the law in rendering judgment, the people's court shall retry the case.

Article 180 A party that applies for retrial shall submit a retrial petition and other materials. The people's court shall, within five days after receiving the retrial petition, serve the duplicate of the retrial petition on the opposing party. The opposing party shall submit written opinions within 15 days after receiving the duplicate of the retrial petition; and the failure to submit written opinions will not affect the review by the people's court. The people's court may require the applicant and the opposing party to supplement relevant matters and may inquire about relevant matters.

Article 181 The people's court shall review a retrial petition within three months after receiving it, and rule to retry the case if the retrial petition is under any of the circumstances specified in Article 179 of this Law; or rule to reject the petition if the retrial petition is not under any of the circumstances specified in Article 179 of this Law. Where an extension of the term is necessary for special circumstances, it shall be subject to the approval of the president of the court.
If a case is ruled to be retried upon application of a party involved, the case shall be retried by an intermediate people's court or a people's court at a higher level. If a case is ruled to be retried by the Supreme People's Court or a higher people's court, the case shall be retried by the court that ruled the retrial or any other people's court, or may be retried by the people's court that originally tried the case.

Article 182 For a legally effective mediation statement, if evidence provided by a party proves that the mediation violates the principle of voluntariness and the content of the mediation statement is in violation of the law, the party may plead for a re-adjudication. The people's court shall, upon examination and verification, re-adjudicate the case.

Article 183 For a legally effective judgment on dissolution of marriage, no party shall apply for a re-adjudication.

Article 184 Any retrial petition by a party shall be made within two years after the judgment or ruling becomes legally effective; or be made within three months after the party has known or should know that the legal document on which the original judgment or ruling was made is cancelled or revised or that the adjudicating personnel were involved in any conduct of embezzlement, bribery, practicing favoritism for himself or relatives, or twisting the law in rendering judgment

after two years.

Article 185 When a decision is made to retry a case according to the procedure of adjudication supervision, the enforcement of the original judgment shall be ordered to be suspended. The order shall be signed by the president of the court, and the seal of the people's court shall be affixed to it.

Article 186 For a case to be retried by a people's court according to the procedure of adjudication supervision, if the legally effective judgment or ruling was made by a court of first instance, the case shall be retried according to the procedure of first instance, and the parties may appeal against the new judgment or ruling; if the legally effective judgment or ruling was made by a court of second instance, it shall be retried according to the procedure of second instance, and the new judgment or ruling shall be legally effective; if it is a case that was brought up for a retrial by a people's court at a higher level, it shall be retried according to the procedure of second instance, and the new judgment or ruling shall be legally effective.
The people's court shall, in retrying a case, form a new collegial bench.

Article 187 If the Supreme People's Procuratorate discovers that a legally effective judgment or ruling made by a people's court at any level, or if a people's procuratorate at a higher level discovers that a legally effective judgment or ruling made by a people's court at a lower level, involves any of the circumstances specified in Article 179 of this Law, the Supreme People's Procuratorate or the people's procuratorate at a higher level shall respectively file a protest.
If a local people's procuratorate at any level discovers that a legally effective judgment or ruling made by a people's court at the same level involves any of the circumstances specified in Article 179 of this Law, the people's procuratorate shall ask the people's procuratorate at a higher level to file a protest with the people's court at the same level.

Article 188 With respect to a case protested by a people's procuratorate, the people's court that has accepted the protest shall render a ruling for retrial within 30 days after receiving the protest; and a case under any of the circumstances specified in Items (1) up to (5) of Paragraph 1 of Article 179 of this Law may be retried by the people's court at the next lower level.

Article 189 When the people's procuratorate decides to file a protest against a judgment or ruling made by a people's court, it shall produce a motion of protest.

Article 190 When a people's court hears a case protested by a people's procuratorate, the court shall notify the people's procuratorate to send personnel to the court.

Chapter 17 Procedure for Hastening Debt Recovery

Article 191 When a creditor requests his debtor to repay money or negotiable instrument, he may plead the basic people's court that has jurisdiction to issue a warrant for payment if the following requirements are met:
(1) The creditor and the debtor are not involved in other debt disputes; and
(2) The warrant for payment can be served on the debtor.
The pleading shall clearly state the requested amount of money or quantity of negotiable instrument and the facts and evidence on the basis of which the request is made.

Article 192 After a creditor files his pleading, the people's court shall, within five days, inform the creditor whether his pleading is accepted.

Article 193 After accepting such a pleading, the people's court shall, upon examination of the facts and evidence provided by the creditor, if the relationship of the creditor's rights and the debtor's obligations is definite and legitimate, issue a warrant for payment to the debtor within 15 days from accepting the pleading. If the pleading is untenable, the people's court shall make a ruling to dismiss it.
The debtor shall, within 15 days from the receipt of the warrant for payment, pay off his debts or submit a written objection

to the people's court.
If the debtor has neither submitted an objection nor complied with the warrant for payment within the time limit specified in the preceding paragraph, the creditor may ask the people's court to enforce the warrant.

Article 194 The people's court shall, upon receiving the written objection submitted by the debtor, make a ruling to stop the procedure for supervising debt collection and the warrant for payment shall be invalidated automatically. However, the creditor may then file a lawsuit.

Chapter 18 Procedure of Public Summon

Article 195 An owner of a transferable negotiable instrument according to regulations may, if the instrument is stolen, lost, or missing, plead the basic people's court located in the place where the instrument to be paid to issue a public summon. The provisions of this Chapter shall also be applicable to other matters related to public summon according to legal provisions.
Anyone who applies for a public summon shall submit to the people's court an application which shall clearly state the main contents of the bill such as the face value, the issuer, the holder, the endorser, and the grounds and facts on which the application is made.

Article 196 The people's court shall, upon deciding to accept the pleading, notify the payer to suspend the payment, and within three days, issue a public summon to invite the interested parties to claim their rights or interests. The time limit of the public summon shall be at the discretion of the people's court, however, it shall not be less than sixty days.

Article 197 The payer shall, upon receiving the notification of payment suspension issued by a people's court, suspend the payment till the conclusion of the procedure of public summon.
Within the time limit of a public summon, any act to transfer the rights of the disputed instrument shall have no legal effects.

Article 198 Any interested parties shall plead the people's court for asserting their claims within the time limit of a public summon.
After receiving a pleading of an interested party for asserting his claims, the people's court shall make a ruling to conclude the procedure of the public summon to invite the interested parties to assert their claims and notify the applicant and the payer.
The applicant or the claimant may institute a lawsuit in the people's court.

Article 199 If no one asserts a claim, the people's court shall make a judgment on the basis of the petition to declare the negotiable instrument null and void. The judgment shall be announced in a public notice, and the payer of the bill shall be notified of the judgment. As of the date of the public notice, the applicant shall be entitled to claim payment from the payer.

Article 200 If an interested party for a legitimate reason was unable to plead the people's court for asserting his claim before the judgment was made, he may, within one year from the day he knew or should have known of the public notice of the judgment, file a lawsuit in the people's court that made the judgment.

Part Three Procedure of Enforcement

Chapter 19 General Stipulations

Article 201 Legally effective judgments or rulings of civil cases and the parts of judgments or rulings related to property in criminal cases shall be enforced by the people's court of first instance or the people's court at the same level where the property that is to be enforced is located.
Other legal documents that are to be enforced by a people's court as prescribed by law shall be enforced by the people's court located in the place where the person to be enforced has his domicile or where the property that is subject to the

enforcement is located.

Article 202 If a party or any interested party considers that the enforcement is in violation of legal provisions, it may raise a written objection to the people's court in charge of the enforcement. If a party or any interested party raises a written objection, the people's court shall review the written objection within 15 days after receiving it. If the objection is tenable, the people's court shall rule to cancel or correct the enforcement; and if the objection is untenable, the people's court shall rule to reject the objection. If a party or any interested party is not satisfied with the ruling, it may apply for reconsideration to the people's court at the next higher level within 10 days after the ruling is served.

Article 203 If the people's court fails to make enforcement within six months after receiving the application for enforcement, the person who has applied for the enforcement may apply for enforcement to the people's court at the next higher level. Upon review, the people's court at the next higher level may order the original people's court to make enforcement within a specified period of time, or may decide to make enforcement by itself or direct any other people's court to make enforcement.

Article 204 If, during the course of enforcement, a person who is not involved in the case raises a written objection to the subject matter of the enforcement, the people's court shall review the written objection within 15 days after receiving it. If the objection is tenable, the people's court shall rule to suspend the enforcement on the subject matter; and if the objection is untenable, it shall be rejected. If a person who is not involved in the case or a party involved is not satisfied with the ruling and considers that there is an error in the original judgment or ruling, it shall be dealt with according to the procedure of adjudication supervision; and if a written objection is irrelevant to the original judgment or ruling, the relevant party may file a lawsuit with the people's court within 15 days after the ruling is served.

Article 205 The enforcement shall be carried out by the enforcement officer.
In carrying out a compulsory enforcement measure, the enforcement officer shall show his credentials. After the enforcement is completed, the enforcement officer shall make a written record for the particulars of the enforcement, and have it signed or sealed by the persons concerned on the scene.
The people's court may, when necessary, establish executive organs.

Article 206 If a person or property to be subject to enforcement is in another locality, the people's court in that locality may be entrusted to enforce the enforcement. The entrusted people's court shall begin the enforcement within 15 days after receiving a power of attorney and shall not refuse to do so. After the enforcement has been completed, the entrusted people's court shall promptly inform the entrusting people's court with the result of the enforcement by writing. If the enforcement has not been completed within 30 days, the entrusted people's court shall also inform the entrusting people's court with the particulars of the enforcement by writing.
If the entrusted people's court fails to enforce the enforcement within 15 days after receiving the power of attorney, the entrusting people's court may request the people's court at a higher level of the entrusted people's court to instruct the entrusted people's court to enforce the enforcement.

Article 207 If, during the course of enforcement, both disputing parties reconcile themselves and reach a settlement agreement on their own initiative, the enforcement officer shall make a written record of the terms of the settlement and have both parties affix their signatures or seals onto the record.
If one party fails to fulfill the settlement agreement, the people's court may, at the request of the other party, resume the enforcement according to the original and effective legal document.

Article 208 During the course of enforcement, if the person to be enforced provides a surety, the people's court may, with the consent of the person who has applied for the enforcement, decide to postpone the enforcement or defer the time limit for the enforcement. If the person to be enforced fails again to perform his duty within the new time limit, the people's court shall have the power to enforce the guaranteed property of the person to be enforced or the property of the guarantor.

Article 209 If the citizen to be enforced dies, his debts shall be paid off from his estate; if a legal person or any other organization to be subject to enforcement is terminated, the party that succeeds to its rights and obligations shall fulfill the obligations.

Article 210 After an enforcement has been enforced according to a judgment, ruling, or legal document, if a definite error is discovered in such a judgment, ruling, or legal document and therefore such a judgment, ruling, or legal document has been revoked by a people's court, the people's court shall, with respect to the property which has been enforcement, make a ruling to order the person who has received the enforcement property to return the property. If he refuses to return the property, a compulsory enforcement shall be enforced on him.

Article 211 The provisions of this Part shall be applicable to the enforcement of a mediation agreement drawn up by a people's court.

Chapter 20 Application and Referral of Enforcement

Article 212 All the parties shall comply with a legally effective judgment or ruling in a civil case. If a party refuses to comply, the other party may apply to the people's court for enforcement, or the judge may refer the matter to an enforcement officer for enforcement.
All the parties shall also comply with a mediation agreement or other legal documents that are to be enforced by a people's court. If a party refuses to comply, the other party may apply to the people's court for enforcement.

Article 213 If a party fails to comply with an award made by an arbitration institution that was established according to law, the other party may apply for enforcement to the people's court which has jurisdiction over the case. The applied people's court shall enforce the award.
If the party whom the application of enforcement is filed against provides evidence to prove that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial bench, rule to revoke the enforcement of the arbitration award:
(1) Where the parties have not stipulated an arbitration clause in the contract or have not subsequently reached a written agreement on arbitration;
(2) Where the matters being arbitrated exceed the scope of the arbitration agreement or the authority of the arbitration agency;
(3) Where the formation of an arbitration tribunal or the procedure of arbitration is not in conformity with the legal procedure;
(4) Where the main evidence for finding the facts is insufficient;
(5) Where there is an error in the application of the law; or
(6) Where the arbitrators involved in any of conducts of embezzlement, bribery, practicing favoritism for himself or relatives, twisting the law in rendering arbitration award.
If a people's court determines that the enforcement of an arbitration award would contradict the social and public interest, it shall make a ruling of not to enforce the award.
The above-mentioned order shall be served on both parties and the arbitration agency.
Where an arbitration award is ruled by a people's court not to be enforced, the parties may, according to the written arbitration agreement reached by them, apply to the arbitration agency for a new arbitration or bring a lawsuit to a people's court.

Article 214 If a party fails to comply with a certificate of obligation enforcement by a notary office according to law, the other party may apply to the people's court that has the jurisdiction over the case for the enforcement of the obligation and the applied people's court shall enforce such an obligation.
If a people's court discovers a definite error in a notarized certificate of obligation, the people's court shall make a ruling not to enforce the obligation and serve the letter of the ruling to the both parties and the notary office.

Article 215 The time limit for the submission of an application for enforcement shall be two years. The suspension or termination of the time limit for the submission of an application for enforcement shall be governed by the provisions on the suspension or termination of the statute of limitation.
The time limit prescribed in the preceding paragraph shall be calculated from the last day of the period specified by a legal document for its performance. If a legal document specifies an installment performance, the time limit shall be calculated from the last day of the period specified for each installment of performance. If a legal document does not specify the period of performance, the time limit shall be calculated from the day when the legal document takes effects.

Article 216 An enforcement officer shall, after receiving the application for enforcement or the writ of referral of enforcement, send an enforcement notice to the person to be enforced, instructing him to comply with the enforcement within the specified time limit. If the person fails to comply with the enforcement within the time limit, a compulsory enforcement shall be enforced.
If a person to be enforced fails to fulfill the obligations specified in a legal document and may hide or transfer his property, the enforcement officers may take the compulsory enforcement measure immediately.

Chapter 21 Enforcement Measures

Article 217 If a person to be enforced fails to fulfill the obligations specified in a legal document as instructed by the enforcement notice, he shall report his property situation for the time being and one year before he has received the enforcement notice. If a person to be enforced refuses to report his property situation or makes a false report, the people's court may, based on the circumstances, impose a fine or detention on the person to be enforced, his legal representative or the principal leading personnel of the unit or the person directly responsible.

Article 218 If a person to be enforced fails to fulfill the obligations specified in a legal document as instructed by the enforcement notice, the people's court shall have the power to make inquiries to the banks, credit unions or other units that deal with saving deposits about the savings deposited by the person subject to the enforcement, and shall also have the power to freeze and appropriate the savings deposited by the person subject to the enforcement, however, the inquiry, freeze, or appropriation of the deposits shall not exceed the scope of the obligation that the person subject to the enforcement should fulfill.
A people's court shall make a ruling to freeze or appropriate a deposit and issue a notice for assisting the enforcement. The banks, credit unions, or other units that deal with saving deposits shall comply with the notice.

Article 219 If a person to be enforced fails to fulfill the obligations specified in a legal documents instructed by an enforcement notice, the people's court shall have the power to withhold or withdraw the portion of his income to fulfill his obligation. However, the court shall leave the necessary living expenses for the person and his dependent family members.
A people's court shall make a ruling to withhold or withdraw a person's income and issue a notice for assisting the enforcement. The unit for which the person to be enforced works, banks, credit unions, or other units that deal with savings deposits shall comply with the notice.

Article 220 If a person to be enforced fails to fulfill his obligation specified in a legal document instructed by the enforcement notice, the people's court shall have the power to seize, detain, freeze, auction, or sell the portion of his property in order to fulfill his obligations. However, the court shall leave the articles of daily necessity used by the person and his dependent family members.
The people's court shall make a ruling in order to take the measures specified in the preceding paragraph.

Article 221 When a people's court seizes or detains a property, if the person to be enforced is a citizen, the court shall notify the person or an adult member of his family to appear on the scene; if the person to be enforced is a legal person or another organization, the court shall notify its legal representatives or the principal leading personnel to appear on the

scene. Their refusal to appear on the scene shall not prevent the enforcement. If a person to be enforced is a citizen, his unit or the basic-level organization in the place where his property is located shall send someone to the scene.
An inventory of the seized or detained property shall be made by the enforcement officer and, after the inventory has been signed or sealed by the persons on the scene, a copy of the inventory shall be given to the person subject to the enforcement. If the person subject to the enforcement is a citizen, a copy of the inventory may also be given to an adult member of his family.

Article 222 The enforcement officer may ask the person to be enforced to safeguard the seized property. The person who is subject to enforcement shall be held responsible for any losses incurred due to his fault.

Article 223 After a property has been seized or detained, the enforcement officer shall order the person to be enforced to fulfill, within the prescribed time limit, the obligations specified in a legal document. If the person fails to fulfill his obligations within the prescribed time limit, the people's court may, according to relevant regulations, ask the relevant units to auction or sell the seized or detained property. The articles that are prohibited from free trading by the state shall be purchased by the relevant units at the price fixed by the state.

Article 224 If a person to be enforced fails to fulfill his obligations specified in a legal document and conceals his property, the people's court shall have the power to issue a search warrant and search his domicile or the place where the property may be concealed.
The adoption of the measures mentioned in the preceding paragraph shall be subject to a search warrant signed by the president of the people's court.

Article 225 The delivery of property or negotiable instrument specified in a legal document shall be conducted in the presence of both parties summoned by the enforcement officer or the enforcement officer may deliver the property or the negotiable instrument to the recipient. The recipient of the property or the negotiable instrument shall sign a receipt.
Any unit that holds the property or negotiable instruments to be enforced shall pass it on according to the enforcement assistance notice issued by the people's court and the recipient shall sign a receipt.
If any citizen holds the property or negotiable instruments to be enforced, the people's court shall notify him to relinquish them. If he refuses to do so, a compulsory enforcement may be enforced.

Article 226 For a compulsory eviction from a building or a plot of land, the president of a people's court shall sign and issue a public announcement to order the person to be enforcement to perform his obligations within a designated period of time. If the person fails to do so within the designated time, a compulsory enforcement may be enforced by the enforcement officer.
When a compulsory enforcement is being enforced, if the person subject to the enforcement is a citizen, the person or an adult member of his family shall be notified to be present on the scene; if the person subject to the enforcement is a legal person or any other organization, its legal representatives or principal leading personnel shall be notified to be present on the scene; their refusal to be present shall not stop the enforcement. If the person to be enforced is a citizen, his work unit or the basic-level organization in the locality of the building or the plot of land to be enforcement shall send people to participate in the enforcement. The enforcement officer shall make a written record of the particulars of the compulsory enforcement, and the people on the scene shall affix their signatures or seals to the record.
The people's court shall assign personnel to transport the properties involved in a compulsory eviction from a building to a designated location and deliver them to the person to be enforced or to an adult member of his family; if any loss is incurred due to the person's refusal to accept the properties, he shall be liable for the loss.

Article 227 During the course of enforcement, if some formalities to transfer the certificates of titles need to be done, the people's court may issue an enforcement assistance notice to relevant units and these units shall comply with the notice.

Article 228 If a person to be enforced fails to fulfill his obligations prescribed in a judgment, ruling, or any other legal

document as instructed by the notice of enforcement, the people's court may conduct a compulsory enforcement or entrust a relevant unit or other persons to carry out the enforcement and the person subject to the enforcement shall bear the expenses thus incurred.

Article 229 If a person to be enforced fails to fulfill his obligations of paying money within the time limit specified by a judgment, ruling, or any other legal documents, he shall pay a multiplied interest for the debt based on the default time. If the person subject to the enforcement fails to fulfill his other obligations within the time limit specified by a judgment, ruling, or any other legal documents, he shall pay a surcharge for the deferred performance.

Article 230 After a people's court adopts an enforcement measure stipulated in Articles 118, 119, and 120 of this Law, if the person subject to the enforcement is still unable to pay debts, he shall continue to fulfill his obligations. Once the creditor discovers that the person subject to the enforcement has other properties, the creditor may at any time apply to the people's court for an enforcement of these properties.

Article 231 If a person to be enforced fails to fulfill the obligations specified in a legal document, the people's court may adopt or notify relevant units to assist to adopt the measure of restricting the exit, making records on the credit system, making public the information about nonperformance of duty through public media or any other measure stipulated by law.

Chapter 22 Suspension and Termination of Enforcement

Article 232 Under any of the following circumstances, the people's court shall make a ruling to suspend the enforcement:
(1) The applicant indicates that the enforcement may be postponed;
(2) A person not involved in the case raises a justified objection to the subject matter of the enforcement;
(3) A citizen as one of the parties dies and it is necessary to wait for an heir to inherit the rights of the deceased or to succeed his obligations;
(4) A legal person or any other organization as one of the parties ceases its existence, and the person succeeding to its rights and obligations has not been determined; or
(5) Other circumstances that the people's court deems the enforcement should be suspended.
Enforcement shall be resumed when the circumstances that caused the suspension of enforcement have disappeared.

Article 233 Under any of the following circumstances, the people's court shall make a ruling to terminate the enforcement:
(1) The applicant has withdrawn his application of enforcement;
(2) The legal document on which the enforcement is based has been repealed;
(3) The citizen to be enforced dies and there is no estate to be enforced and no one to succeed his obligations;
(4) The person who is entitled to alimony or supports for children or elders dies;
(5) The citizen to be enforced is too poor to repay his debts, has no source of income, and loses his ability to work; or
(6) Other circumstances that the people's court deems the enforcement should be concluded.

Article 234 A ruling to suspend or terminate the enforcement shall become effective immediately after being served on the parties concerned.

Part Four Special Provisions of the Civil Procedures Involving Foreign Elements

Chapter 23 General Principles

Article 235 The provisions of this Part shall be applicable to any civil litigation involving foreign elements within the territory of the People's Republic of China. Where it is not covered by the provisions of this Part, other relevant provisions of this Law shall apply.

Article 236 If an international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those found in this Law, the provisions of the international treaty shall apply, unless the provisions are the

ones on which China has announced reservations.

Article 237 Any civil lawsuits brought against a foreign national, a foreign organization, or an international organization that enjoys diplomatic privileges or immunities shall be dealt with according to the relevant laws of the People's Republic of China and with the international treaties concluded or acceded to by the People's Republic of China.

Article 238 A people's court shall use the spoken and written languages commonly used in the People's Republic of China to adjudicate civil cases involving foreign elements. Translation may be provided at the request of the parties concerned and the expenses of the translation shall be borne by the requesting parties.

Article 239 When foreign nationals, stateless persons, or foreign enterprises or organizations need to appoint lawyers for filing or respond to a lawsuit in a people's court, they shall appoint the lawyers of the People's Republic of China only.

Article 240 Any power of attorney mailed or forwarded from outside the territory of the People's Republic of China by a foreign national, stateless person, or a foreign enterprise or organization that has no domicile in the People's Republic of China to appoint a lawyer or any other person of the People's Republic of China as an litigation representative must be authenticated by a notary office in the country where that person, enterprise, or organization has domicile and confirmed by the Chinese embassy or consulate stationed in that country or shall go through the notary formalities stipulated in the relevant bilateral treaties between China and that country before the power of attorney becomes effective.

Chapter 24 Jurisdiction

Article 241 A lawsuit brought against a defendant who has no domicile in the People's Republic of China concerning a contract dispute or other disputes over property rights and interests, if the contract is signed or performed within the territory of the People's Republic of China, or the object of the action is within the territory of the People's Republic of China, or the defendant has detainable property within the territory of the People's Republic of China, or the defendant has its representative agency, branch, or business agent within the territory of the People's Republic of China, may be under the jurisdiction of the people's court located in the place where the contract is signed or performed, the subject of the action is located, the defendant's detainable property is located, the infringing act takes place, or the representative agency, branch or business agent is located.

Article 242 The parties to a disputed contract involving foreign elements or the parties having disputes over property rights and interests involving foreign elements may reach a written agreement to choose the people's court located in the place that has actual connections with their disputes as the court to adjudicate their disputes. If a people's court of the People's Republic of China is chosen as the court having the jurisdiction, such a jurisdiction shall not contravene with the stipulations on the jurisdictions by level or the exclusive jurisdiction proscribed in this Law.

Article 243 If the defendant in a civil litigation involving foreign elements raises no objection to the jurisdiction of a people's court and files his defense with the court, he shall be deemed to have accepted that this people's court has jurisdiction over the case.

Article 244 Lawsuits brought for disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, or Chinese-foreign cooperative exploration and development of the natural resources in the People's Republic of China shall be under the jurisdiction of the people's courts of the People's Republic of China.

Chapter 25 Service and Time Periods

Article 245 A people's court may serve litigation documents to a party who has no domicile within the territory of the People's Republic of China by the following methods:
(1) By the method specified in the international treaties concluded or acceded to by both the People's Republic of China

and the country where the recipient of service resides;
(2) Through diplomatic channels;
(3) By entrusting the service to the embassy or consulate of the People's Republic of China stationed in the country where the recipient of service resides;
(4) Through the litigation representative who is empowered by the recipient of service to receive the service for it;
(5) Through the party's representative agency, branch, or business agent whom are authorized to receive the service within the territory of the People's Republic of China;
(6) Via postal service if the law of the country where the recipient of service resides permits serving litigation documents via postal service; in the event that no receipt is returned in six months after the date on which the document was posted, but various circumstances justify the assumption that it has been served, the service shall be deemed completed upon the expiration of the time limit; or
(7) By public announcement if none of the above-mentioned methods can be employed and the service shall be considered completed in six months after the date when the public announcement was issued.

Article 246 If a defendant has no domicile in the People's Republic of China, the people's court shall serve a copy of the motion of complaint on the defendant and notify him to file his motion of defense within 30 days after he receives the copy of the motion of complaint. Any extension of the time requested by the defendant shall be at the discretion of the people's court.

Article 247 If any party who has no domicile in the People's Republic of China is dissatisfied with a judgment or ruling made by a people's court of first instance, he shall have the right to file an appeal within 30 days from the date the written judgment or ruling is served. The appellee shall forward his motion of defense within 30 days after he has received a copy of the motion of appeal. If a party is unable to file an appeal or forward a motion of defense within the period of time prescribed by law and therefore requests an extension of the period, the people's court shall decide to approve or disapprove the request.

Article 248 The time period for handling a civil case involving foreign elements by the people's court shall not be limited by the provisions of Article 135 and 159 of this Law.

Chapter 26 Property Preservation

Article 249 The parties may, according to the provisions of Article 92 of this Law, apply to the people's court for property preservation.
The interested parties may, according to the provisions of Article 94 of this Law, apply to the people's court for property preservation before a lawsuit is brought.

Article 250 After a people's court rules to grant a request for property preservation before litigation, the applicant shall bring a lawsuit within 30 days. If he fails to bring a lawsuit within the time limit, the people's court shall cancel the property preservation.

Article 251 After a people's court rules to grant a request for property preservation, if a surety is provided by the person against whom application for the property preservation is made, the people's court shall cancel the property preservation.

Article 252 If an application is wrongfully made, the applicant shall compensate the person against whom the application is made for losses incurred by the property preservation.

Article 253 If a property preserved by a people's court needs to be kept under surveillance, it shall notify the unit concerned to be responsible for the surveillance, and the person against whom the application is made shall bear the expenses thus incurred.

Article 254 A ruling to cancel the preservation issued by a people's court shall be carried out by an enforcement officer.

Chapter 27 Arbitration

Article 255 For disputes involving foreign economic, trade, transport, or maritime activities, if the parties have stipulated clauses on arbitration in their contracts or have subsequently reached written agreements on arbitration, they shall submit such disputes for arbitration to the foreign-affair arbitration institutions of the People's Republic of China and shall not bring lawsuits in a people's court.
If the parties have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement on arbitration, they may file a lawsuit in a people's court.

Article 256 If a party applies for the adoption of property preservation measure, the foreign-affair arbitration institution of the People's Republic of China shall submit the party's application to the intermediate people's court located in the place where the person against whom the application for the property preservation is filed has his domicile or where the person's property is located.

Article 257 If one party fails to comply with the award made by a foreign-affair arbitration institution of the People's Republic of China, the other party may apply for the enforcement of the award to the intermediate people's court located in the place where the person against whom the application for the enforcement is made has his domicile or where the property of the person is located.

Article 258 If a defendant provides evidence to prove that the arbitration award made by a foreign-affair arbitration institution of the People's Republic of China involves any of the following circumstances, the people's court shall, after examination and verification by a collegial bench, rule to disallow the enforcement of the award:
(1) The parties have not stipulated any clause regarding arbitration in their contract or have not subsequently reached a written agreement on arbitration;
(2) The defendant is not duly notified of the appointment of the arbitrators or the arbitration proceeding, or the defendant fails to express his defense due to the reasons for which he is not held responsible;
(3) The formation of the arbitration panel or the arbitration procedure is not in conformity with rules of arbitration; or
(4) The matters decided by arbitration exceed the scope of the arbitration agreement or the authority of the arbitration institution.
If a people's court determines that the enforcement of an award will violate the social and public interest, the court shall make a ruling to disallow the enforcement of the arbitration award.

Article 259 If the enforcement of an arbitration award is disallowed, the parties may reach a written agreement on arbitration to re-submit their dispute for a new arbitration or file a lawsuit in a people's court.

Chapter 28 Judicial Assistance

Article 260 According to the international treaties concluded or acceded to by the People's Republic of China or the principle of reciprocity, the people's courts of China and foreign courts may request each other's assistance in the service of legal documents, the investigation and collection of evidence, or other litigation actions.
If any matter requested by a foreign court for assistance would impair the sovereignty, security, or social and public interests of the People's Republic of China, the people's court shall refuse the request.

Article 261 A request for providing of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China; if there is no treaty regarding judicial assistance between China and the foreign country, such a request may be made through diplomatic channels.
A foreign embassy or consulate to the People's Republic of China may serve legal documents to its citizens or conduct the investigation and collection of evidence on its citizens with the conditions of no laws of the People's Republic of China to be violated and no compulsory measures to be taken.
Except for the circumstances proscribed in the preceding paragraph, no foreign organ or individual may, without obtaining

an approval from the relevant authorities of the People's Republic of China, serve documents or conduct any investigation and collection of evidence within the territory of the People's Republic of China.

Article 262 A letter of request for judicial assistance and its annexes submitted by a foreign court to a people's court shall be appended with Chinese translations or the texts in the language specified in the relevant international treaty.
A letter of request and its annexes submitted to a foreign court by a people's court for judicial assistance shall also be appended with the translations in the language of the country or the texts in the language specified in the relevant international treaty.

Article 263 The judicial assistance provided by the people's courts shall be carried out according to the procedure stipulated by the laws of the People's Republic of China. If a foreign court request for judicial assistance to be conducted in a special method, it may be conducted as requested as long as the special method does not violate any laws of the People's Republic of China.

Article 264 If a party applies for enforcement of a legally effective judgment or ruling made by a people's court and the party subject to the enforcement or its property is not within the territory of the People's Republic of China, the applicant may directly apply for the recognition and enforcement of the judgment or ruling to the foreign court that has jurisdiction over the case, or have the people's court request a foreign court to recognize and enforce the judgment or ruling according to the relevant provisions of the international treaties concluded or acceded to by China or on the principle of reciprocity.
If a party applies for the enforcement of a legally effective arbitration award made by a foreign-affair arbitration institution of the People's Republic of China and the party subject to the enforcement or its property is not within the territory of the People's Republic of China, the applicant may directly apply for the recognition and enforcement of the arbitration award to the foreign court that has jurisdiction over the case.

Article 265 If a legally effective judgment or ruling made by a foreign court seeks the recognition and enforcement of a people's court of the People's Republic of China, the party may directly apply to the intermediate people's court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement, or the foreign court may, according to the provisions of the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, request the recognition and enforcement of a people's court.

Article 266 After a people's court of the People's Republic of China reviews an application or pleading for the recognition and enforcement of a legally effective judgment or ruling rendered by a foreign court according to the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, if the court considers that such a judgment or ruling does not contradict the basic principles of the laws of the People's Republic of China nor violates the national, social, and public interest of China, the court may render a ruling to recognize its force. Where the enforcement is necessary, the court may issue an order to enforce a foreign judgment according to the relevant provisions of this Law. If a legally effective judgment or ruling rendered by a foreign court contradicts the basic principles of the law of the People's Republic of China or the national, social, and public interest of China, the people's court shall reject the application of recognition and enforcement.

Article 267 If an award made by a foreign arbitration institution needs the recognition and enforcement of a people's court of the People's Republic of China, the party shall directly apply to the intermediate people's court located in the place where the party subject to the enforcement has its domicile or where its property is located. The people's court shall deal with the matter according to the relevant provisions of the international treaties concluded or acceded to by the People's Republic of China or on the principle of reciprocity.

Article 268 This Law shall become effective as of the date of promulgation, and the Civil Procedure Law of the People's Republic of China (for Trial Implementation) shall be annulled as of the same date.

中华人民共和国民事诉讼法

（1991 年 4 月 9 日第七届全国人民代表大会第四次会议通过　根据 2007 年 10 月 28 日第十届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》修正）

目　　录

第一编　总　　则

第一章　任务、适用范围和基本原则

第一条　中华人民共和国民事诉讼法以宪法为根据，结合我国民事审判工作的经验和实际情况制定。

第二条　华人民共和国民事诉讼法的任务，是保护当事人行使诉讼权利，保证人民法院查明事实，分清是非，正确适用法律，及时审理民事案件，确认民事权利义务关系，制裁民事违法行为，保护当事人的合法权益，教育公民自觉遵守法律，维护社会秩序、经济秩序，保障社会主义建设事业顺利进行。

第三条　人民法院受理公民之间、法人之间、其他组织之间以及他们相互之间因财产关系和人身关系提起的民事诉讼，适用本法的规定。

第四条　凡在中华人民共和国领域内进行民事诉讼，必须遵守本法。

第五条　外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，同中华人民共和国公民、法人和其他组织有同等的诉讼权利义务。

外国法院对中华人民共和国公民、法人和其他组织的民事诉讼权利加以限制的，中华人民共和国人民法院对该国公民、企业和组织的民事诉讼权利，实行对等原则。

第六条　民事案件的审判权由人民法院行使。

人民法院依照法律规定对民事案件独立进行审判，不受行政机关、社会团体和个人的干涉。

第七条　人民法院审理民事案件，必须以事实为根据，以法律为准绳。

第八条　民事诉讼当事人有平等的诉讼权利。人民法院审理民事案件，应当保障和便利当事人行使诉讼权利，对当事人在适用法律上一律平等。

第九条　人民法院审理民事案件，应当根据自愿和合法的原则进行调解；调解不成的，应当及时判决。

第十条　人民法院审理民事案件，依照法律规定实行合议、回避、公开审判和两审终审制度。

第十一条　各民族公民都有用本民族语言、文字进行民事诉讼的权利。

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

第十二条　人民法院审理民事案件时，当事人有权进行辩论。

第十三条　当事人有权在法律规定的范围内处分自己的民事权利和诉讼权利。

第十四条　人民检察院有权对民事审判活动实行法律监督。

第十五条　机关、社会团体、企业事业单位对损害国家、集体或者个人民事权益的行为，可以支持受损害的单位或者个人向人民法院起诉。

第十六条　人民调解委员会是在基层人民政府和基层人民法院指导下，调解民间纠纷的群众性组织。

人民调解委员会依照法律规定，根据自愿原则进行调解。当事人对调解达成的协议应当履行；不愿调解、调解不成或者反悔的，可以向人民法院起诉。

人民调解委员会调解民间纠纷，如有违背法律的，人民法院应当予以纠正。

第十七条　民族自治地方的人民代表大会根据宪法和本法的原则，结合当地民族的具体情况，可以制定变通或者补充的规定。自治区的规定，报全国人民代表大会常务委员会批准。自治州、自治县的规定，报省或者自治区的人民代表大会常务委员会批准，并报全国人民代表大会常务委员会备案。

第二章　管辖

第一节　级别管辖

第十八条　基层人民法院管辖第一审民事案件，但本法另有规定的除外。

第十九条　中级人民法院管辖下列第一审民事案件：

（一）重大涉外案件；

（二）在本辖区有重大影响的案件；

（三）最高人民法院确定由中级人民法院管辖的案件。

第二十条　高级人民法院管辖在本辖区有重大影响的第一审民事案件。

第二十一条　最高人民法院管辖下列第一审民事案件：

（一）在全国有重大影响的案件；

（二）认为应当由本院审理的案件。

第二节　地域管辖

第二十二条　对公民提起的民事诉讼，由被告住所地人民法院管辖；被告住所地与经常居住地不一致的，由经常居住地人民法院管辖。

对法人或者其他组织提起的民事诉讼，由被告住所地人民法院管辖。

同一诉讼的几个被告住所地、经常居住地在两个以上人民法院辖区的，各该人民法院都有管辖权。

第二十三条　下列民事诉讼，由原告住所地人民法院管辖；原告住所地与经常居住地不一致的，由原告经常居住地人民法院管辖：

（一）对不在中华人民共和国领域内居住的人提起的有关身份关系的诉讼；

（二）对下落不明或者宣告失踪的人提起的有关身份关系的诉讼；

（三）对被劳动教养的人提起的诉讼；

（四）对被监禁的人提起的诉讼。

第二十四条　因合同纠纷提起的诉讼，由被告住所地或者合同履行地人民法院管辖。

第二十五条　合同的双方当事人可以在书面合同中协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地人民法院管辖，但不得违反本法对级别管辖和专属管辖的规定。

第二十六条　因保险合同纠纷提起的诉讼，由被告住所地或者保险标的物所在地人民法院管辖。

第二十七条　因票据纠纷提起的诉讼，由票据支付地或者被告住所地人民法院管辖。

第二十八条　因铁路、公路、水上、航空运输和联合运输合同纠纷提起的诉讼，由运输始发地、目的地或者被告住所地人民法院管辖。

第二十九条　因侵权行为提起的诉讼，由侵权行为地或者被告住所地人民法院管辖。

第三十条　因铁路、公路、水上和航空事故请求损害赔偿提起的诉讼，由事故发生地或者车辆、船舶最先到达地、航空器最先降落地或者被告住所地人民法院管辖。

第三十一条　因船舶碰撞或者其他海事损害事故请求损害赔偿提起的诉讼，由碰撞发生地、碰撞船舶最先到达地、加害船舶被扣留地或者被告住所地人民法院管辖。

第三十二条　因海难救助费用提起的诉讼，由救助地或者被救助船舶最先到达地人民法院管辖。

第三十三条　因共同海损提起的诉讼，由船舶最先到达地、共同海损理算地或者航程终止地的人民法院管辖。

第三十四条　下列案件，由本条规定的人民法院专属管辖：

（一）因不动产纠纷提起的诉讼，由不动产所在地人民法院管辖；

（二）因港口作业中发生纠纷提起的诉讼，由港口所在地人民法院管辖；

（三）因继承遗产纠纷提起的诉讼，由被继承人死亡时住所地或者主要遗产所在地人民法院管辖。

第三十五条　两个以上人民法院都有管辖权的诉讼，原告可以向其中一个人民法院起诉；原告向两个以上有管辖权的人民法院起诉的，由最先立案的人民法院管辖。

第三节　移送管辖和指定管辖

第三十六条　人民法院发现受理的案件不属于本院管辖的，应当移送有管辖权的人民法院，受移送的人民法院应当受理。受移送的人民法院认为受移送的案件依照规定不属于本院管辖的，应当报请上级人民法院指定管辖，不得再自行移送。

第三十七条　有管辖权的人民法院由于特殊原因，不能行使管辖权的，由上级人民法院指定管辖。

人民法院之间因管辖权发生争议，由争议双方协商解决；协商解决不了的，报请它们的共同上级人民法院指定管辖。

第三十八条　人民法院受理案件后，当事人对管辖权有异议的，应当在提交答辩状期间提出。人民法院对当事人提出的异议，应当审查。异议成立的，裁定将案件移送有管辖权的人民法院；异议不成立的，裁定驳回。

第三十九条　上级人民法院有权审理下级人民法院管辖的第一审民事案件，也可以把本院管辖的第一审民事案件交下级人民法院审理。

下级人民法院对它所管辖的第一审民事案件，认为需要由上级人民法院审理的，可以报

请上级人民法院审理。

第三章　审判组织

第四十条　人民法院审理第一审民事案件，由审判员、陪审员共同组成合议庭或者由审判员组成合议庭。合议庭的成员人数，必须是单数。

适用简易程序审理的民事案件，由审判员一人独任审理。

陪审员在执行陪审职务时，与审判员有同等的权利义务。

第四十一条　人民法院审理第二审民事案件，由审判员组成合议庭。合议庭的成员人数，必须是单数。

发回重审的案件，原审人民法院应当按照第一审程序另行组成合议庭。

审理再审案件，原来是第一审的，按照第一审程序另行组成合议庭；原来是第二审的或者是上级人民法院提审的，按照第二审程序另行组成合议庭。

第四十二条　合议庭的审判长由院长或者庭长指定审判员一人担任；院长或者庭长参加审判的，由院长或者庭长担任。

第四十三条　合议庭评议案件，实行少数服从多数的原则。评议应当制作笔录，由合议庭成员签名。评议中的不同意见，必须如实记入笔录。

第四十四条　审判人员应当依法秉公办案。

审判人员不得接受当事人及其诉讼代理人请客送礼。

审判人员有贪污受贿，徇私舞弊，枉法裁判行为的，应当追究法律责任；构成犯罪的，依法追究刑事责任。

第四章　回避

第四十五条　审判人员有下列情形之一的，必须回避，当事人有权用口头或者书面方式申请他们回避：

（一）是本案当事人或者当事人、诉讼代理人的近亲属；

（二）与本案有利害关系；

（三）与本案当事人有其他关系，可能影响对案件公正审理的。

前款规定，适用于书记员、翻译人员、鉴定人、勘验人。

第四十六条　当事人提出回避申请，应当说明理由，在案件开始审理时提出；回避事由在案件开始审理后知道的，也可以在法庭辩论终结前提出。

被申请回避的人员在人民法院作出是否回避的决定前，应当暂停参与本案的工作，但案件需要采取紧急措施的除外。

第四十七条　院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。

第四十八条　人民法院对当事人提出的回避申请，应当在申请提出的三日内，以口头或者书面形式作出决定。申请人对决定不服的，可以在接到决定时申请复议一次。复议期间，被申请回避的人员，不停止参与本案的工作。人民法院对复议申请，应当在三日内作出复议决定，并通知复议申请人。

第五章　诉讼参加人

第一节　当事人

第四十九条　公民、法人和其他组织可以作为民事诉讼的当事人。

法人由其法定代表人进行诉讼。其他组织由其主要负责人进行诉讼。

第五十条　当事人有权委托代理人，提出回避申请，收集、提供证据，进行辩论，请求调解，提起上诉，申请执行。

当事人可以查阅本案有关材料，并可以复制本案有关材料和法律文书。查阅、复制本案有关材料的范围和办法由最高人民法院规定。

当事人必须依法行使诉讼权利，遵守诉讼秩序，履行发生法律效力的判决书、裁定书和调解书。

第五十一条　双方当事人可以自行和解。

第五十二条　原告可以放弃或者变更诉讼请求。被告可以承认或者反驳诉讼请求，有权提起反诉。

第五十三条　当事人一方或者双方为二人以上，其诉讼标的是共同的，或者诉讼标的是同一种类、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。

共同诉讼的一方当事人对诉讼标的有共同权利义务的，其中一人的诉讼行为经其他共同诉讼人承认，对其他共同诉讼的发生效力；对诉讼标的没有共同权利义务的，其中一人的诉讼行为对其他共同诉讼人不发生效力。

第五十四条　当事人一方人数众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

第五十五条　诉讼标的是同一种类、当事人一方人数众多在起诉时人数尚未确定的，人民法院可以发出公告，说明案件情况和诉讼请求，通知权利人在一定期间向人民法院登记。

向人民法院登记的权利人可以推选代表人进行诉讼；推选不出代表人的，人民法院可以与参加登记的权利人商定代表人。

代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

人民法院作出的判决、裁定，对参加登记的全体权利人发生效力。未参加登记的权利人在诉讼时效期间提起诉讼的，适用该判决、裁定。

第五十六条　对当事人双方的诉讼标的，第三人认为有独立请求权的，有权提起诉讼。

对当事人双方的诉讼标的，第三人虽然没有独立请求权，但案件处理结果同他有法律上的利害关系的，可以申请参加诉讼，或者由人民法院通知他参加诉讼。人民法院判决承担民事责任的第三人，有当事人的诉讼权利义务。

第二节　诉讼代理人

第五十七条　无诉讼行为能力人由他的监护人作为法定代理人代为诉讼。法定代理人之间互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

第五十八条　当事人、法定代理人可以委托一至二人作为诉讼代理人。

律师、当事人的近亲属、有关的社会团体或者所在单位推荐的人、经人民法院许可的其他公民，都可以被委托为诉讼代理人。

第五十九条　委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。

授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进

行和解，提起反诉或者上诉，必须有委托人的特别授权。

侨居在国外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

第六十条　诉讼代理人的权限如果变更或者解除，当事人应当书面告知人民法院，并由人民法院通知对方当事人。

第六十一条　代理诉讼的律师和其他诉讼代理人有权调查收集证据，可以查阅本案有关材料。查阅本案有关材料的范围和办法由最高人民法院规定。

第六十二条　离婚案件有诉讼代理人的，本人除不能表达意志的以外，仍应出庭；确因特殊情况无法出庭的，必须向人民法院提交书面意见。

第六章　证据

第六十三条　证据有下列几种：

（一）书证；

（二）物证；

（三）视听资料；

（四）证人证言；

（五）当事人的陈述；

（六）鉴定结论；

（七）勘验笔录。

以上证据必须查证属实，才能作为认定事实的根据。

第六十四条　当事人对自己提出的主张，有责任提供证据。

当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。

人民法院应当按照法定程序，全面地、客观地审查核实证据。

第六十五条　人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。

人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

第六十六条　证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人稳私的证据应当保密，需要在法庭出示的，不得在公开开庭时出示。

第六十七条　经过法定程序公证证明的法律行为、法律事实和文书，人民法院应当作为认定事实的根据。但有相反证据足以推翻公证证明的除外。

第六十八条　书证应当提交原件。物证应当提交原物。提交原件或者原物确有困难的，可以提交复制品、照片、副本、节录本。

提交外文书证，必须附有中文译本。

第六十九条　人民法院对视听资料，应当辨别真伪，并结合本案的其他证据，审查确定能否作为认定事实的根据。

第七十条　凡是知道案件情况的单位和个人，都有义务出庭作证。有关单位的负责人应当支持证人作证。证人确有困难不能出庭的，经人民法院许可，可以提交书面证言。

不能正确表达意志的人，不能作证。

第七十一条　人民法院对当事人的陈述，应当结合本案的其他证据，审查确定能否作为认定事实的根据。

当事人拒绝陈述的，不影响人民法院根据证据认定案件事实。

第七十二条　人民法院对专门性问题认为需要鉴定的，应当交由法定鉴定部门鉴定；没有法定鉴定部门的，由人民法院指定的鉴定部门鉴定。

鉴定部门及其指定的鉴定人有权了解进行鉴定所需要的案件材料，必要时可以询问当事人、证人。

鉴定部门和鉴定人应当提出书面鉴定结论，在鉴定书上签名或者盖章。鉴定人鉴定的，应当由鉴定人所在单位加盖印章，证明鉴定人身份。

第七十三条　勘验物证或者现场，勘验人必须出示人民法院的证件，并邀请当地基层组织或者当事人所在单位派人参加。当事人或者当事人的成年家属应当到场，拒不到场的，不影响勘验的进行。

有关单位和个人根据人民法院的通知，有义务保护现场，协助勘验工作。

勘验人应当将勘验情况和结果制作笔录，由勘验人、当事人和被邀参加人签名或者盖章。

第七十四条　在证据可能灭失或者以后难以取得的情况下，诉讼参加人可以向人民法院申请保全证据，人民法院也可以主动采取保全措施。

第七章　期间、送达

第一节　期间

第七十五条　期间包括法定期间和人民法院指定的期间。

期间以时、日、月、年计算。期间开始的时和日，不计算在期间内。

期间届满的最后一日是节假日的，以节假日后的第一日为期间届满的日期。

期间不包括在途时间，诉讼文书在期满前交邮的，不算过期。

第七十六条　当事人因不可抗拒的事由或者其他正当理由耽误期限的，在障碍消除后的十日内，可以申请顺延期限，是否准许，由人民法院决定。

第二节　送达

第七十七条　送达诉讼文书必须有送达回证，由受送达人在送达回证上记明收到日期，签名或者盖章。

受送达人在送达回证上的签收日期为送达日期。

第七十八条　送达诉讼文书，应当直接送交受送达人。受送达人是公民的，本人不在交他的同住成年家属签收；受送达人是法人或者其他组织的，应当由法人的法定代表人、其他组织的主要负责人或者该法人、组织负责收件的人签收；受送达人有诉讼代理人的，可以送交其代理人签收；受送达人已向人民法院指定代收人的，送交代收人签收。

受送达人的同住成年家属，法人或者其他组织的负责收件的人，诉讼代理人或者代收人在送达回证上签收的日期为送达日期。

第七十九条　受送达人或者他的同住成年家属拒绝接收诉讼文书的，送达人应当邀请有关基层组织或者所在单位的代表到场，说明情况，在送达回证上记明拒收事由和日期，由送达人、见证人签名或者盖章，把诉讼文书留在受送达人的住所，即视为送达。

第八十条　直接送达诉讼文书有困难的，可以委托其他人民法院代为送达，或者邮寄送达。邮寄送达的，以回执上注明的收件日期为送达日期。

第八十一条　受送达人是军人的，通过其所在部队团以上单位的政治机关转交。

第八十二条　受送达人是被监禁的，通过其所在监所或者劳动改造单位转交。

受送达人是被劳动教养的，通过其所在劳动教养单位转交。

第八十三条　代为转交的机关、单位收到诉讼文书后，必须立即交受送达人签收，以在送达回证上的签收日期，为送达日期。

第八十四条　受送达人下落不明，或者用本节规定的其他方式无法送达的，公告送达。自发出公告之日起，经过六十日，即视为送达。

公告送达，应当在案卷中记明原因和经过。

第八章　调解

第八十五条　人民法院审理民事案件，根据当事人自愿的原则，在事实清楚的基础上，分清是非，进行调解。

第八十六条　人民法院进行调解，可以由审判员一人主持，也可以由合议庭主持，并尽可能就地进行。

人民法院进行调解，可以用简便方式通知当事人、证人到庭。

第八十七条　人民法院进行调解，可以邀请有关单位和个人协助。被邀请的单位和个人，应当协助人民法院进行调解。

第八十八条　调解达成协议，必须双方自愿，不得强迫。调解协议的内容不得违反法律规定。

第八十九条　调解达成协议，人民法院应当制作调解书。调解书应当写明诉讼请求、案件的事实和调解结果。

调解书由审判人员、书记员署名，加盖人民法院印章，送达双方当事人。

调解书经双方当事人签收后，即具有法律效力。

第九十条　下列案件调解达成协议，人民法院可以不制作调解书：

（一）调解和好的离婚案件；

（二）调解维持收养关系的案件；

（三）能够即时履行的案件；

（四）其他不需要制作调解书的案件。

对不需要制作调解书的协议，应当记入笔录，由双方当事人、审判人员、书记员签名或者盖章后，即具有法律效力。

第九十一条　调解未达成协议或者调解书送达前一方反悔的，人民法院应当及时判决。

第九章　财产保全和先予执行

第九十二条　人民法院对于可能因当事人一方的行为或者其他原因，使判决不能执行或者难以执行的案件，可以根据对方当事人的申请，作出财产保全的裁定；当事人没有提出申请的，人民法院在必要时也可以裁定采取财产保全措施。

人民法院采取财产保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。

人民法院接受申请后，对情况紧急的，必须在四十八小时内作出裁定；裁定采取财产保全措施的，应当立即开始执行。

第九十三条　利害关系人因情况紧急，不立即申请财产保全将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取财产保全措施。申请人应当提供担保，不提供担保的，驳回申请。

人民法院接受申请后，必须在四十八小时内作出裁定；裁定采取财产保全措施的，应当

立即开始执行。

申请人在人民法院采取保全措施后十五日内不起诉的，人民法院应当解除财产保全。

第九十四条　财产保全限于请求的范围，或者与本案有关的财物。

财产保全采取查封、扣押、冻结或者法律规定的其他方法。

人民法院冻结财产后，应当立即通知被冻结财产的人。

财产已被查封、冻结的，不得重复查封、冻结。

第九十五条　被申请人提供担保的，人民法院应当解除财产保全。

第九十六条　申请有错误的，申请人应赔偿被申请人因财产保全所遭受的损失。

第九十七条　人民法院对下列案件，根据当事人的申请，可以裁定先予执行：

（一）追索赡养费、扶养费、抚育费、抚恤金、医疗费用的；

（二）追索劳动报酬的；

（三）因情况紧急需要先予执行的。

第九十八条　人民法院裁定先予执行的，应当符合下列条件：

（一）当事人之间权利义务关系明确，不先予执行将严重影响申请人的生活或者生产经营的；

（二）被申请人有履行能力。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。申请人败诉的，应当赔偿被申请人因先予执行遭受的财产损失。

第九十九条　当事人对财产保全或者先予执行的裁定不服的，可以申请复议一次。复议期间不停止裁定的执行。

第十章　对妨害民事诉讼的强制措施

第一百条　人民法院对必须到庭的被告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

第一百零一条　诉讼参与人和其他人应当遵守法庭规则。

人民法院对违反法庭规则的人，可以予以训诫，责令退出法庭或者予以罚款、拘留。

人民法院对哄闹、冲击法庭、侮辱、诽谤、威胁、殴打审判人员，严重扰乱法庭秩序的人，依法追究刑事责任；情节较轻的，予以罚款、拘留。

第一百零二条　诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任：

（一）伪造、毁灭重要证据，妨碍人民法院审理案件的；

（二）以暴力、威胁、贿买方法阻止证人作证或者指使、贿买、胁迫他人作伪证的；

（三）隐藏、转移、变卖、毁损已被查封、扣押的财产，或者已被清点并责令其保管的财产，转移已被冻结的财产的；

（四）对司法工作人员、诉讼参加人、证人、翻译人员、鉴定人、勘验人、协助执行的人，进行侮辱、诽谤、诬陷、殴打或者打击报复的；

（五）以暴力、威胁或者其他方法阻碍司法工作人员执行职务的；

（六）拒不履行人民法院已经发生法律效力的判决、裁定的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款、拘留；构成犯罪的，依法追究刑事责任。

第一百零三条　有义务协助调查、执行的单位有下列行为之一的，人民法院除责令其履行协助义务外，并可以予以罚款：

（一）有关单位拒绝或者妨碍人民法院调查取证的；

（二）银行、信用合作社和其他有储蓄业务的单位接到人民法院协助执行通知书后，拒不协助查询、冻结或者划拨存款的；

（三）有关单位接到人民法院协助执行通知书后，拒不协助扣留被执行人的收入、办理有关财产权证照转移手续、转交有关票证、证照或者其他财产的；

（四）其他拒绝协助执行的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款；对仍不履行协助义务的，可以予以拘留；并可以向监察机关或者有关机关提出予以纪律处分的司法建议。

第一百零四条　对个人的罚款金额，为人民币一万元以下。对单位的罚款金额，为人民币一万元以上三十万元以下。

拘留的期限，为十五日以下。

被拘留的人，由人民法院交公安机关看管。在拘留期间，被拘留人承认并改正错误的，人民法院可以决定提前解除拘留。

第一百零五条　拘传、罚款、拘留必须经院长批准。

拘传应当发拘传票。

罚款、拘留应当用决定书。对决定不服的，可以向上一级人民法院申请复议一次。复议期间不停止执行。

第一百零六条　采取对妨害民事诉讼的强制措施必须由人民法院决定。任何单位和个人采取非法拘禁他人或者非法私自扣押他人财产追索债务的，应当依法追究刑事责任，或者予以拘留、罚款。

第十一章　诉讼费用

第一百零七条　当事人进行民事诉讼，应当按照规定交纳案件受理费。财产案件除交纳案件受理费外，并按照规定交纳其他诉讼费用。

当事人交纳诉讼费用确有困难的，可以按照规定向人民法院申请缓交、减交或者免交。

收取诉讼费用的办法另行制定。

第二编　　审判程序

第十二章　第一审普通程序

第一节　起诉和受理

第一百零八条　起诉必须符合下列条件：

（一）原告是与本案有直接利害关系的公民、法人和其他组织；

（二）有明确的被告；

（三）有具体的诉讼请求和事实、理由；

（四）属于人民法院受理民事诉讼的范围和受诉人民法院管辖。

第一百零九条　起诉应当向人民法院递交起诉状，并按照被告人数提出副本。

书写起诉状确有困难的，可以口头起诉，由人民法院记入笔录，并告知对方当事人。

第一百一十条　起诉状应当记明下列事项：

（一）当事人的姓名、性别、年龄、民族、职业、工作单位和住所，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务；

（二）诉讼请求和所根据的事实与理由；

（三）证据和证据来源，证人姓名和住所。

第一百一十一条　人民法院对符合本法第一百零八条的起诉，必须受理；对下列起诉，分别情形，予以处理：

（一）依照行政诉讼法的规定，属于行政诉讼受案范围的，告知原告提起行政诉讼；

（二）依照法律规定，双方当事人对合同纠纷自愿达成书面仲裁协议向仲裁机构申请仲裁、不得向人民法院起诉的，告知原告向仲裁机构申请仲裁；

（三）依照法律规定，应当由其他机关处理的争议，告知原告向有关机关申请解决；

（四）对不属于本院管辖的案件，告知原告向有管辖权的人民法院起诉；

（五）对判决、裁定已经发生法律效力的案件，当事人又起诉的，告知原告按照申诉处理，但人民法院准许撤诉的裁定除外；

（六）依照法律规定，在一定期限内不得起诉的案件，在不得起诉的期限内起诉的，不予受理；

（七）判决不准离婚和调解和好的离婚案件，判决、调解维持收养关系的案件，没有新情况、新理由，原告在六个月内又起诉的，不予受理。

第一百一十二条　人民法院收到起诉状或者口头起诉，经审查，认为符合起诉条件的，应当在七日内立案，并通知当事人；认为不符合起诉条件的，应当在七日内裁定不予受理；原告对裁定不服的，可以提起上诉。

第二节　审理前的准备

第一百一十三条　人民法院应当在立案之日起五日内将起诉状副本发送被告，被告在收到之日起十五日内提出答辩状。

被告提出答辩状的，人民法院应当在收到之日起五日内将答辩状副本发送原告。被告不提出答辩状的，不影响人民法院审理。

第一百一十四条　人民法院对决定受理的案件，应当在受理案件通知书和应诉通知书中向当事人告知有关的诉讼权利义务，或者口头告知。

第一百一十五条　合议庭组成人员确定后，应当在三日内告知当事人。

第一百一十六条　审判人员必须认真审核诉讼材料，调查收集必要的证据。

第一百一十七条　人民法院派出人员进行调查时，应当向被调查人出示证件。

调查笔录经被调查人校阅后，由被调查人、调查人签名或者盖章。

第一百一十八条　人民法院在必要时可以委托外地人民法院调查。

委托调查，必须提出明确的项目和要求。受委托人民法院可以主动补充调查。

受委托人民法院收到委托书后，应当在三十日内完成调查。因故不能完成的，应当在上述期限内函告委托人民法院。

第一百一十九条　必须共同进行诉讼的当事人没有参加诉讼的，人民法院应当通知其参加诉讼。

第三节　开庭审理

第一百二十条　人民法院审理民事案件，除涉及国家秘密、个人隐私或者法律另有规定的以外，应当公开进行。

离婚案件，涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

第一百二十一条　人民法院审理民事案件，根据需要进行巡回审理，就地办案。

第一百二十二条　人民法院审理民事案件，应当在开庭三日前通知当事人和其他诉讼参与人。公开审理的，应当公告当事人姓名、案由和开庭的时间、地点。

第一百二十三条　开庭审理前，书记员应当查明当事人和其他诉讼参与人是否到庭，宣布法庭纪律。

开庭审理时，由审判长核对当事人，宣布案由，宣布审判人员、书记员名单，告知当事

人有关的诉讼权利义务，询问当事人是否提出回避申请。

第一百二十四条　法庭调查按照下列顺序进行：

（一）当事人陈述；

（二）告知证人的权利义务，证人作证，宣读未到庭的证人证言；

（三）出示书证、物证和视听资料；

（四）宣读鉴定结论；

（五）宣读勘验笔录。

第一百二十五条　当事人在法庭上可以提出新的证据。

当事人经法庭许可，可以向证人、鉴定人、勘验人发问。

当事人要求重新进行调查、鉴定或者勘验的，是否准许，由人民法院决定。

第一百二十六条　原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理。

第一百二十七条　法庭辩论按照下列顺序进行：

（一）原告及其诉讼代理人发言；

（二）被告及其诉讼代理人答辩；

（三）第三人及其诉讼代理人发言或者答辩；

（四）互相辩论。

法庭辩论终结，由审判长按照原告、被告、第三人的先后顺序征询各方最后意见。

第一百二十八条　法庭辩论终结，应当依法作出判决。判决前能够调解的，还可以进行调解，调解不成的，应当及时判决。

第一百二十九条　原告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以按撤诉处理；被告反诉的，可以缺席判决。

第一百三十条　被告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以缺席判决。

第一百三十一条　宣判前，原告申请撤诉的，是否准许，由人民法院裁定。

人民法院裁定不准许撤诉的，原告经传票传唤，无正当理由拒不到庭的，可以缺席判决。

第一百三十二条　有下列情形之一的，可以延期开庭审理：

（一）必须到庭的当事人和其他诉讼参与人有正当理由没有到庭的；

（二）当事人临时提出回避申请的；

（三）需要通知新的证人到庭，调取新的证据，重新鉴定、勘验，或者需要补充调查的；

（四）其他应当延期的情形。

第一百三十三条　书记员应当将法庭审理的全部活动记入笔录，由审判人员和书记员签名。

法庭笔录应当当庭宣读，也可以告知当事人和其他诉讼参与人当庭或者在五日内阅读。当事人和其他诉讼参与人认为对自己的陈述记录有遗漏或者差错的，有权申请补正。如果不予补正，应当将申请记录在案。

法庭笔录由当事人和其他诉讼参与人签名或者盖章。拒绝签名盖章的，记明情况附卷。

第一百三十四条　人民法院对公开审理或者不公开审理的案件，一律公开宣告判决。

当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立即发给判决书。

宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的法院。

宣告离婚判决，必须告知当事人在判决发生法律效力前不得另行结婚。

第一百三十五条　人民法院适用普通程序审理的案件，应当在立案之日起六个月内审结。有特殊情况需要延长的，由本院院长批准，可以延长六个月；还需要延长的，报请上级人民

法院批准。

第四节　诉讼中止和终结

第一百三十六条　有下列情形之一的，中止诉讼：
（一）一方当事人死亡，需要等待继承人表明是否参加诉讼的；
（二）一方当事人丧失诉讼行为能力，尚未确定法定代理人的；
（三）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；
（四）一方当事人因不可抗拒的事由，不能参加诉讼的；
（五）本案必须以另一案的审理结果为依据，而另一案尚未审结的；
（六）其他应当中止诉讼的情形。
中止诉讼的原因消除后，恢复诉讼。
第一百三十七条　有下列情形之一的，终结诉讼：
（一）原告死亡，没有继承人，或者继承人放弃诉讼权利的；
（二）被告死亡，没有遗产，也没有应当承担义务的人的；
（三）离婚案件一方当事人死亡的；
（四）追索赡养费、扶养费、抚育费以及解除收养关系案件的一方当事人死亡的。
第五节　判决和裁定
第一百三十八条　判决书应当写明：
（一）案由、诉讼请求、争议的事实和理由；
（二）判决认定的事实、理由和适用的法律依据；
（三）判决结果和诉讼费用的负担；
（四）上诉期间和上诉的法院。
判决书由审判人员、书记员署名，加盖人民法院印章。
第一百三十九条　人民法院审理案件，其中一部分事实已经清楚，可以就该部分先行判决。
第一百四十条　裁定适用于下列范围：
（一）不予受理；
（二）对管辖权有异议的；
（三）驳回起诉；
（四）财产保全和先予执行；
（五）准许或者不准许撤诉；
（六）中止或者终结诉讼；
（七）补正判决书中的笔误；
（八）中止或者终结执行；
（九）不予执行仲裁裁决；
（十）不予执行公证机关赋予强制执行效力的债权文书；
（十一）其他需要裁定解决的事项。
对前款第（一）、（二）、（三）项裁定，可以上诉。
裁定书由审判人员、书记员署名，加盖人民法院印章。口头裁定的，记入笔录。
第一百四十一条　最高人民法院的判决、裁定，以及依法不准上诉或者超过上诉期没有上诉的判决、裁定，是发生法律效力的判决、裁定。

第十三章　简易程序

第一百四十二条　基层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

第一百四十三条　对简单的民事案件，原告可以口头起诉。

当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

第一百四十四条　基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式随时传唤当事人、证人。

第一百四十五条　简单的民事案件由审判员一人独任审理，并不受本法第一百二十二条、第一百二十四条、第一百二十七条规定的限制。

第一百四十六条　人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。

第十四章　第二审程序

第一百四十七条　当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

第一百四十八条　上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的名称及其主要负责人的姓名；原审人民法院名称、案件的编号和案由；上诉的请求和理由。

第一百四十九条　上诉状应当通过原审人民法院提出，并按照对方当事人或者代表人的人数提出副本。

当事人直接向第二审人民法院上诉的，第二审人民法院应当在五日内将上诉状移交原审人民法院。

第一百五十条　原审人民法院收到上诉状，应当在五日内将上诉状副本送达对方当事人，对方当事人在收到之日起十五日内提出答辩状。人民法院应当在收到答辩状之日起五日内将副本送达上诉人。对方当事人不提出答辩状的，不影响人民法院审理。

原审人民法院收到上诉状、答辩状，应当在五日内连同全部案卷和证据，报送第二审人民法院。

第一百五十一条　第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

第一百五十二条　第二审人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷和调查，询问当事人，在事实核对清楚后，合议庭认为不需要开庭审理的，也可以迳行判决、裁定。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

第一百五十三条　第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决认定事实清楚，适用法律正确的，判决驳回上诉，维持原判决；

（二）原判决适用法律错误的，依法改判；

（三）原判决认定事实错误，或者原判决认定事实不清，证据不足，裁定撤销原判决，发回原审人民法院重审，或者查清事实后改判；

（四）原判决违反法定程序，可能影响案件正确判决的，裁定撤销原判决，发回原审人民法院重审。

当事人对重审案件的判决、裁定，可以上诉。

第一百五十四条　第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使

用裁定。

第一百五十五条　第二审人民法院审理上诉案件，可以进行调解。调解达成协议，应当制作调解书，由审判人员、书记员署名，加盖人民法院印章。调解书送达后，原审人民法院的判决即视为撤销。

第一百五十六条　第二审人民法院判决宣告前，上诉人申请撤回上诉的，是否准许，由第二审人民法院裁定。

第一百五十七条　第二审人民法院审理上诉案件，除依照本章规定外，适用第一审普通程序。

第一百五十八条　第二审人民法院的判决、裁定，是终审的判决、裁定。

第一百五十九条　人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。

人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。

第十五章　特别程序

第一节　一般规定

第一百六十条　人民法院审理选民资格案件、宣告失踪或者宣告死亡案件、认定公民无民事行为能力或者限制民事行为能力案件和认定财产无主案件，适用本章规定。本章没有规定的，适用本法和其他法律的有关规定。

第一百六十一条　依照本章程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

第一百六十二条　人民法院在依照本章程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

第一百六十三条　人民法院适用特别程序审理的案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选民资格的案件除外。

第二节　选民资格案件

第一百六十四条　公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

第一百六十五条　人民法院受理选民资格案件后，必须在选举日前审结。

审理时，起诉人、选举委员会的代表和有关公民必须参加。

人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

第三节　宣告失踪、宣告死亡案件

第一百六十六条　公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。

申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十七条　公民下落不明满四年，或者因意外事故下落不明满二年，或者因意外事故下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。

申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十八条　人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事故下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。

公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

第一百六十九条　被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

第四节　认定公民无民事行为能力、限制民事行为能力案件

第一百七十条　申请认定公民无民事行为能力或者限制民事行为能力，由其近亲属或者其他利害关系人向该公民住所地基层人民法院提出。

申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

第一百七十一条　人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力的公民进行鉴定。申请人已提供鉴定结论的，应当对鉴定结论进行审查。

第一百七十二条　人民法院审理认定公民无民事行为能力或者限制民事行为能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人为代理人。该公民健康情况许可的，还应当询问本人的意见。

人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

第一百七十三条　人民法院根据被认定为无民事行为能力人、限制民事行为能力人或者他的监护人的申请。证实该公民无民事行为能力或者限制民事行为能力的原因已经消除的，应当作出新判决，撤销原判决。

第五节　认定财产无主案件

第一百七十四条　申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。

申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

第一百七十五条　人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

第一百七十六条　判决认定财产无主后，原财产所有人或者继承人出现，在民法通则规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

第十六章　审判监督程序

第一百七十七条　各级人民法院院长对本院已经发生法律效力的判决、裁定，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定，上级人民法院对下级人民法院已经发生法律效力的判决、裁定，发现确有错误的，有权提审或者指令下级人民

法院再审。

第一百七十八条　当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审，但不停止判决、裁定的执行。

第一百七十九条　当事人的申请符合下列情形之一的，人民法院应当再审：

（一）有新的证据，足以推翻原判决、裁定的；

（二）原判决、裁定认定的基本事实缺乏证据证明的；

（三）原判决、裁定认定事实的主要证据是伪造的；

（四）原判决、裁定认定事实的主要证据未经质证的；

（五）对审理案件需要的证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；

（六）原判决、裁定适用法律确有错误的；

（七）违反法律规定，管辖错误的；

（八）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；

（九）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；

（十）违反法律规定，剥夺当事人辩论权利的；

（十一）未经传票传唤，缺席判决的；

（十二）原判决、裁定遗漏或者超出诉讼请求的；

（十三）据以作出原判决、裁定的法律文书被撤销或者变更的。

对违反法定程序可能影响案件正确判决、裁定的情形，或者审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，人民法院应当再审。

第一百八十条　当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

第一百八十一条　人民法院应当自收到再审申请书之日起三个月内审查，符合本法第一百七十九条规定情形之一的，裁定再审；不符合本法第一百七十九条规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

第一百八十二条　当事人对已经发生法律效力的调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

第一百八十三条　当事人对已经发生法律效力的解除婚姻关系的判决，不得申请再审。

第一百八十四条　当事人申请再审，应当在判决、裁定发生法律效力后二年内提出；二年后据以作出原判决、裁定的法律文书被撤销或者变更，以及发现审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，自知道或者应当知道之日起三个月内提出。

第一百八十五条　按照审判监督程序决定再审的案件，裁定中止原判决的执行。裁定由院长署名，加盖人民法院印章。

第一百八十六条　人民法院按照审判监督程序再审的案件，发生法律效力的判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力的判决、裁定是由第二审法院作出的，按照第二审程序审理，所作的判决、裁定，是发生法律效力的判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力的判决、裁定。

人民法院审理再审案件，应当另行组成合议庭。

第一百八十七条　最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提请上级人民检察院向同级人民法院提出抗诉。

第一百八十八条　人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第一百七十九条第一款第（一）项至第（五）项规定情形之一的，可以交下一级人民法院再审。

第一百八十九条　人民检察院决定对人民法院的判决、裁定提出抗诉的，应当制作抗诉书。

第一百九十条　人民检察院提出抗诉的案件，人民法院再审时，应当通知人民检察院派员出席法庭。

第十七章　督促程序

第一百九十一条　债权人请求债务人给付金钱、有价证券，符合下列条件的，可以向有管

辖权的基层人民法院申请支付令：

（一）债权人与债务人没有其他债务纠纷的；

（二）支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

第一百九十二条　债权人提出申请后，人民法院应当在五日内通知债权人是否受理。

第一百九十三条　人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。

债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。

债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

第一百九十四条　人民法院收到债务人提出的书面异议后，应当裁定终结督促程序，支付令自行失效，债权人可以起诉。

第十八章　公示催告程序

第一百九十五条　按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

第一百九十六条　人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

第一百九十七条　支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。

公示催告期间，转让票据权利的行为无效。

第一百九十八条　利害关系人应当在公示催告期间向人民法院申报。

人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。

申请人或者申报人可以向人民法院起诉。

第一百九十九条　没有人申报的，人民法院应当根据申请人的申请，作出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。

第二百条　利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。　　申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。　　人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。　　支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。　　公示催告期间，转让票据权利的行为无效。　　利害关系人应当在公示催告期间向人民法院申报。　　人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。　　申请人或者申报人可以向人民法院起诉。没有人申报的，人民法院应当根据申请人的申请，作出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。　　利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

第三编　执行程序

第十九章　一般规定

第二百零一条　发生法律效力的民事判决、裁定，以及刑事判决、裁定中的财产部分，由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。

法律规定由人民法院执行的其他法律文书，由被执行人住所地或者被执行的财产所在地人民法院执行。

第二百零二条　当事人、利害关系人认为执行行为违反法律规定的，可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定撤销或者改正；理由不成立的，裁定驳回。当事人、利害关系人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。

第二百零三条　人民法院自收到申请执行书之日起超过六个月未执行的，申请执行人可以向上一级人民法院申请执行。上一级人民法院经审查，可以责令原人民法院在一定期限内执行，也可以决定由本院执行或者指令其他人民法院执行。

第二百零四条　执行过程中，案外人对执行标的提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定中止对该标的的执行；理由不成立的，裁定驳回。案外人、当事人对裁定不服，认为原判决、裁定错误的，依照审判监督程序办理；与

原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。

第二百零五条　执行工作由执行员进行。

采取强制执行措施时，执行员应当出示证件。执行完毕后，应当将执行情况制作笔录，由在场的有关人员签名或者盖章。

人民法院根据需要可以设立执行机构。

第二百零六条　被执行人或者被执行的财产在外地的，可以委托当地人民法院代为执行。受委托人民法院收到委托函件后，必须在十五日内开始执行，不得拒绝。执行完毕后，应当将执行结果及时函复委托人民法院；在三十日内如果还未执行完毕，也应当将执行情况函告委托人民法院。

受委托人民法院自收到委托函件之日起十五日内不执行的，委托人民法院可以请求受委托人民法院的上级人民法院指令受委托人民法院执行。

第二百零七条　在执行中，双方当事人自行和解达成协议的，执行员应当将协议内容记入笔录，由双方当事人签名或者盖章。

一方当事人不履行和解协议的，人民法院可以根据对方当事人的申请，恢复对原生效法律文书的执行。

第二百零八条　在执行中，被执行人向人民法院提供担保，并经申请执行人同意的，人民法院可以决定暂缓执行及暂缓执行的期限。被执行人逾期仍不履行的，人民法院有权执行被执行人的担保财产或者担保人的财产。

第二百零九条　作为被执行人的公民死亡的，以其遗产偿还债务。作为被执行人的法人或者其他组织终止的，由其权利义务承受人履行义务。

第二百一十条　执行完毕后，据以执行的判决、裁定和其他法律文书确有错误，被人民法院撤销的，对已被执行的财产，人民法院应当作出裁定，责令取得财产的人返还；拒不返还的，强制执行。

第二百一十一条　人民法院制作的调解书的执行，适用本编的规定。

第二十章　执行的申请和移送

第二百一十二条　发生法律效力的民事判决、裁定，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行，也可以由审判员移送执行员执行。

调解书和其他应当由人民法院执行的法律文书，当事人必须履行。一方拒绝履行的，对

方当事人可以向人民法院申请执行。

第二百一十三条　对依法设立的仲裁机构的裁决，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行。受申请的人民法院应当执行。

被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）认定事实的主要证据不足的；

（五）适用法律确有错误的；

（六）仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

裁定书应当送达双方当事人和仲裁机构。

仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二百一十四条　对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。

公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

第二百一十五条　申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从规定的每次履行期间的最后一日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。

第二百一十六条　执行员接到申请执行书或者移交执行书，应当向被执行人发出执行通知，责令其在指定的期间履行，逾期不履行的，强制执行。

被执行人不履行法律文书确定的义务，并有可能隐匿、转移财产的，执行员可以立即采

取强制执行措施。

第二十一章　执行措施

第二百一十七条　被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。

第二百一十八条　被执行人未按执行通知履行法律文书确定的义务，人民法院有权向银行、信用合作社和其他有储蓄业务的单位查询被执行人的存款情况，有权冻结、划拨被执行人的存款，但查询、冻结、划拨存款不得超出被执行人应当履行义务的范围。

人民法院决定冻结、划拨存款，应当作出裁定，并发出协助执行通知书，银行、信用合作社和其他有储蓄业务的单位必须办理。

第二百一十九条　被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。

人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

第二百二十条　被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。

采取前款措施，人民法院应当作出裁定。

第二百二十一条　人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者财产所在地的基层组织应当派人参加。

对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。

第二百二十二条　被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。

第二百二十三条　财产被查封、扣押后，执行员应当责令被执行人在指定期间履行法律文

书确定的义务。被执行人逾期不履行的，人民法院可以按照规定交有关单位拍卖或者变卖被查封、扣押的财产。国家禁止自由买卖的物品，交有关单位按照国家规定的价格收购。

第二百二十四条　被执行人不履行法律文书确定的义务，并隐匿财产的，人民法院有权发出搜查令，对被执行人及其住所或者财产隐匿地进行搜查。

采取前款措施，由院长签发搜查令。

第二百二十五条　法律文书指定交付的财物或者票证，由执行员传唤双方当事人当面交付，或者由执行员转交，并由被交付人签收。

有关单位持有该项财物或者票证的，应当根据人民法院的协助执行通知书转交，并由被交付人签收。

有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。

第二百二十六条　强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。

强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。

强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝接收而造成的损失，由被执行人承担。

第二百二十七条　在执行中，需要办理有关财产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。

第二百二十八条　对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人完成，费用由被执行人承担。

第二百二十九条　被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

第二百三十条　人民法院采取本法第二百一十八条、第二百一十九条、第二百二十条规定的执行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

第二百三十一条　被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。

被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。被执行人未按执行通知履行法律文书确定的义务，人民法院有权向银行、信用合作社和其他有储蓄业务的单位查询被执行人的存款情况，有权冻结、划拨被执行人的存款，但查询、冻结、划拨存款不得超出被执行人应当履行义务的范围。　　人民法院决定冻结、划拨存款，应当作出裁定，并发出协助执行通知书，银行、信用合作社和其他有储蓄业务的单位必须办理。　　被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。　　被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。　　采取前款措施，人民法院应当作出裁定。　　人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者财产所在地的基层组织应当派人参加。　　对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。　　被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。　　财产被查封、扣押后，执行员应当责令被执行人在指定期间履行法律文书确定的义务。被执行人逾期不履行的，人民法院可以按照规定交有关单位拍卖或者变卖被查封、扣押的财产。国家禁止自由买卖的物品，交有关单位按照国家规定的价格收购。　　被执行人不履行法律文书确定的义务，并隐匿财产的，人民法院有权发出搜查令，对被执行人及其住所或者财产隐匿地进行搜查。　　采取前款措施，由院长签发搜查令。　　法律文书指定交付的财物或者票证，由执行员传唤双方当事人当面交付，或者由执行员转交，并由被交付人签收。　　有关单位持有该项财物或者票证的，应当根据人民法院的协助执行通知书转交，并由被交付人签收。　　有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。　　强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。　　强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。　　强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝接收而造成的损失，由被执行人承担。　　在执行中，需要办理有关财产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。　　对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人完成，费用由被执行人承担。　　被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。　　人民法院采取本法第二百一十八条、第二百一十九条、第二百二十条规定的执行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。　　被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及

法律规定的其他措施。

第二十二章　执行中止和终结

第二百三十二条　有下列情形之一的，人民法院应当裁定中止执行：

（一）申请人表示可以延期执行的；

（二）案外人对执行标的提出确有理由的异议的；

（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；

（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；

（五）人民法院认为应当中止执行的其他情形。

中止的情形消失后，恢复执行。

第二百三十三条　有下列情形之一的，人民法院裁定终结执行：

（一）申请人撤销申请的；

（二）据以执行的法律文书被撤销的；

（三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；

（四）追索赡养费、扶养费、抚育费案件的权利人死亡的；

（五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；

（六）人民法院认为应当终结执行的其他情形。

第二百三十四条　中止和终结执行的裁定，送达当事人后立即生效。

有下列情形之一的，人民法院应当裁定中止执行：　（一）申请人表示可以延期执行的；　（二）案外人对执行标的提出确有理由的异议的；　（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；　（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；　（五）人民法院认为应当中止执行的其他情形。　中止的情形消失后，恢复执行。　有下列情形之一的，人民法院裁定终结执行：　（一）申请人撤销申请的；　（二）据以执行的法律文书被撤销的；　（三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；　（四）追索赡养费、扶养费、抚育费案件的权利人死亡的；　（五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；　（六）人民法院认为应当终结执行的其他情形。中止和终结执行的裁定，送达当事人后立即生效。

第四编　涉外民事诉讼程序的特别规定

第二十三章　一般原则

第二百三十五条　在中华人民共和国领域内进行涉外民事诉讼，适用本编规定。本编没有规定的，适用本法其他有关规定。

第二百三十六条　中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定，但中华人民共和国声明保留的条款除外。

第二百三十七条　对享有外交特权与豁免的外国人、外国组织或者国际组织提起的民事诉讼，应当依照中华人民共和国有关法律和中华人民共和国缔结或者参加的国际条约的规定办理。

第二百三十八条　人民法院审理涉外民事案件，应当使用中华人民共和国通用的语言、文字。当事人要求提供翻译的，可以提供，费用由当事人承担。

第二百三十九条　外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，需要委托律师代理诉讼的，必须委托中华人民共和国的律师。

第二百四十条　在中华人民共和国领域内没有住所的外国人、无国籍人、外国企业和组织委托中华人民共和国律师或者其他人代理诉讼，从中华人民共和国领域外寄交或者托交的授权委托书，应当经所在国公证机关证明，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续后，才具有效力。

第二十四章　管　　辖

第二百四十一条　因合同纠纷或者其他财产权益纠纷，对在中华人民共和国领域内没有住所的被告提起的诉讼，如果合同在中华人民共和国领域内签订或者履行，或者诉讼标的物在中华人民共和国领域内，或者被告在中华人民共和国领域内有可供扣押的财产，或者被告在中华人民共和国领域内设有代表机构，可以由合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地或者代表机构住所地人民法院管辖。

第二百四十二条　涉外合同或者涉外财产权益纠纷的当事人，可以用书面协议选择与争议有实际联系的地点的法院管辖。选择中华人民共和国人民法院管辖的，不得违反本法关于级别管辖和专属管辖的规定。

第二百四十三条　涉外民事诉讼的被告对人民法院管辖不提出异议，并应诉答辩的，视为承认该人民法院为有管辖权的法院。

第二百四十四条　因在中华人民共和国履行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发生纠纷提起的诉讼，由中华人民共和国人民法院管辖。

第二十五章　送达、期间

第二百四十五条　人民法院对在中华人民共和国领域内没有住所的当事人送达诉讼文书，可以采用下列方式：

（一）依照受送达人所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式送达；

（二）通过外交途径送达；

（三）对具有中华人民共和国国籍的受送达人，可以委托中华人民共和国驻受送达人所在国的使领馆代为送达；

（四）向受送达人委托的有权代其接受送达的诉讼代理人送达；

（五）向受送达人在中华人民共和国领域内设立的代表机构或者有权接受送达的分支机构、业务代办人送达；

（六）受送达人所在国的法律允许邮寄送达的，可以邮寄送达，自邮寄之日起满六个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

（七）不能用上述方式送达的，公告送达，自公告之日起满六个月，即视为送达。

第二百四十六条　被告在中华人民共和国领域内没有住所的，人民法院应当将起诉状副本送达被告，并通知被告在收到起诉状副本后三十日内提出答辩状。被告申请延期的，是否准许，由人民法院决定。

第二百四十七条　在中华人民共和国领域内没有住所的当事人，不服第一审人民法院判决、裁定的，有权在判决书、裁定书送达之日起三十日内提起上诉。被上诉人在收到上诉状副本后，应当在三十日内提出答辩状。当事人不能在法定期间提起上诉或者提出答辩状，申请延期的，是否准许，由人民法院决定。

第二百四十八条　人民法院审理涉外民事案件的期间，不受本法第一百三十五条、第一百五十九条规定的限制。

第二十六章　财产保全

第二百四十九条　当事人依照本法第九十二条的规定可以向人民法院申请财产保全。

利害关系人依照本法第九十三条的规定可以在起诉前向人民法院申请财产保全。

第二百五十条　人民法院裁定准许诉前财产保全后，申请人应当在三十日内提起诉讼。逾

期不起诉的，人民法院应当解除财产保全。

第二百五十一条　人民法院裁定准许财产保全后，被申请人提供担保的，人民法院应当解除财产保全。

第二百五十二条　申请有错误的，申请人应当赔偿被申请人因财产保全所遭受的损失。

第二百五十三条　人民法院决定保全的财产需要监督的，应当通知有关单位负责监督，费用由被申请人承担。

第二百五十四条　人民法院解除保全的命令由执行员执行。

第二十七章　仲　　裁

第二百五十五条　涉外经济贸易、运输和海事中发生的纠纷，当事人在合同中订有仲裁条款或者事后达成书面仲裁协议，提交中华人民共和国涉外仲裁机构或者其他仲裁机构仲裁的，当事人不得向人民法院起诉。

当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的，可以向人民法院起诉。

第二百五十六条　当事人申请采取财产保全的，中华人民共和国的涉外仲裁机构应当将当事人的申请，提交被申请人住所地或者财产所在地的中级人民法院裁定。

第二百五十七条　经中华人民共和国涉外仲裁机构裁决的，当事人不得向人民法院起诉。一方当事人不履行仲裁裁决的，对方当事人可以向被申请人住所地或者财产所在地的中级人民法院申请执行。

第二百五十八条　对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

第二百五十九条　仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二十八章　司法协助

第二百六十条　根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，人民法院和外国法院可以相互请求，代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的，人民法院不予执行。

第二百六十一条　请求和提供司法协助，应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行；没有条约关系的，通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证，但不得违反中华人民共和国的法律，并不得采取强制措施。

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

第二百六十二条　外国法院请求人民法院提供司法协助的请求书及其所附文件，应当附有中文译本或者国际条约规定的其他文字文本。

人民法院请求外国法院提供司法协助的请求书及其所附文件，应当附有该国文字译本或者国际条约规定的其他文字文本。

第二百六十三条　人民法院提供司法协助，依照中华人民共和国法律规定的程序进行。外国法院请求采用特殊方式的，也可以按照其请求的特殊方式进行，但请求采用的特殊方式不得违反中华人民共和国法律。

第二百六十四条　人民法院作出的发生法律效力的判决、裁定，如果被执行人或者其财产不在中华人民共和国领域内，当事人请求执行的，可以由当事人直接向有管辖权的外国法院申请承认和执行，也可以由人民法院依照中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求外国法院承认和执行。

中华人民共和国涉外仲裁机构作出的发生法律效力的仲裁裁决，当事人请求执行的，如果被执行人或者其财产不在中华人民共和国领域内，应当由当事人直接向有管辖权的外国法院申请承认和执行。

第二百六十五条　外国法院作出的发生法律效力的判决、裁定，需要中华人民共和国人民法院承认和执行的，可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行，也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定，或

者按照互惠原则，请求人民法院承认和执行。

第二百六十六条　人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

第二百六十七条　国外仲裁机构的裁决，需要中华人民共和国人民法院承认和执行的，应当由当事人直接向被执行人住所地或者其财产所在地的中级人民法院申请，人民法院应当依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则办理。

第二百六十八条　本法自公布之日起施行，《中华人民共和国民事诉讼法（试行）》同时废止。

Law of the People's Republic of China on the State-Owned Assets of Enterprises

Order of the President of the People’s Republic of China

(No. 5)

The Law of the People’s Republic of China on the State-Owned Assets of Enterprises, which was adopted at the 5th session of the Standing Committee of the 11th National People’s Congress of the People’s Republic of China on October 28, 2008, is hereby promulgated and shall come into force on May 1, 2009.

President of the People’s Republic of China: Hu Jintao

October 28, 2008

Law of the People’s Republic of China on the State-Owned Assets of Enterprises

(Adopted at the 5th session of the Standing Committee of the 11th National People’s Congress on October 28, 2008)

Contents

Chapter I General Provisions

Article 1 This law is formulated for the purposes of safeguarding the basic economic system of China, consolidating and developing the state-owned economy, strengthening the protection of state-owned assets, giving play to the leading role of the state-owned economy in the national economy, and promoting the development of the socialist market economy.

Article 2 The term “state-owned assets of enterprises” (hereinafter referred to as the “state-owned assets”) as mentioned in this Law refers to the rights and interests formed by the various forms of capital contribution of the state in enterprises.

Article 3 The state-owned assets shall be owned by the state, i.e. owned by the whole people. The State Council shall, on behalf of the state, exercise the ownership of state-owned assets.

Article 4 The State Council and the local people’s governments shall, in accordance with laws and administrative regulations, perform respectively the contributor’s rights and obligation for state-invested enterprises and enjoy the contributor’s rights and interests on behalf of the state. The State Council shall, on behalf of the state, perform the contributor’s rights and obligation for the large-sized state-invested enterprises that have bearings on the national economic lifeline and state security determined by the State Council and the state-invested enterprises in such fields as important infrastructures and natural resources. The local people’s governments shall, on behalf of the state, perform the contributor’s rights and obligations for other state-invested enterprises.

Article 5 The term “state-invested enterprise” as mentioned in this Law refers to a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling.

Article 6 The State Council and the local people’s governments shall, according to law, perform the contributor’s functions, based on the principles of separation of government bodies and enterprises,

separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Article 7 The state shall take measures to promote concentration of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the force and influence of the state-owned economy.

Article 8 The state shall establish and improve the state-owned assets administration and supervision system meeting the requirements of the development of the socialist market economy, establish and improve the evaluation and accountability system of value maintenance and increment of state-owned assets, and ensure the performance of responsibilities for the value maintenance and increment of state-owned assets.

Article 9 The state shall establish and improve the basic management system of state-owned assets. The specific measures shall be formulated according to the provisions of the State Council.

Article 10 State-owned assets shall be protected by law, and no entities and individuals shall infringe upon them.

Chapter II Bodies Performing the Contributor’s Functions

Article 11 The state-owned assets supervision and administration body under the State Council and the state-owned assets supervision and administration bodies established by the local people’s governments according to the provisions of the State Council shall perform the contributor’s functions for state-invested enterprises on behalf of and upon the authorization of the corresponding people’s government.

The State Council and the local people's governments may, when necessary, authorize other departments or bodies to perform the contributor's functions for state-invested enterprises on behalf of the corresponding people's government

The bodies and departments that perform the contributor's functions on behalf of the corresponding people's government shall be together referred to as the "bodies performing the contributor's functions" hereinafter.

Article 12 A body performing the contributor's functions on behalf of the corresponding people's government shall enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to the state-invested enterprises according to law.

A body performing the contributor's functions shall formulate or participate in the formulation of the bylaws of state-invested enterprises according to the provisions of laws and administrative regulations.

For the major matters on the performance of the contributor's functions that are subject to the approval of the corresponding people's government as prescribed by laws, administrative regulations and the corresponding people's government, a body performing the contributor's functions shall report such matters to the corresponding people's government for approval.

Article 13 When attending the shareholders' meeting or general assembly of shareholders convoked by a company in which the state has a stake, whether controlling or non-controlling, the shareholder representative(s) appointed by a body performing the contributor's functions shall put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and report the performance of his duties and results thereof to the appointing body in good time.

Article 14 Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the

enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

Article 15 A body performing the contributor's functions shall be responsible to the corresponding people's government, report its performance of the contributor's functions to the corresponding people's government, accept the supervision and assessment by the corresponding people's government, and be responsible for the value maintenance and increment of state-owned assets.
A body performing the contributor's functions shall, according to the relevant state provisions, report regularly the summary analyses concerning the total volume, structure and changes of, return on, etc. of the state-owned assets to the corresponding people's government.

Chapter III State-invested Enterprises

Article 16 The state-invested enterprises shall enjoy the rights to possess, use, profit from and dispose of their movables, immovables and other property according to laws, administrative regulations and enterprise bylaws.
The operation autonomy as well as other lawful rights and interests legally enjoyed by the state-invested enterprises shall be protected by law.

Article 17 The state-invested enterprises engaged in business activities shall observe laws and administrative regulations, strengthen business management, enhance economic benefits, accept the administration and supervision legally implemented by the people's governments and their relevant departments and bodies, accept the supervision of the general public, assume social responsibilities, and be responsible to the contributors.
The state-invested enterprises shall establish and improve the legal person governance structure according to law, as well as the internal supervisory management and risk control systems.

Article 18 The state-invested enterprises shall establish and improve the finance and accounting system, maintain account books and conduct accounting according to the provisions of laws,

administrative regulations and the public finance department of the State Council, and provide the contributor with true and complete financial and accounting information according to laws, administrative regulations and enterprise bylaws.
The state-invested enterprises shall distribute profits to the contributor according to laws, administrative regulations and enterprise bylaws.

Article 19 A wholly state-owned company or a company in which the state has a stake, whether controlling or non-controlling, shall set up a board of supervisors in accordance with the Company Law of the People's Republic of China. For a wholly state-owned enterprise, its board of supervisors shall be composed of the supervisors appointed by the body performing the contributor's functions according to the provisions of the State Council.
The board of supervisors of a state-invested enterprise shall, according to laws, administrative regulations and enterprise bylaws, supervise the performance of duties of the directors and senior managers, and supervise and inspect the financial status of the enterprise.

Article 20 A state-invested enterprise shall apply the democratic management through the assembly of employee representatives or other channels according to law.

Article 21 A state-invested enterprise shall legally enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to an enterprise in which it invests.
For the enterprise in which it invests, the state-invested enterprise shall, according to laws and administrative regulations, safeguard its rights and interests as a contributor by formulating or participating in the formulation of the bylaws of the enterprise in which it invests and establishing the internal enterprise supervisory management and risk control systems with definite rights and responsibilities and effective check and balance.

Chapter IV Selection and Evaluation of State-invested Enterprise Managers

Article 22 A body performing the contributor's functions shall, according to laws, administrative regulations and enterprise bylaws, appoint or remove, or suggest the appointment or removal of the following personnel of a state-invested enterprise:

1. Appointing and removing the president, vice-presidents, person in charge of finance and other senior managers of a wholly state-owned enterprise;
2. Appointing and removing the chairman and vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and supervisors of a wholly state-owned company; and
3. Proposing the director and supervisor candidates to the shareholders' meeting or general assembly of shareholders of a company in which the state has a stake, whether controlling or non-controlling.

The directors and supervisors of a state-invested enterprise who shall be employee representatives shall be elected democratically by employees according to the relevant laws and administrative regulations.

Article 23 Any of the directors, supervisors and senior managers appointed or proposed for appointment by a body performing the contributor's functions shall meet the following requirements:

1. Having good moral characters;
2. Having the expertise and working capability as required by the position;
3. Being in a health condition enabling him to normally perform his duties; and
4. Meeting other requirements of laws and administrative regulations.

Where any director, supervisor or senior manager, during his term of office, does not satisfy any of the aforesaid requirements any more or becomes prohibited from being a director, supervisor or senior manager of a company as prescribed by the Company Law of the People's Republic of China, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 24 A body performing the contributor's functions shall, according to the prescribed conditions and procedures, assess the candidates for directors, supervisors and senior managers to be appointed or proposed for appointment. If such candidates pass the assessment, it shall appoint or

propose the appointment of them according to the prescribed authority and procedures.

Article 25 Without the approval of the body performing the contributor's functions, no director or senior manager of a wholly state-owned enterprise or wholly state-owned company shall hold a position concurrently in any other enterprise. Without the approval of the shareholders' meeting or the general assembly of shareholders, no director or senior manager of a company in which the state has a stake, whether controlling or non-controlling, shall hold a position concurrently in any other enterprise operating the similar business.

Without the approval of the body performing the contributor's functions, the chairman of the board of directors of a wholly state-owned company shall not be the president concurrently. Without the approval of the shareholders' meeting or the general assembly of shareholders, the chairman of the board of directors of a company in which the state has a controlling stake shall not be the president concurrently.

No director or senior manager shall concurrently serve as a supervisor.

Article 26 The directors, supervisors and senior managers of a state-invested enterprise shall comply with laws, administrative regulations and enterprise bylaws, and bear the obligations of fidelity and diligence to the enterprise; shall not take bribes or acquire other illegal gains or improper benefits by taking advantage of their positions; shall not encroach on or embezzle the enterprise property; shall not decide major enterprise matters ultra vires or in violation of procedures; and shall not otherwise damage the rights and interests of the state-owned assets contributor.

Article 27 The state shall establish the assessment system of business management performance of the managers of state-invested enterprises. A body performing the contributor's functions shall conduct annual and office term assessments of the enterprise managers appointed by it, and decide the rewards and punishments to the enterprise managers according to the assessment results.

A body performing the contributor's functions shall, pursuant to the relevant state provisions, determine the standards of remuneration for the managers of state-invested enterprise appointed by it.

Article 28 The principal persons in charge of a wholly state-owned enterprise, a wholly state-owned company or a company in which the state has a controlling stake shall accept the office term economic accountability audit conducted according to law.

Article 29 For the enterprise managers as provided for in subparagraphs 1 and 2 of paragraph 1 of Article 22 of this Law, if they shall be appointed or removed by the corresponding people's government as provided for by the State Council and the local people's governments, such provisions shall prevail. A body performing the contributor's functions shall assess, reward or punish the aforesaid enterprise managers, and decide the standards of remuneration for them, in accordance with the provisions of this Chapter.

Chapter V Major Matters concerning the Rights and Interests of the State-owned Assets Contributor

Section 1 Common Provisions

Article 30 The state-invested enterprises shall comply with laws, administrative regulations and enterprise bylaws in such major matters as merger, splitting, restructuring, listing, increase or reduction of registered capital, issuance of bonds, major investment, provision of large-sum security for others, transfer of major property, large-sum donation, distribution of profits, dissolution, and petition for bankruptcy, without prejudice to the rights and interests of the contributor and creditors.

Article 31 The merger, splitting, increase or reduction of registered capital, issuance of bonds, distribution of profits, dissolution and petition for bankruptcy of a wholly state-owned enterprise or a wholly state-owned company shall be decided by the body performing the contributor's functions.

Article 32 The matters listed in Article 30 of this Law of a wholly state-owned enterprise or a wholly state-owned company, other than those that shall be decided by the body performing the contributor's functions according to Article 31 of this Law and the relevant laws, administrative regulations and enterprise bylaws, shall be decided by the persons in charge of the wholly

state-owned enterprise through collective discussion or decided by the board of directors of the wholly state-owned company.

Article 33 The matters listed in Article 30 of this Law of a company in which the state has a stake, whether controlling or non-controlling, shall be decided by the shareholders' meeting, general assembly of shareholders or the board of directors of the company according to laws, administrative regulations and company bylaws. If the matters are decided by the shareholders' meeting or general assembly of shareholders, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

Article 34 For the merger, splitting, dissolution or petition for bankruptcy of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake or any other major matter which shall be reported by the body performing the contributor's functions to the corresponding people's government for approval as prescribed by laws, administrative regulations and the corresponding people's government, the body performing the contributor's functions shall, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, report such a matter to the corresponding people's government for approval.
The "important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake" as mentioned in this Law shall be determined in accordance with the provisions of the State Council.

Article 35 If a relevant law or administrative regulation provides that such matters as issuance of bonds and investment of state-invested enterprises shall be reported to the people's governments or the relevant departments or bodies of the people's governments for examination and approval, verification and approval or archival purposes, such provisions shall prevail.

Article 36 A state-invested enterprise making investment shall comply with the national industrial

policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

Article 37 In such major matters as merger, splitting, restructuring, dissolution and petition for bankruptcy of a state-invested enterprise, the opinions of the trade union of the enterprise shall be heeded, and the opinions and suggestions of the employees shall be heeded through the assembly of employee representatives or other channels.

Article 38 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall perform the contributor's functions in the major matters of an enterprise in which it invests under the provisions of this Chapter by analogy. The specific measures shall be stipulated by the State Council.

Section 2 Enterprise Restructuring

Article 39 The term "enterprise restructuring" as mentioned this Law refers to:
1. Restructuring a wholly state-owned enterprise into a wholly state-owned company;
2. Restructuring a wholly state-owned enterprise or wholly state-owned company into a company in which the state has or does not have a controlling stake; and
3. Restructuring a company in which the state has a controlling stake into a company in which the state does not have a controlling stake.

Article 40 The enterprise restructuring shall be decided by the body performing the contributor's functions or the shareholders' meeting or general assembly of shareholders of a company under legal proceedings.
For the restructuring of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, the body performing the contributor's functions shall report the restructuring scheme to the corresponding people's government for approval, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend

the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake.

Article 41 A restructuring scheme shall be worked out for the enterprise restructuring, which shall indicate the enterprise organizational form after the restructuring, plan on the disposition of enterprise assets, debts and claims, plan on equity changes, operating procedures for restructuring, selection and engagement of such intermediaries as assets appraisal and financial audit, etc.
If the enterprise restructuring involves the resettlement of enterprise employees, an employee resettlement plan shall be also formulated and adopted at the assembly of employee representatives or the employees' assembly upon deliberation.

Article 42 In the enterprise restructuring, the assets and capital verification, financial auditing and assets appraisal shall be conducted according to the relevant provisions to accurately define and verify assets and objectively and fairly determine the value of assets.
If the enterprise restructuring involves the conversion of such non-monetary property of the enterprise as property in kind, intellectual property rights and land use rights into the contribution of state-owned capital or into the state-owned shares, the converted property shall be appraised according to the relevant provisions, and the amount of the state-owned capital contribution or the amount of state-owned shares shall be determined on the basis of the price confirmed by appraisal. No property shall be converted into shares at a low price, and any other acts prejudicial to the contributor's rights and interests shall be banned.

Section 3 Transactions with an Affiliated Party

Article 43 An affiliated party of a state-invested enterprise shall not seek any improper benefits and damage the interests of the state-invested enterprise by taking advantage of any transaction with the state-invested enterprise.
The term "affiliated party" as mentioned in this Law refers to a director, supervisor or senior manager of an enterprise or a close relative thereof, or an enterprise owned or actually controlled by

such a person.

Article 44 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall not gratuitously provide an affiliated party with capital, commodities, services or other assets, and shall not conduct a transaction with an affiliated party at an unfair price.

Article 45 Without the approval of the body performing the contributor's functions, a wholly state-owned enterprise or wholly state-owned company shall not commit any of the following acts:
1. Entering into an agreement on property transfer or loan with an affiliated party;
2. Providing a security for an affiliated party; or
3. Making joint investment with an affiliated party to form an enterprise, or making investment in an enterprise owned or actually controlled by a director, supervisor or senior manager or a close relative thereof.

Article 46 A transaction between a company in which the state has a stake, whether controlling or non-controlling, and an affiliated party shall be decided by the shareholders' meeting, general assembly of shareholders or board of directors of the company according to the Company Law of the People's Republic of China, relevant administrative regulations and company bylaws. If the transaction is decided by the shareholders' meeting or general assembly of shareholders of the company, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.
When the board of directors of the company makes a resolution on a transaction with an affiliated party, the director involved in the transaction shall neither exercise his voting right nor exercise the voting right on behalf of any other director.

Section 4 Assets Appraisal

Article 47 For the merger, splitting, restructuring, transfer of major property, investment of

non-monetary property or liquidation of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, or any other matter in which the assets appraisal shall be conducted according to a law or administrative regulation or the enterprise bylaws, the appraisal of the relevant assets shall be conducted according to the relevant provisions.

Article 48 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall entrust a legally established and qualified assets appraisal agency with the assets appraisal; and if any matter that shall be reported to the body performing the contributor's functions for decision is involved, the information on entrusting the assets appraisal agency shall be reported to the body performing the contributor's functions.

Article 49 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake and its directors, supervisors and senior managers shall faithfully provide the relevant information and materials for the assets appraisal agency, and shall not collude with the assets appraisal agency in the appraisal.

Article 50 The assets appraisal agency and its staff entrusted with the appraisal of the relevant assets shall comply with laws, administrative regulations and appraisal practice guidelines to appraise the assets independently, objectively and fairly. The assets appraisal agency shall be responsible for the appraisal report produced by it.

Section 5 Transfer of State-owned Assets

Article 51 The term "transfer of state-owned assets" as mentioned in this Law refers to the legal transfer of the rights and interests formed by the state's contribution to an enterprise to any other entity or individual, other than the gratuitous transfer of state-owned assets according to the state provisions.

Article 52 The transfer of state-owned assets shall be favorable to the strategic adjustment of the

layout and structure of the state-owned economy, the loss of state-owned assets shall be prevented, and the legal rights and interests of all the parties to the transaction shall not be damaged.

Article 53 The transfer of state-owned assets shall be decided by the body performing the contributor's functions. If a body performing the contributor's functions decides to transfer the whole state-owned assets or transfer the partial state-owned assets which will cause the state to lose the controlling position over the enterprise, it shall report such a decision to the corresponding people's government for approval.

Article 54 The transfer of state-owned assets shall follow the principles of valuable consideration, openness, fairness and equity.

Except the state-owned assets that may be directly transferred by agreement in accordance with the state provisions, the transfer of state-owned assets shall be openly conducted at a legally established property right exchange. The transferor shall faithfully disclose the relevant information to invite a transferee; if the invitation leads to two or more prospective transferees, open bidding shall be adopted for the transfer.

The transfer of shares traded on an exchange shall be carried out according to the Securities Law of the People's Republic of China.

Article 55 For the transfer of state-owned assets, a minimum transfer price shall be reasonably determined on the basis of the price which is legally appraised and confirmed by the body performing the contributor's functions or approved by the corresponding people's government after being reported thereto by the body performing the contributor's functions.

Article 56 During the transfer of the state-owned assets which may be transferred to the directors, supervisors and senior managers of the enterprise and their close relatives or the enterprises owned or actually controlled by these persons as prescribed by the laws and administrative regulations or the state-owned assets supervision and administration body under the State Council, the aforesaid persons or enterprises, if participating in the transfer, shall equally compete for the transferred assets

with other participants; the transferor shall truthfully disclose the relevant information according to the relevant state provisions; and the relevant directors, supervisors and senior managers shall not take part in the various work on the formulation and organization of implementation of the transfer plan.

Article 57 If the state-owned assets are transferred to any overseas investor, the relevant state provisions shall be observed, and the national security and public interest shall not be compromised.

Chapter VI State-owned Capital Operating Budget

Article 58 The state shall establish and improve the state-owned capital operating budget system to carry out budget administration of the state-owned capital income obtained and expenditures therefrom.

Article 59 For the following state-owned capital income obtained by the state and the expenditures from the following income, a state-owned capital operating budget shall be formulated:

1. The profits distributed to the state by the state-invested enterprises;
2. Income from the transfer of state-owned assets;
3. Liquidation income from the state-invested enterprises; and
4. Other state-owned capital income.

Article 60 The state-owned capital operating budget shall be compiled annually and separately, brought into the budget of the corresponding people’s government, and submitted to the corresponding people’s congress for approval.

The expenditures in the state-owned capital operating budget shall be arranged according to the scale of income in the budget of the year, and no deficit shall be listed.

Article 61 The public finance departments of the State Council and the relevant local people’s governments shall be responsible for compiling the draft state-owned capital operating budgets, and

the bodies performing the contributor's functions shall propose to the public finance departments the draft state-owned capital operating budgets for which they perform the contributor's functions.

Article 62 The specific measures and implementing procedures for the administration of state-owned capital operating budgets shall be stipulated by the State Council and filed with the Standing Committee of the National People's Congress for archival purposes.

Chapter VII State-owned Assets Supervision

Article 63 The standing committee of the people's congress at every level shall legally exercise the powers of supervision, through hearing and deliberating the specialized work reports on the performance of the contributor's functions by the corresponding people's government and on the supervision and administration of state-owned assets, organizing the law enforcement inspection on the implementation of this Law, etc.

Article 64 The State Council and the local people's governments shall conduct supervision over the performance of functions by the bodies empowered by them to perform the contributor's functions.

Article 65 The audit organs of the State Council and the local people's governments shall, according to the Audit Law of the People's Republic of China, conduct audit supervision over the implementation of the state-owned capital operating budgets and the state-invested enterprises falling within the subjects of the audit supervision.

Article 66 The State Council and the local people's governments shall make available to the public the status of state-owned assets and the information on the sate-owned assets supervision and administration, and accept the supervision of the general public, according to law.
Entities and individuals shall have the right to report and file accusations of acts causing losses of state-owned assets.

Article 67 A body performing the contributor's functions may, when necessary, entrust an accounting firm to audit the annual financial report of a wholly state-owned enterprise or wholly state-owned company, or through a resolution of the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, cause the company to engage an accounting firm to audit the annual financial report of the company, so as to protect the rights and interests of the contributor.

Chapter VIII Legal Liabilities

Article 68 Where a body performing the contributor's functions commits any of the following acts, the directly liable person in charge and other directly liable persons of the body shall be subject to sanctions according to law:

1. Appointing or proposing the appointment of managers of a state-invested enterprise in violation of the statutory qualifications for office;
2. Encroaching upon, illegally withholding or embezzling the funds of a state-invested enterprise or the state-owned capital income to be turned in;
3. Making a decision on a major matter of a state-invested enterprise in violation of the legal authority or procedures, which has caused losses of state-owned assets; or
4. Other wise failing to perform the contributor's functions according to law, which has caused losses of the state-owned assets.

Article 69 Where any staff member of a body performing the contributor's functions neglects his duties, abuses his powers or engages in malpractice for personal gains, which does not constitute a crime, he shall be subject to a sanction according to law.

Article 70 Where any shareholder representative appointed by a body performing the contributor's functions fails to perform his functions according to the instructions of the appointing body, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is

a state functionary, he shall be subject to a sanction according to law.

Article 71 Where any director, supervisor or senior manager of a state-invested enterprise commits any of the following acts, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is a state functionary, he shall be subject to a sanction according to law:

1. Taking bribes or obtaining other illegal income or improper benefits by taking advantage of his position;
2. Encroaching on or embezzling enterprise assets;
3. During the enterprise restructuring, property transfer, etc., transferring the enterprise property or converting the enterprise property into shares at a low price, in violation of laws, administrative regulations and the rule of fair trade;
4. Transacting with the enterprise in violation of the provisions of this Law;
5. Unfaithfully providing an assets appraisal agency or accounting firm with the relevant information or materials, or colluding with an assets appraisal agency or accounting firm in issuing a false assets appraisal report or audit report;
6. Making a decision on a major matter of the enterprise in violation of the procedures for decision-making as prescribed by laws, administrative regulations and enterprise bylaws; or
7. Otherwise performing his duties in violation of laws, administrative regulations and enterprise bylaws.

The income obtained from any of the acts listed in the preceding paragraph by a director, supervisor or senior manager of a state-invested enterprise shall be recovered according to law or be owned by the state-invested enterprise.

Where a director, supervisor or senior manager appointed or proposed for appointment by a body performing the contributor’s functions commits any of the acts listed in paragraph 1 of this Article, which has caused gross losses of state-owned assets, the body performing the contributor’s functions shall remove him or propose the removal of him according to law.

Article 72 During such transactions as one involving an affiliated party and the transfer of

state-owned assets, if the parties maliciously collude to damage the rights and interests of state-owned assets, such transactions shall be void.

Article 73 Where any director, supervisor or senior manager of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake is removed from office for a violation of this Law which has caused gross losses of state-owned assets, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake within 5 years from the day of removal; if the violation has caused especially gross losses of state-owned assets or he has been subject to a criminal punishment for corruption, bribery, encroachment upon property, embezzlement of property or undermining of the socialist market economic order, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake for life.

Article 74 Where an assets appraisal agency or an accounting firm which is entrusted with the assets appraisal or financial auditing of a state-invested enterprise produces a false assets appraisal report or audit report in violation of laws, administrative regulations and practice guidelines, it shall be subject to legal liabilities according to laws and administrative regulations.

Article 75 Whoever violates this Law shall be subject to the criminal liability if the violation constitutes a crime.

Chapter IX Supplementary Provisions

Article 76 If any law or administrative regulation provides otherwise for the administration and supervision of state-owned assets of financial enterprises, such provisions shall prevail.

Article 77 This Law shall come into force on May 1, 2009.

中华人民共和国企业国有资产法

中华人民共和国主席令

（第五号）

（相关资料: 法律 1 篇 部门规章 23 篇 其他规范性文件 1 篇 地方法规 64 篇 裁判文书 1 篇 条文释义 相关论文 9 篇 条文释义 1 篇 英文译本）

《中华人民共和国企业国有资产法》已由中华人民共和国第十一届全国人民代表大会常务委员会第五次会议于 2008 年 10 月 28 日通过，现予公布，自 2009 年 5 月 1 日起施行。

中华人民共和国主席　胡锦涛

2008 年 10 月 28 日

中华人民共和国企业国有资产法

（2008 年 10 月 28 日第十一届全国人民代表大会常务委员会第五次会议通过）

目　录

第一章 总　则

第一条 为了维护国家基本经济制度，巩固和发展国有经济，加强对国有资产的保护，发挥国有经济在国民经济中的主导作用，促进社会主义市场经济发展，制定本法。

第二条 本法所称企业国有资产（以下称国有资产），是指国家对企业各种形式的出资所形成的权益。

第三条 国有资产属于国家所有即全民所有。国务院代表国家行使国有资产所有权。

第四条 国务院和地方人民政府依照法律、行政法规的规定，分别代表国家对国家出资企业履行出资人职责，享有出资人权益。

国务院确定的关系国民经济命脉和国家安全的大型国家出资企业，重要基础设施和重要自然资源等领域的国家出资企业，由国务院代表国家履行出资人职责。其他的国家出资企业，由地方人民政府代表国家履行出资人职责。

第五条 本法所称国家出资企业，是指国家出资的国有独资企业、国有独资公司，以及国有资本控股公司、国有资本参股公司。

第六条 国务院和地方人民政府应当按照政企分开、社会公共管理职能与国有资产出资人职能分开、不干预企业依法自主经营的原则，依法履行出资人职责。

第七条 国家采取措施，推动国有资本向关系国民经济命脉和国家安全的重要行业和关键领域集中，优化国有经济布局和结构，推进国有企业的改革和发展，提高国有经济的整体素质，增强国有经济的控制力、影响力。

第八条 国家建立健全与社会主义市场经济发展要求相适应的国有资产管理与监督体制，建立健全国有资产保值增值考核和责任追究制度，落实国有资产保值增值责任。

第九条 国家建立健全国有资产基础管理制度。具体办法按照国务院的规定制定。

第十条 国有资产受法律保护，任何单位和个人不得侵害。

第二章 履行出资人职责的机构

第十一条 国务院国有资产监督管理机构和地方人民政府按照国务院的规定设立的国有资产监督管理机构，根据本级人民政府的授权，代表本级人民政府对国家出资企业履行出资人职责。

国务院和地方人民政府根据需要，可以授权其他部门、机构代表本级人民政府对国家出资企业履行出资人职责。

代表本级人民政府履行出资人职责的机构、部门，以下统称履行出资人职责的机构。

第十二条 履行出资人职责的机构代表本级人民政府对国家出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

履行出资人职责的机构依照法律、行政法规的规定，制定或者参与制定国家出资企业的章程。

履行出资人职责的机构对法律、行政法规和本级人民政府规定须经本级人民政府批准的履行出资人职责的重大事项，应当报请本级人民政府批准。

第十三条 履行出资人职责的机构委派的股东代表参加国有资本控股公司、国有资本参股公司召开的股东会会议、股东大会会议，应当按照委派机构的指示提出提案、发表意见、行使表决权，并将其履行职责的情况和结果及时报告委派机构。

第十四条 履行出资人职责的机构应当依照法律、行政法规以及企业章程履行出资人职责，保障出资人权益，防止国有资产损失。

履行出资人职责的机构应当维护企业作为市场主体依法享有的权利，除依法履行出资人职责外，不得干预企业经营活动。

第十五条 履行出资人职责的机构对本级人民政府负责，向本级人民政府报告履行出资人职责的情况，接受本级人民政府的监督和考核，对国有资产的保值增值负责。

履行出资人职责的机构应当按照国家有关规定，定期向本级人民政府报告有关国有资产总量、结构、变动、收益等汇总分析的情况。

第三章 国家出资企业

第十六条 国家出资企业对其动产、不动产和其他财产依照法律、行政法规以及企业章程享有占有、使用、收益和处分的权利。

国家出资企业依法享有的经营自主权和其他合法权益受法律保护。

第十七条 国家出资企业从事经营活动，应当遵守法律、行政法规，加强经营管理，提高经济效益，接受人民政府及其有关部门、机构依法实施的管理和监督，接受社会公众的监督，承担社会责任，对出资人负责。

国家出资企业应当依法建立和完善法人治理结构，建立健全内部监督管理和风险控制制度。

第十八条 国家出资企业应当依照法律、行政法规和国务院财政部门的规定，建立健全财务、会计制度，设置会计账簿，进行会计核算，依照法律、行政法规以及企业章程的规定向出资人提供真实、完整的财务、会计信息。

国家出资企业应当依照法律、行政法规以及企业章程的规定，向出资人分配利润。

第十九条 国有独资公司、国有资本控股公司和国有资本参股公司依照《中华人民共和国公司法》的规定设立监事会。国有独资企业由履行出资人职责的机构按照国务院的规定委派监事组成监事会。

国家出资企业的监事会依照法律、行政法规以及企业章程的规定，对董事、高级管理人员执行职务的行为进行监督，对企业财务进行监督检查。

第二十条 国家出资企业依照法律规定，通过职工代表大会或者其他形式，实行民主管理。

第二十一条 国家出资企业对其所出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

国家出资企业对其所出资企业，应当依照法律、行政法规的规定，通过制定或者参与制定所出资企业的章程，建立权责明确、有效制衡的企业内部监督管理和风险控制制度，维护其出资人权益。

第四章 国家出资企业管理者的选择与考核

第二十二条 履行出资人职责的机构依照法律、行政法规以及企业章程的规定，任免或者建议任免国家出资企业的下列人员：

（一）任免国有独资企业的经理、副经理、财务负责人和其他高级管理人员；

（二）任免国有独资公司的董事长、副董事长、董事、监事会主席和监事；

（三）向国有资本控股公司、国有资本参股公司的股东会、股东大会提出董事、监事人选。

国家出资企业中应当由职工代表出任的董事、监事，依照有关法律、行政法规的规定由职工民主选举产生。

第二十三条 履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员，应当具备下列条件：

（一）有良好的品行；

（二）有符合职位要求的专业知识和工作能力；

（三）有能够正常履行职责的身体条件；

（四）法律、行政法规规定的其他条件。

董事、监事、高级管理人员在任职期间出现不符合前款规定情形或者出现《中华人民共和国公司法》规定的不得担任公司董事、监事、高级管理人员情形的，履行出资人职责的机构应当依法予以免职或者提出免职建议。

第二十四条 履行出资人职责的机构对拟任命或者建议任命的董事、监事、高级管理人员的人选，应当按照规定的条件和程序进行考察。考察合格的，按照规定的权限和程序任命或者建议任命。

第二十五条 未经履行出资人职责的机构同意，国有独资企业、国有独资公司的董事、高级管理人员不得在其他企业兼职。未经股东会、股东大会同意，国有资本控股公司、国有资本参股公司的董事、高级管理人员不得在经营同类业务的其他企业兼职。

未经履行出资人职责的机构同意，国有独资公司的董事长不得兼任经理。未经股东会、股东大会同意，国有资本控股公司的董事长不得兼任经理。

董事、高级管理人员不得兼任监事。

第二十六条 国家出资企业的董事、监事、高级管理人员，应当遵守法律、行政法规以及企业章程，对企业负有忠实义务和勤勉义务，不得利用职权收受贿赂或者取得其他非法收入和不当利益，不得侵占、挪用企业资产，不得超越职权或者违反程序决定企业重大事项，不得有其他侵害国有资产出资人权益的行为。

第二十七条 国家建立国家出资企业管理者经营业绩考核制度。履行出资人职责的机构应当对其任命的企业管理者进行年度和任期考核，并依据考核结果决定对企业管理者的奖惩。

履行出资人职责的机构应当按照国家有关规定，确定其任命的国家出资企业管理者的薪酬标准。

第二十八条 国有独资企业、国有独资公司和国有资本控股公司的主要负责人，应当接受依法进行的任期经济责任审计。

第二十九条 本法第二十二条第一款第一项、第二项规定的企业管理者，国务院和地方人民政府规定由本级人民政府任免的，依照其规定。履行出资人职责的机构依照本章规定对上述企业管理者进行考核、奖惩并确定其薪酬标准。

第五章 关系国有资产出资人权益的重大事项

第一节 一般规定

第三十条 国家出资企业合并、分立、改制、上市，增加或者减少注册资本，发行债券，进行重大投资，为他人提供大额担保，转让重大财产，进行大额捐赠，分配利润，以及解散、申请破产等重大事项，应当遵守法律、行政法规以及企业章程的规定，不得损害出资人和债权人的权益。

第三十一条 国有独资企业、国有独资公司合并、分立，增加或者减少注册资本，发行债券，分配利润，以及解散、申请破产，由履行出资人职责的机构决定。

第三十二条 国有独资企业、国有独资公司有本法第三十条所列事项的，除依照本法第三十一条和有关法律、行政法规以及企业章程的规定，由履行出资人职责的机构决定的以外，国有独资企业由企业负责人集体讨论决定，国有独资公司由董事会决定。

第三十三条 国有资本控股公司、国有资本参股公司有本法第三十条所列事项的，依照法律、行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由股东会、股东大会决定的，履行出资人职责的机构委派的股东代表应当依照本法第十三条的规定行使权利。

第三十四条 重要的国有独资企业、国有独资公司、国有资本控股公司的合并、分立、解散、申请破产以及法律、行政法规和本级人民政府规定应当由履行出资人职责的机构报经本级人民政府批准的重大事项，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当报请本级人民政府批准。

本法所称的重要的国有独资企业、国有独资公司和国有资本控股公司，按照国务院的规定确定。

第三十五条 国家出资企业发行债券、投资等事项，有关法律、行政法规规定应当报经人民政府或者人民政府有关部门、机构批准、核准或者备案的，依照其规定。

第三十六条 国家出资企业投资应当符合国家产业政策，并按照国家规定进行可行性研究；与他人交易应当公平、有偿，取得合理对价。

第三十七条 国家出资企业的合并、分立、改制、解散、申请破产等重大事项，应当听取企业工会的意见，并通过职工代表大会或者其他形式听取职工的意见和建议。

第三十八条 国有独资企业、国有独资公司、国有资本控股公司对其所出资企业的重大事项参照本章规定履行出资人职责。具体办法由国务院规定。

第二节 企业改制

第三十九条 本法所称企业改制是指：

（一）国有独资企业改为国有独资公司；

（二）国有独资企业、国有独资公司改为国有资本控股公司或者非国有资本控股公司；

（三）国有资本控股公司改为非国有资本控股公司。

第四十条 企业改制应当依照法定程序，由履行出资人职责的机构决定或者由公司股东会、股东大会决定。

重要的国有独资企业、国有独资公司、国有资本控股公司的改制，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当将改制方案报请本级人民政府批准。

第四十一条 企业改制应当制定改制方案，载明改制后的企业组织形式、企业资产和债权债务处理方案、股权变动方案、改制的操作程序、资产评估和财务审计等中介机构的选聘等事项。

企业改制涉及重新安置企业职工的，还应当制定职工安置方案，并经职工代表大会或者职工大会审议通过。

第四十二条 企业改制应当按照规定进行清产核资、财务审计、资产评估，准确界定和核实资产，客观、公正地确定资产的价值。

企业改制涉及以企业的实物、知识产权、土地使用权等非货币财产折算为国有资本出资或者股份的，应当按照规定对折价财产进行评估，以评估确认价格作为确定国有资本出资额或者股份数额的依据。不得将财产低价折股或者有其他损害出资人权益的行为。

第三节 与关联方的交易

第四十三条 国家出资企业的关联方不得利用与国家出资企业之间的交易，谋取不当利益，损害国家出资企业利益。

本法所称关联方，是指本企业的董事、监事、高级管理人员及其近亲属，以及这些人员所有或者实际控制的企业。

第四十四条 国有独资企业、国有独资公司、国有资本控股公司不得无偿向关联方提供资金、商品、服务或者其他资产，不得以不公平的价格与关联方进行交易。

第四十五条 未经履行出资人职责的机构同意，国有独资企业、国有独资公司不得有下列行为：

（一）与关联方订立财产转让、借款的协议；

（二）为关联方提供担保；

（三）与关联方共同出资设立企业，或者向董事、监事、高级管理人员或者其近亲属所有或者实际控制的企业投资。

第四十六条 国有资本控股公司、国有资本参股公司与关联方的交易，依照《中华人民共和国公司法》和有关行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由公司股东会、股东大会决定的，履行出资人职责的机构委派的股东代表，应当依照本法第十三条的规定行使权利。

公司董事会对公司与关联方的交易作出决议时，该交易涉及的董事不得行使表决权，也不得代理其他董事行使表决权。

第四节 资产评估

第四十七条 国有独资企业、国有独资公司和国有资本控股公司合并、分立、改制，转让重大财产，以非货币财产对外投资，清算或者有法律、行政法规以及企业章程规定应当进行资产评估的其他情形的，应当按照规定对有关资产进行评估。

第四十八条 国有独资企业、国有独资公司和国有资本控股公司应当委托依法设立的符合条件的资产评估机构进行资产评估；涉及应当报经履行出资人职责的机构决定的事项的，应当将委托资产评估机构的情况向履行出资人职责的机构报告。

第四十九条 国有独资企业、国有独资公司、国有资本控股公司及其董事、监事、高级管理人员应当向资产评估机构如实提供有关情况和资料，不得与资产评估机构串通评估作价。

第五十条 资产评估机构及其工作人员受托评估有关资产，应当遵守法律、行政法规以及评估执业准则，独立、客观、公正地对受托评估的资产进行评估。资产评估机构应当对其出具的评估报告负责。

第五节 国有资产转让

第五十一条 本法所称国有资产转让，是指依法将国家对企业的出资所形成的权益转移给其他单位或者个人的行为；按照国家规定无偿划转国有资产的除外。

第五十二条 国有资产转让应当有利于国有经济布局和结构的战略性调整，防止国有资产损失，不得损害交易各方的合法权益。

第五十三条 国有资产转让由履行出资人职责的机构决定。履行出资人职责的机构决定转让全部国有资产的，或者转让部分国有资产致使国家对该企业不再具有控股地位的，应当报请本级人民政府批准。

第五十四条 国有资产转让应当遵循等价有偿和公开、公平、公正的原则。

除按照国家规定可以直接协议转让的以外，国有资产转让应当在依法设立的产权交易场所公开进行。转让方应当如实披露有关信息，征集受让方；征集产生的受让方为两个以上的，转让应当采用公开竞价的交易方式。

转让上市交易的股份依照《中华人民共和国证券法》的规定进行。

第五十五条 国有资产转让应当以依法评估的、经履行出资人职责的机构认可或者由履行出资人职责的机构报经本级人民政府核准的价格为依据，合理确定最低转让价格。

第五十六条 法律、行政法规或者国务院国有资产监督管理机构规定可以向本企业的董事、监事、高级管理人员或者其近亲属，或者这些人员所有或者实际控制的企业转让的国有资产，在转让时，上述人员或者企业参与受让的，应当与其他受让参与者平等竞买；转让方应当按照国家有关规定，如实披露有关信息；相关的董事、监事和高级管理人员不得参与转让方案的制定和组织实施的各项工作。

第五十七条 国有资产向境外投资者转让的，应当遵守国家有关规定，不得危害国家安全和社会公共利益。

第六章 国有资本经营预算

第五十八条 国家建立健全国有资本经营预算制度，对取得的国有资本收入及其支出实行预算管理。

第五十九条 国家取得的下列国有资本收入，以及下列收入的支出，应当编制国有资本经营预算：

（一）从国家出资企业分得的利润；

（二）国有资产转让收入；

（三）从国家出资企业取得的清算收入；

（四）其他国有资本收入。

第六十条 国有资本经营预算按年度单独编制，纳入本级人民政府预算，报本级人民代表大会批准。

国有资本经营预算支出按照当年预算收入规模安排，不列赤字。

第六十一条 国务院和有关地方人民政府财政部门负责国有资本经营预算草案的编制工作，履行出资人职责的机构向财政部门提出由其履行出资人职责的国有资本经营预算建议草案。

第六十二条 国有资本经营预算管理的具体办法和实施步骤，由国务院规定，报全国人民代表大会常务委员会备案。

第七章 国有资产监督

第六十三条 各级人民代表大会常务委员会通过听取和审议本级人民政府履行出资人职责的情况和国有资产监督管理情况的专项工作报告，组织对本法实施情况的执法检查等，依法行使监督职权。

第六十四条 国务院和地方人民政府应当对其授权履行出资人职责的机构履行职责的情况进行监督。

第六十五条 国务院和地方人民政府审计机关依照《中华人民共和国审计法》的规定，对国有资本经营预算的执行情况和属于审计监督对象的国家出资企业进行审计监督。

第六十六条 国务院和地方人民政府应当依法向社会公布国有资产状况和国有资产监督管理工作情况，接受社会公众的监督。

任何单位和个人有权对造成国有资产损失的行为进行检举和控告。

第六十七条 履行出资人职责的机构根据需要，可以委托会计师事务所对国有独资企业、国有独资公司的年度财务会计报告进行审计，或者通过国有资本控股公司的股东会、股东大会决议，由国有资本控股公司聘请会计师事务所对公司的年度财务会计报告进行审计，维护出资人权益。

第八章 法律责任

第六十八条 履行出资人职责的机构有下列行为之一的，对其直接负责的主管人员和其他直接责任人员依法给予处分：

（一）不按照法定的任职条件，任命或者建议任命国家出资企业管理者的；

（二）侵占、截留、挪用国家出资企业的资金或者应当上缴的国有资本收入的；

（三）违反法定的权限、程序，决定国家出资企业重大事项，造成国有资产损失的；

（四）有其他不依法履行出资人职责的行为，造成国有资产损失的。

第六十九条 履行出资人职责的机构的工作人员玩忽职守、滥用职权、徇私舞弊，尚不构成犯罪的，依法给予处分。

第七十条 履行出资人职责的机构委派的股东代表未按照委派机构的指示履行职责，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分。

第七十一条 国家出资企业的董事、监事、高级管理人员有下列行为之一，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分：

（一）利用职权收受贿赂或者取得其他非法收入和不当利益的；

（二）侵占、挪用企业资产的；

（三）在企业改制、财产转让等过程中，违反法律、行政法规和公平交易规则，将企业财产低价转让、低价折股的；

（四）违反本法规定与本企业进行交易的；

（五）不如实向资产评估机构、会计师事务所提供有关情况和资料，或者与资产评估机构、会计师事务所串通出具虚假资产评估报告、审计报告的；

（六）违反法律、行政法规和企业章程规定的决策程序，决定企业重大事项的；

（七）有其他违反法律、行政法规和企业章程执行职务行为的。

国家出资企业的董事、监事、高级管理人员因前款所列行为取得的收入，依法予以追缴或者归国家出资企业所有。

履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员有本条第一款所列行为之一，造成国有资产重大损失的，由履行出资人职责的机构依法予以免职或者提出免职建议。

第七十二条 在涉及关联方交易、国有资产转让等交易活动中，当事人恶意串通，损害国有资产权益的，该交易行为无效。

第七十三条 国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员违反本法规定，造成国有资产重大损失，被免职的，自免职之日起五年内不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员；造成国有资产特别重大损失，或者因贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序被判处刑罚的，终身不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员。

第七十四条 接受委托对国家出资企业进行资产评估、财务审计的资产评估机构、会计师事务所违反法律、行政法规的规定和执业准则，出具虚假的资产评估报告或者审计报告的，依照有关法律、行政法规的规定追究法律责任。

第七十五条 违反本法规定，构成犯罪的，依法追究刑事责任。

第九章 附 则

第七十六条 金融企业国有资产的管理与监督，法律、行政法规另有规定的，依照其规定。

第七十七条 本法自 2009 年 5 月 1 日起施行。

Law of the People's Republic of China against unfair Competition (Adopted at the Third Meeting of the Standing Committee of the Eighth National People's Congress on September 2, 1993, Promulgated by Order No. 10 of the President of the People's Republic of China, and effective as of December 1, 1993) #1

Chapter I - General Provisions #2

Article 1 #3

This Law is formulated with a view to safeguarding the healthy development of socialist market economy, encouraging and protecting fair competition, repressing unfair competition acts, and protecting the lawful rights and interests of business operators and consumers. #4

Article 2 #5

A business operator shall, in his market transactions, follow the principles of voluntariness,* equality, fairness, honesty and credibility and observe the generally recognized business ethics. #6

Unfair competition as mentioned in this Law refers to a business operators acts violating the provisions of this Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order. #7

A business operator as mentioned in this Law refers to a legal person or any other economic organization or individual engaged in commodities marketing or profit-making services commodities referred to hereinafter includes such services). #8

Article 3 #9

People's governments at various levels shall take measures to repress unfair competition acts and create favorable environment and conditions for fair competition. #10

Administrative departments for industry and commerce of the people's governments at or above the county level shall exercise supervision over and inspection of unfair competition acts; where laws or administrative rules and regulations provide that other departments shall exercise the supervision and inspection, those provisions shall apply. #11

Article 4

The State shall encourage, support and protect all organizations and individuals in the exercise of social supervision over unfair competition acts.

No State functionary may support or cover up unfair competition acts.

Chapter II - Acts of Unfair Competition

Article 5

A business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means:

(1) counterfeiting a registered trademark of another person;

(2) using for a commodity without authorization a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter;

(3) using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person; or

(4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.

Article 6

A public utility enterprise or any other business operator occupying monopoly status according to law shall not restrict people to purchasing commodities from the business operators designated by him, thereby precluding other business operators from fair competition.

Article 7

Governments and their subordinate departments shall not abuse administrative powers to restrict people to purchasing commodities from the business operators designated by them and impose limitations on the rightful operation activities of other business operators.

Governments and their subordinate departments shall not abuse administrative powers to restrict commodities originated in other places from entering the local markets or the local commodities from flowing into markets

of other places.

Article 8

A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or purchasing commodities. A business operator who offers off-the-book rebate in secret to the other party, a unit or an individual, shall be deemed and punished as offering bribes; and any unit or individual that accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.

A business operator may, in selling or purchasing commodities, expressly allow a discount to the other party and pay a commission to the middleman. The business operator who gives discount to the other party and pays commission to the middleman must truthfully enter them in the account. The business operator who accepts the discount or the commission must also truthfully enter it in the account.

Article 9

A business operator may not, by advertisement or any other means, make false or misleading publicity of their commodities as to their quality, ingredients, functions, usage, producers, duration of validity or origin.

An advertisement agent may not act as agent for, or design, produce or release, a false advertisement while he clearly knows or ought to know its falsehood.

Article 10

A business operator shall not use any of the following means to infringe upon business secrets:

(1) obtaining an obligees business secrets by stealing, luring, intimidation or any other unfair means;

(2) disclosing, using or allowing another person to use the business secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) in violation of the agreement or against the obligees demand for keeping business secrets, disclosing, using or allowing another person to use the business secrets he possesses.

Obtaining, using or disclosing another's business secrets by a third party who clearly knows or ought to know that the case falls under the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon business secrets.

?/FONT>Business secrets as mentioned in this Article refers to any technology information or business operation information which is unknown to the public, can bring about economic benefits to the obligee, has practical utility and about which the obligee has adopted secret-keeping measures. #39

Article 11 #40

A business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs. #41

Any of the following shall not be deemed as an unfair competition act: #42

(1) selling perishables or live commodities; #43

(2) disposing of commodities near expiration of their validity duration or those kept too long in stock; #44

(3) seasonal sales; or #45

(4) selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation. #46

Article 12 #47

A business operator may not, against the will of purchasers, conduct tie-in sale of commodities or attach any other unreasonable conditions to the sale of their commodities. #48

Article 13 #49

A business operator shall not engage in any of the following lottery-attached sale activities: #50

(1) lottery-attached sale conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize; #51

(2) lottery-attached sale employed as a means to sell goods of low quality at a high price; or #52

(3) lottery-attached sale in form of lottery-drawing with the highest prize exceeding 5 000 yuan. #53

Article 14 #54

A business operator shall not fabricate or spread false information to injure his competitors commercial credit or the reputation of his competitors commodities. #55

Article 15 #56

Bidders shall not act in collusion with each other so as to force up or down the bidding prices. #57

Bidders and tender-inviters* shall not collude with each other so as to push out their competitors from fair competition. #58

Chapter III - Supervision and Inspection #59

Article 16 #60

Supervision and inspection departments at or above the county level may carry out supervision over and inspection of unfair competition acts. #61

Article 17 #62

Supervision and inspection departments shall, in supervising and inspecting unfair competition acts, have the right to exercise the following functions and powers: #63

(1) to interrogate the business operators under inspection, interested persons, or witnesses in accordance with the prescribed procedures, and require them to provide testimonial materials or other materials relating to the unfair competition acts; #64

(2) to inquire about and duplicate the agreements, account books, invoices, documents, records, business letters and telegrams or other materials relating to the unfair competition acts; and #65

(3) to inspect the property involved in the unfair competition acts under Article 5 of this Law; and, when necessary, to order the business operators under inspection to explain the source and quantity of the commodities, suspend the sale and await the inspection thereof, and the property involved shall not be transferred, concealed or destroyed. #66

Article 18 #67

Functionaries of supervision and inspection departments shall, when supervising and inspecting unfair competition acts, produce their inspection certificates. #68

Article 19 #69

Business operators under inspection, interested persons and witnesses shall truthfully provide relevant materials or particulars when the supervision and inspection departments supervise and inspect unfair competition acts. #70

Chapter IV - Legal Responsibility #71

Article 20

A business operator who violates the provisions of this Law and thus causes damage to the infringed business operators, shall bear the liability of compensation for the damage. If the losses of the infringed business operator are difficult to estimate, the damages shall be the profits derived from the infringement by the infringer* during the period of infringement. And the infringer shall also bear the reasonable expense paid by the infringed business operator for investigating the infringers unfair competition acts violating his lawful rights and interests.

A business operator whose lawful rights and interests are infringed upon by unfair competition acts may bring a suit in a peoples court.

Article 21

A business operator who counterfeits another's registered trademark, uses without authorization the name of another enterprise or person, forges or counterfeits authentication marks, famous-and-excellent-product marks or other product quality marks, forges origin of the products or makes false and misleading indications regarding the product quality shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Law of the People's Republic of China on Product Quality.

In case a business operator uses for a commodity without authorization the name, package or decoration of a famous commodity or the name, package or decoration similar to that of a famous commodity and thereby confuses the commodity with another's famous commodity and leads the purchasers to mistake the former for the latter, the supervision and inspection department shall order the business operator to stop the illegal act and confiscate the illegal earnings and may, in light of the circumstances, impose a fine of not less than one time but not more than three times the illegal earnings; if the circumstances are serious, his business license may be revoked; and if the commodities sold are fake and inferior, and the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 22

A business operator, who resorts to bribery by offering money or goods or by any other means in selling or purchasing commodities and if the case constitutes a crime, shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances and confiscate the illegal earnings,

if any.

Article 23

In case a public utility enterprise or any other business operator occupying monopoly status according to law restricts people to purchasing commodities from a designated business operator in order to push out other business operators from fair competition, the supervision and inspection departments at the provincial level or of cities divided into districts shall order the ceasing of the illegal acts and may impose a fine of not less than 50 000 yuan but not more than 200 000 yuan in light of the circumstances. If such designated business operator takes advantage of his monopoly status to sell goods of low quality at high prices or indiscriminately collects fees, the inspection and supervision department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 24

In case a business operator makes false and misleading publicity of his commodities by advertisement or any other means, the supervision and inspection department shall order the said business operator to stop his illegal acts and eliminate the bad effects, and may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances.

In case an advertisement agent acts as agent for, or designs, produces or releases, a false advertisement though the agent clearly knows or ought to know the falsehood, the supervision and inspection department shall order the ceasing of the illegal acts, confiscate the illegal earnings, and impose a fine according to law.

Article 25

In case a business operator violates the provisions of Article 10 of this Law and infringes upon trade secrets, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances.

Article 26

In case a business operator engages in lottery-attached sale in violation of the provisions of Article 13 of this Law, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10 000 yuan but not more than 100 000 yuan in light of the circumstances.

Article 27 #89

Where bidders act in collusion with each other to force up or down the bidding price, or a bidder colludes with a tender-inviter* for the purpose of pushing out their competitors, the successful bid shall be invalid, and the supervision and inspection department may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances. #90

Article 28 #91

In case a business operator acts in violation of the order of stopping the sale or forbidding the transfer, concealment or destruction of the property involved in the unfair competition acts, the supervision and inspection department may impose a fine of not less than one time but not more than three times the price of the property sold, transferred, concealed or destroyed. #92

Article 29 #93

In case a party is not satisfied with the punishment decision made by the supervision and inspection department, it may apply for reconsideration to the competent department at the next higher level within 15 days from receipt of the decision; and if the party is still not satisfied with the reconsideration decision, it may bring a suit in a people's court within 15 days from receipt of the decision; and the party may also directly file a suit in a people's court. #94

Article 30 #95

Where a government or its subordinate departments, in violation of the provisions of Article 7 #96

of this Law, restrict people to purchasing commodities from a designated business operator or impose limits on other business operator's rightful operation activities or the normal circulation of commodities between different areas, the supervision and inspection department at higher levels shall order them to make corrections; and if the circumstances are serious, the persons held directly responsible shall be given administrative sanctions by the relevant department at the same or higher levels; if the designated business operator takes advantage of his status to sell goods of low quality at high prices or indiscriminately collects fees, the supervision and inspection department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances. #97

Article 31 #98

Where a State functionary engaged in supervision over and inspection of unfair competition acts abuses his power or neglects his duty, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, he shall be given an administrative sanction. #99

Article 32 #100

Where a State functionary engaged in supervision over and inspection of unfair competition acts practices favoritism or irregularities and intentionally harbors a business operator whom he clearly knows to be guilty of a crime committed by violating the provisions of this Law and attempts to shield him from prosecution, he shall be investigated for criminal responsibility according to law. #101

Chapter V - Supplementary Provisions #102

Article 33 #103

This Law shall enter into force as of December 1, 1993. #104

Endnotes

中华人民共和国反不正当竞争法

（１９９３年９月２日第八届全国人民代表大会常务委员会第三次会议通过　１９９３年９月２日中华人民共和国主席令第十号公布　自１９９３年１２月１日起施行）

第一章　总　则

第一条　为保障社会主义市场经济健康发展，鼓励和保护公平竞争，制止不正当竞争行为，保护经营者和消费者的合法权益，制定本法。

第二条　经营者在市场交易中，应当遵循自愿、平等、公平、诚实信用的原则，遵守公认的商业道德。

本法所称的不正当竞争，是指经营者违反本法规定，损害其他经营者的合法权益，扰乱社会经济秩序的行为。

本法所称的经营者，是指从事商品经营或者营利性服务（以下所称商品包括服务）的法人、其他经济组织和个人。

第三条　各级人民政府应当采取措施，制止不正当竞争行为，为公平竞争创造良好的环境和条件。

县级以上人民政府工商行政管理部门对不正当竞争行为进行监督检查；法律、行政法规规定由其他部门监督检查的，依照其规定。

第四条 国家鼓励、支持和保护一切组织和个人对不正当竞争行为进行社会监督。

国家机关工作人员不得支持、包庇不正当竞争行为。

第二章 不正当竞争行为

第五条 经营者不得采用下列不正当手段从事市场交易，损害竞争对手：

（一）假冒他人的注册商标；

（二）擅自使用知名商品特有的名称、包装、装潢，或者使用与知名商品近似的名称、包装、装潢，造成和他人的知名商品相混淆，使购买者误认为是该知名商品；

（三）擅自使用他人的企业名称或者姓名，引人误认为是他人的商品；

（四）在商品上伪造或者冒用认证标志、名优标志等质量标志，伪造产地，对商品质量作引人误解的虚假表示。

第六条 公用企业或者其他依法具有独占地位的经营者，不得限定他人购买其指定的经营者的商品，以排挤其他经营者的公平竞争。

第七条 政府及其所属部门不得滥用行政权力，限定他人购买其指定的经营者的商品，限制其他经营者正当的经营活动。

政府及其所属部门不得滥用行政权力，限制外地商品进入本地市场，或者本地商品流向外地市场。

第八条 经营者不得采用财物或者其他手段进行贿赂以销售或者购买商品。在帐外暗中给予对方单位或者个人回扣的，以行贿论处；对方单位或者个人在帐外暗中收受回扣的，以受贿论处。

经营者销售或者购买商品，可以以明示方式给对方折扣，可以给中间人佣金。经营者给对方折扣、给中间人佣金的，必须如实入帐。接受折扣、佣金的经营者必须如实入帐。

第九条 经营者不得利用广告或者其他方法，对商品的质量、制作成分、性能、用途、生产者、有效期限、产地等作引人误解的虚假宣传。

广告的经营者不得在明知或者应知的情况下，代理、设计、制作、发布虚假广告。

第十条 经营者不得采用下列手段侵犯商业秘密：

（一）以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密；

（二）披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密；

（三）违反约定或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密。

第三人明知或者应知前款所列违法行为，获取、使用或者披露他人的商业秘密，视为侵犯商业秘密。

本条所称的商业秘密，是指不为公众所知悉、能为权利人带来经济利益、具有实用性并经权利人采取保密措施的技术信息和经营信息。

第十一条 经营者不得以排挤竞争对手为目的，以低于成本的价格销售商品。

有下列情形之一的，不属于不正当竞争行为：

（一）销售鲜活商品；

（二）处理有效期限即将到期的商品或者其他积压的商品；

（三）季节性降价；

（四）因清偿债务、转产、歇业降价销售商品。

第十二条 经营者销售商品，不得违背购买者的意愿搭售商品或者附加其他不合理的条件。

第十三条 经营者不得从事下列有奖销售：

（一）采用谎称有奖或者故意让内定人员中奖的欺骗方式进行有奖销售；

（二）利用有奖销售的手段推销质次价高的商品；

（三）抽奖式的有奖销售，最高奖的金额超过五千元。

第十四条 经营者不得捏造、散布虚伪事实，损害竞争对手的商业信誉、商品声誉。

第十五条 投标者不得串通投标，抬高标价或者压低标价。

投标者和招标者不得相互勾结，以排挤竞争对手的公平竞争。

第三章　监督检查

第十六条　县级以上监督检查部门对不正当竞争行为，可以进行监督检查。

第十七条　监督检查部门在监督检查不正当竞争行为时，有权行使下列职权：

（一）按照规定程序询问被检查的经营者、利害关系人、证明人，并要求提供证明材料或者与不正当竞争行为有关的其他资料；

（二）查询、复制与不正当竞争行为有关的协议、帐册、单据、文件、记录、业务函电和其他资料；

（三）检查与本法第五条规定的不正当竞争行为有关的财物，必要时可以责令被检查的经营者说明该商品的来源和数量，暂停销售，听候检查，不得转移、隐匿、销毁该财物。

第十八条　监督检查部门工作人员监督检查不正当竞争行为时，应当出示检查证件。

第十九条　监督检查部门在监督检查不正当竞争行为时，被检查的经营者、利害关系人和证明人应当如实提供有关资料或者情况。

第四章　法律责任

第二十条　经营者违反本法规定，给被侵害的经营者造成损害的，应当承担损害赔偿责任，被侵害的经营者的损失难以计算的，赔偿额为侵权人在侵权期间因侵权所获得的利润；并应当承担被侵害的经营者因调查该经营者侵害其合法权益的不正当竞争行为所支付的合理费用。

被侵害的经营者的合法权益受到不正当竞争行为损害的，可以向人民法院提起诉讼。

第二十一条　经营者假冒他人的注册商标，擅自使用他人的企业名称或者姓名，伪造或者冒用认证标志、名优标志等质量标志，伪造产地，对商品质量作引人误解的虚假表示的，依照《中华人民共和国商标法》、《中华人民共和国产品质量法》的规定处罚。

经营者擅自使用知名商品特有的名称、包装、装潢，或者使用与知名商品近似的名称、包装、装潢，造成和他人的知名商品相混淆，使购买者误认为是该知名商品的，监督检查部

门应当责令停止违法行为，没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款；情节严重的，可以吊销营业执照；销售伪劣商品，构成犯罪的，依法追究刑事责任。

第二十二条 经营者采用财物或者其他手段进行贿赂以销售或者购买商品，构成犯罪的，依法追究刑事责任；不构成犯罪的，监督检查部门可以根据情节处以一万元以上二十万元以下的罚款，有违法所得的，予以没收。

第二十三条 公用企业或者其他依法具有独占地位的经营者，限定他人购买其指定的经营者的商品，以排挤其他经营者的公平竞争的，省级或者设区的市的监督检查部门应当责令停止违法行为，可以根据情节处以五万元以上二十万元以下的罚款。被指定的经营者借此销售质次价高商品或者滥收费用的，监督检查部门应当没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款。

第二十四条 经营者利用广告或者其他方法，对商品作引人误解的虚假宣传的，监督检查部门应当责令停止违法行为，消除影响，可以根据情节处以一万元以上二十万元以下的罚款。

广告的经营者，在明知或者应知的情况下，代理、设计、制作、发布虚假广告的，监督检查部门应当责令停止违法行为，没收违法所得，并依法处以罚款。

第二十五条 违反本法第十条规定侵犯商业秘密的，监督检查部门应当责令停止违法行为，可以根据情节处以一万元以上二十万元以下的罚款。

第二十六条 经营者违反本法第十三条规定进行有奖销售的，监督检查部门应当责令停止违法行为，可以根据情节处以一万元以上十万元以下的罚款。

第二十七条 投标者串通投标，抬高标价或者压低标价；投标者和招标者相互勾结，以排挤竞争对手的公平竞争的，其中标无效。监督检查部门可以根据情节处以一万元以上二十万元以下的罚款。

第二十八条 经营者有违反被责令暂停销售，不得转移、隐匿、销毁与不正当竞争行为有关的财物的行为的，监督检查部门可以根据情节处以被销售、转移、隐匿、销毁财物的价款的一倍以上三倍以下的罚款。

第二十九条　当事人对监督检查部门作出的处罚决定不服的，可以自收到处罚决定之日起十五日内向上一级主管机关申请复议；对复议决定不服的，可以自收到复议决定书之日起十五日内向人民法院提起诉讼；也可以直接向人民法院提起诉讼。

第三十条　政府及其所属部门违反本法第七条规定，限定他人购买其指定的经营者的商品、限制其他经营者正当的经营活动，或者限制商品在地区之间正常流通的，由上级机关责令其改正；情节严重的，由同级或者上级机关对直接责任人员给予行政处分。被指定的经营者借此销售质次价高商品或者滥收费用的，监督检查部门应当没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款。

第三十一条　监督检查不正当竞争行为的国家机关工作人员滥用职权、玩忽职守，构成犯罪的，依法追究刑事责任；不构成犯罪的，给予行政处分。

第三十二条　监督检查不正当竞争行为的国家机关工作人员徇私舞弊，对明知有违反本法规定构成犯罪的经营者故意包庇不使他受追诉的，依法追究刑事责任。

第五章　附　则

第三十三条　本法自１９９３年１２月１日起施行。

Accounting Law of the People's Republic of China

(Adopted by the Ninth Meeting of the Standing Committee of the Sixth National People's Congress on January 21, 1985; amended in accordance with the Decision on Revising the Accounting Law of the People's Republic of China adopted at the Fifth Meeting of the Standing Committee of the Eighth National People's Congress on December 29, 1993; revised at the 12th Meeting of the Standing Committee of the Ninth People's Congress on October 31, 1999 and promulgated by Order No.24 of the President of the People's Republic of China on October 31, 1999)

Contents

Chapter I General Provisions

Article 1 This Law is enacted with a view to standardizing accounting acts, ensuring the truthfulness and completeness of the accounting materials, strengthening economic management and financial control, raising economic results and maintaining the order of the socialist market economy.

Article 2 State organs, social organizations, companies, enterprises, institutions and other organizations (hereinafter generally referred to as units) must handle accounting affairs in accordance with this Law.

Article 3 All units must set up account books according to law and ensure their truthfulness and completeness.

Article 4 The person in charge of a unit shall be responsible for its accounting work as well as the truthfulness and completeness of its accounting materials.

Article 5 Accounting offices and accounting personnel shall, in accordance with the provisions of this Law, conduct accounting practice and exercise accounting supervision.
No unit or person may, by any means, suggest, instruct or compel any accounting office or accountant to forge or alter any accounting document, account book or other accounting material or to submit any false financial accounting statement.
No unit or person is allowed to retaliate upon any accountant because of his resistance against any act violating the provisions of this Law in the performance of his duty.

Article 6 Moral encouragement or material award shall be given to any accountant who has shown conscientiousness in implementing this Law, devotion to his duty and consistence in principle, thus achieving remarkable results in his work.

Article 7 The department of finance under the State Council shall administer the accounting work throughout the country. Departments of finance under local people's governments at or above the county level shall administer the accounting work in their respective administrative areas.

Article 8 The State practises a unified accounting system. The State's unified accounting system shall be formulated and promulgated by the department of finance under the State Council in accordance with this Law.

For those trades which have special requirements on accounting practice and accounting supervision, the relevant departments of the State Council may, in accordance with this Law and the State's unified accounting system, formulate concrete measures or supplementary provisions for the implementation of the State's unified accounting system and submit them to the department of finance of the State Council for examination and approval.
The General Logistics Department of the Chinese People's Liberation Army may, in accordance with this Law and the State's unified accounting system, formulate concrete measures for the implementation of the State's unified accounting system in the army and report them to the department of finance of the State Council for the record.

Chapter II Accounting Practice

Article 9 All units must fulfil accounting practice, fill in and prepare accounting documents, record account books and work out financial accounting statements according to the economic and business transactions actually taken place.
No unit may fulfil accounting practice on the basis of untrue economic and business transactions or false materials.

Article 10 Accounting procedures shall be conducted and accounting be practised with respect to the following economic and business transactions:
(1) receipts and disbursements in cash and in negotiable securities;
(2) acceptance, delivery, increase, decrease and use of property;
(3) occurrence and settlement of claims and debts;
(4) increase and decrease of capital and funds;
(5) computation of income and expenditure, expenses and costs;
(6) computation and treatment of financial results; and
(7) other transactions that are subject to accounting procedures and accounting practice.

Article 11 The fiscal year shall start on January 1 and end on December 31 on the Gregorian calendar.

Article 12 Renminbi shall be the basic accounting currency in accounting practice.
The units that use a currency other than Renminbi as chief currency in their business receipts and expenditures may select one specific currency as their basic accounting currency, but the accounts to be reported in their financial statements shall still be converted to and expressed in Renminbi.

Article 13 Accounting documents, account books, accounting statements and other accounting materials must all comply with the unified accounting system of the State.
Where computers are used for accounting practice, the software and accounting documents, account books, financial accounting statements and other accounting materials produced therefrom must also comply with the provisions of the State's unified accounting system.
No unit or person may forge or alter any accounting documents, account book or other accounting material, or submit any false financial accounting statement.

Article 14 Accounting documents include original documents and accounting vouchers.
In handling the economic and business transactions specified in Article 10 of this Law, original documents must be filled in or obtained, and be promptly submitted to the accounting office.
Accounting offices and accounting personnel must, in accordance with the provisions of the State's unified accounting system, examine and verify the original documents and are entitled to deny any untrue or illegal original document and report the case to the person in charge of the unit or and to return any original document which carries inaccurate or incomplete records and require it to be corrected or supplemented in accordance with the provisions of the State's unified accounting system.
All entries recorded in the original documents may not be altered; if an original document contains mistake, it shall be replaced with a new one or corrected by the issuing unit and a stamp of the issuing unit shall be affixed right over the

place where the correction is made. If the amount of money in an original document is wrong, the issuing unit shall correct it by issuing a new document and may not do it by a correction on the original document.
Accounting vouchers shall be prepared according to the examined and verified original documents and related materials.

Article 15 Entries into account books must be based on the examined and verified accounting documents and comply with the provisions of related laws, administrative regulations and the State's unified accounting system. Account books include general ledgers, detailed ledgers, journal books and other auxiliary books.
Entries to an account book shall be recorded in the order of the pages consecutively numbered. Any occurrence of mistake, skip of page, omission of number or skip of line in the entry to an account book shall be remedied according to the method specified in the State's unified accounting system, and the interested accountant and the person in charge of the accounting office (or the accountant-in-charge) shall affix their seals right over the place where remedy is made.
If computers are used for accounting practice, the entries and corrections of account books shall comply with the provisions of the State's unified accounting system.

Article 16 All economic and business transactions take place in a unit shall be recorded and calculated in the account books set up according to law, and no unit may, in violation of the provisions of this Law and the State's unified accounting system, set up privately any other account book for recording and calculating such transactions.

Article 17 All units shall regularly check the records in their account books against the property in kind, amount of money and related materials and shall ensure the conformity between the records in the account books and the actual amount of property in kind and money, the conformity of the related contents between the account books and the accounting documents, the conformity of the corresponding records between the relevant account books, and the conformity between the records of account books and the related contents in the accounting statements.

Article 18 The accounting method used by a unit shall be consistent throughout all periods and may not be changed arbitrarily; if it is necessary to change the method, it shall be changed according to the provisions of the State's unified accounting system, and the cause for the change, the situation and impact of the change shall all be explained in the financial accounting statement.

Article 19 Such probable items as guarantee provided by a unit and pending legal proceedings shall be explained in the financial accounting statement in accordance with the provisions of the State's unified accounting system.

Article 20 Financial accounting statements shall be prepared on the basis of the examined and verified records of the account books and the related materials information and comply with the requirements set by this Law and the State's unified accounting system for the preparation of financial accounting statements as well as the provisions concerning the target and time limit of their submission; if other laws and administrative regulations provides otherwise, those provisions shall govern.
A financial accounting statement shall be composed of the accounting statement, notes to the accounting statement and explanations on financial conditions. The basis for preparing financial accounting statements to be provided to the different users of accounting materials shall be uniform. If the accounting statements, notes to the accounting statements and explanations on financial conditions must, as stipulated by related laws and administrative regulations, be subject to auditing by a certified public accountant, the auditing report issued by the certified public accountant and the interested certified public accountant's office shall be provided together with the financial accounting statement.

Article 21 The financial accounting statement shall be signed and stamped by the person in charge of the unit, the person in charge of the accounting work and the person in charge of the accounting office (or the accountant-in-charge). If a unit has a chief accountant, it must also be signed and stamped by the chief accountant.
The person in charge of the unit shall guarantee the truthfulness and the completeness of the financial accounting statement.

Article 22 The language used for accounting records shall be Chinese. In the national autonomous areas, a national language commonly used in the area may concurrently be used for accounting records. A foreign investment enterprise, foreign enterprise or any other foreign organization in the territory of the People's Republic of China may concurrently use a foreign language for its accounting records.

Article 23 All units shall establish and properly preserve archives for their accounting documents, account books, financial accounting statements and other accounting materials. The period of preservation of the archives and the procedures for their destruction shall be stipulated jointly by the department of finance under the State Council and the relevant departments.

Chapter III Special Provisions on Accounting Practice of Companies and Enterprises

Article 24 Accounting practice of companies and enterprises shall, in addition to the compliance with the provisions of Chapter II of this Law, comply with the provisions of this Chapter.

Article 25 Companies and enterprises must, according to the economic and business transactions actually taken place and in accordance with the provisions of the State's unified accounting system, verify, compute and record their assets, liabilities, creditor's rights, incomes, expenses, costs and profits.

Article 26 In fulfilling accounting practice, companies and enterprises may not commit any of the following acts:
(1) arbitrarily changing the verification standards or computation method for their assets, liabilities and creditor's rights, and falsifying the statement of their assets, liabilities and creditor's rights by false statement, over-statement, no-statement or under-statement;
(2) false statement of or concealing their incomes, delaying or anticipating the verification of their incomes;
(3) arbitrarily changing the verification standards or computation method for their expenses and costs, and falsifying the statement of their expenses and costs by false statement, over-statement, no-statement or under-statement;
(4) arbitrarily adjusting the computation and distribution method for profits, conjuring up false profits or concealing profits; or
(5) any other act violating the provisions of the State's unified accounting system.

Chapter IV Accounting Supervision

Article 27 All units shall establish and perfect their internal accounting supervision system. The units' internal accounting supervision system shall meet the following requirements:
(1) The limits of, responsibilities and powers of the persons to record the accounts, the persons to examine and approve economic and business transactions and accounting affairs, the persons to deal with economic and business transactions and accounting affairs and the persons to keep money and property shall be clearly defined as well as mutually separated and constrained;
(2) The mutual supervision and mutual constraint procedures for making and implementing the decisions on important external investment, assets disposition, capital allocation and other important economic and business transactions shall be clearly defined;
(3) The scope, time limit and organizational procedures for inventory-taking of property shall be clearly defined; and
(4) The measures and procedures for regular internal auditing of accounting materials shall be clearly defined.

Article 28 The person in charge of a unit shall guarantee that the accounting office and accounting personnel perform their duties according to law, and may not suggest, instruct or compel the accounting office and accounting personnel to handle accounting affairs in violation of law.
Accounting offices and accounting personnel are entitled to refuse the conduct of any accounting affair violating the provisions of this Law and the State's unified accounting system, or to rectify any such violation according to their duties and powers.

Article 29 The accounting offices or the accounting personnel shall, whenever discovering any unconformity between records of account books and property in kind, money and related materials, handle the case without delay if they have the power to handle it on their own according to the provisions of the State's unified accounting system; if they do not have the power to handle the case on their own, they shall immediately report it to the person in charge of the unit and request him to ascertain the cause and to handle it.

Article 30 Any unit or person is entitled to accuse any act violating the provisions of this Law and the State's unified accounting system. The department receiving the accusation shall, in accordance with the division of duties and functions, deal with the case without delay according to law if it has the power to do so; if the department does not have such power, it shall, without delay, transfer the case to the department which has the power to deal with it. The department receiving the accusation and the department responsible to deal with the case shall keep secret for the accusing person, and may not disclose the name of the accusing person and transfer the accusing materials to the unit or person accused.

Article 31 Units which, according to the provisions of relevant laws and administrative regulations, shall be subject to auditing by a certified public accountant, shall truthfully provide accounting documents, account books, financial accounting statements and other accounting materials as well as related situations to the empowered certified public accountants' office.
No unit or person may, by any means, request or instruct a certified public accountant and the interested certified public accountants' office to issue any untrue or improper auditing report.
Departments of finance are entitled to supervise the procedures and contents of the auditing reports issued by certified public accountants' offices.

Article 32 Departments of finance shall exercise supervision over the following situations in all units:
(1) Whether account books have been established according to law;
(2) Whether the accounting documents, account books, financial accounting statements and other accounting materials are truthful and complete;
(3) Whether the accounting practice complies with the provisions of this Law and the State's unified accounting system; and
(4) Whether the persons engaged in the accounting work have the qualifications.
In exercising supervision over the situations mentioned in sub-paragraph (2) of the preceding paragraph, if there is suspicion of serious law-violation, the department of finance under the State Council and its designated agencies may make inquiries of the units which have economic and business transactions with the unit under supervision and of the financial institutions at which the unit under supervision has opened accounts; the units and financial institutions involved shall render support.

Article 33 Departments in charge of finance, auditing and taxation, the people's banks as well as securities regulatory and insurance regulatory authorities shall, in accordance with the duties and functions specified by the relevant laws and administrative regulations, exercise supervision over and conduct inspection of the accounting materials of the related units.
The supervisory and inspection departments mentioned in the preceding paragraph shall issue inspection conclusions after exercising supervision over and conducting inspection of the accounting materials of the related units according to law. If the inspection conclusion made by a supervisory and inspection department is sufficient to meet the requirements of other supervisory and inspection departments for performing their duties and functions, the other supervisory and inspection departments shall make use of the conclusion and shall avoid making repeated account inspection and verification.

Article 34 Departments and their personnel exercising supervision over and conducting inspection of the accounting materials of the related units according to law have the obligation to keep confidential all State secrets and commercial

secrets that came to their knowledge in their supervision and inspection.

Article 35 All units must, in accordance with the provisions of relevant laws and administrative regulations, accept the supervision and inspection conducted according to law by the relevant supervisory and inspection departments and honestly furnish accounting documents, account books, financial accounting statements and other accounting materials and relevant situations, and may not refuse inspection, conceal materials or report falsely.

Chapter V Accounting Offices and Accounting Personnel

Article 36 Each unit shall, according to the needs of its accounting affair, set up an accounting office or staff a relevant office with accountant and designate a person as accountant in charge. Where conditions do not so permit, the unit may entrust its bookkeeping to an intermediary agency engaged in bookkeeping and established with due approval.
Any large and medium-sized enterprises owned by the State, or in which State-owned assets have a controlling stake or dominant position, must institute a chief accountant. The qualifications, the procedures for appointment and dismissal and limits of duties and powers of the chief accountant shall be prescribed by the State Council.

Article 37 In all accounting offices, an internal auditing system shall be instituted.
A cashier shall not concurrently take charge of auditing, custody of accounting archives or recording the revenue, expense or claims and liability accounts.

Article 38 Whoever engages in accounting work must obtain a professional accountant qualification certificate.
A person in charge of an accounting office (or an accountant-in-charge) in a unit shall, in addition to obtaining a professional accountant qualification certificate, have the professional title of certified accountant or above, or have engaged in accounting work for more than three years.
Measures for the administration of professional qualifications for accountants shall be stipulated by the department of finance under the State Council.

Article 39 Accounting personnel shall abide by their code of ethics and improve their professional quality. Education and training for accounting personnel shall be enhanced.

Article 40 A person who is investigated for criminal responsibility according to law due to any illegal acts pertaining to his accounting position such as making untrue financial accounting statement or false account, concealing or intentionally destroying accounting documents, account books or financial accounting statement, embezzling or misappropriating public funds or seizing property by taking advantage of his position, may not obtain or obtain again a professional accountant qualification certificate.
Besides the cases mentioned in the preceding paragraph, whoever is punished by revocation of his professional accountant qualification certificate may not obtain again a new professional accountant qualification certificate within five years from the date of revocation of his original certificate.

Article 41 An accountant to be transferred to another place or to leave his post must fulfill the hand-over procedure with the person to take over his post.
The person in charge of the accounting office or the accountant in charge shall supervise the hand-over procedure to be fulfilled by ordinary accountants. The person in charge of the unit shall supervise the hand-over procedure to be fulfilled by persons in charge of the accounting office or accountants in charge; when necessary, the competent authority may send people to jointly supervise the hand-over.

Chapter VI Legal Liability

Article 42 Whoever, in violation of the provisions of this Law, commits any of the following acts, the department of finance under the people's government at or above the county level shall order it to make corrections within a given period of time and may concurrently impose a fine of not less than 3,000 yuan but not more than 50,000 yuan on the unit and a fine of

not less than 2,000 yuan but not more than 20,000 yuan on the person-in-charge directly responsible and other persons directly responsible; if the said person is a State functionary, the unit to which he belongs or the interested unit shall give him administrative sanctions according to law in addition:
(1) failing to set up account books according to law;
(2) setting up an account book in private;
(3) failing to fill in or obtain original documents as stipulated or the original documents filled in or obtained do not comply with the provisions;
(4) entering into an account book on the basis of accounting documents not examined and verified, or in a manner not conforming to the provisions;
(5) arbitrarily changing the accounting method;
(6) the basis for preparing financial accounting statements provided to different users of accounting materials is inconsistent;
(7) not using the language or basic accounting currency for accounting records as stipulated;
(8) failing to preserve accounting materials as stipulated, causing thus damage or losses of accounting materials;
(9) failing to set up and implement the unit's internal accounting supervision system as required, or refusing supervision conducted according to law or failing to truthfully provide relevant accounting materials and relevant particulars; or
(10) employing accounting personnel in a manner not complying with the provisions of this Law.
Where any of the acts mentioned in the preceding paragraph constitutes a crime, criminal responsibility shall be investigated according to law.
Where any of the acts committed by an accountant as mentioned in the first paragraph constitutes a serious case, the department of finance under the people's government at or above the county level shall revoke his professional accountant qualification certificate.
If relevant laws stipulate otherwise on the punishment of acts mentioned in the first paragraph, the provisions of those laws shall govern.

Article 43 Where forgery or alteration of an accounting document or account book or preparation of a false financial accounting statement constitutes a crime, criminal responsibility shall be investigated according to law.
If the offence mentioned in the preceding paragraph does not constitute a crime, the department of finance under the people's government at or above the county level shall circulate a notice of criticism and may concurrently impose a fine of not less than 5,000 yuan and not more than 100,000 yuan on the unit and a fine of not less than 3,000 yuan and not more than 50,000 yuan on the person-in-charge directly responsible and other persons directly responsible; if the said person is a State functionary, the unit to which he belongs or the interested unit shall give him in addition administrative sanctions according to law such as removal from position up to expulsion from public function; with regard to the accounting personnel involved, the department of finance under the people's government at or above the county level shall revoke their professional accountant qualification certificates.

Article 44 Where concealment or intentional destruction of any accounting document, account book or financial accounting statement that shall be preserved according to law constitutes a crime, criminal responsibility shall be investigated according to law.
If the offence mentioned in the preceding paragraph does not constitute a crime, the department of finance under the people's government at or above the county level shall circulate a notice of criticism and may concurrently impose a fine of not less than 5,000 yuan but not more than 100,000 yuan on the unit and a fine of not less than 3,000 yuan and not more than 50,000 yuan on the person-in-charge directly responsible and other persons directly responsible; if the offender is a State functionary, the unit to which he belongs or the interested unit shall give him in addition administrative sanctions according to law such as removal from position up to expulsion from the public function; with regard to the accounting personnel involved, the department of finance under the people's government at or above the county level shall revoke his professional accountant qualification certificate.

Article 45 Whoever suggests, instructs or compels an accounting office, an accountant or any other person to forge or alter any accounting document or account book or to prepare any untrue financial accounting statement or to conceal or intentionally destroy any accounting document, account book or financial accounting statement that shall be preserved according to law shall be investigated for his criminal responsibility according to law if the offence constitutes a crime; if the offence does not constitute a crime, a fine of not less than 5,000 yuan and not more than 50,000 yuan may be imposed; and if the offender is a State functionary, he shall be given in addition administrative sanctions according to law such as degradation, removal from position or expulsion from the public function by the unit to which he belongs or by the interested unit.

Article 46 The person in charge of a unit who retaliates against any accountant who performs his duties according to law and rejects acts violating this Law in form of degradation, removal from position, transfer to another job, disengagement or expulsion from the public function shall be investigated for his criminal responsibility according to law if the offence constitutes a crime; if the offence does not constitute a crime, administrative sanctions shall be given according to law by the unit to which the offender belongs or by the interested unit. The reputation of the accountant retaliated shall be rehabilitated and his original position and grade be restored.

Article 47 The functionary of a department of finance or of a relevant administrative department who, in exercising supervision and administration, abuses his power, neglects his duty, practices favoritism or irregularity or divulges State secrets or commercial secrets shall be investigated for his criminal responsibility according to law if the offence constitutes a crime; if the offence does not constitute a crime, administrative sanctions shall be given according to law.

Article 48 Whoever in violation of the provisions of Article 30 of this Law, discloses the name of an accusing person and transfers the accusing materials to the unit or person accused shall be given administrative sanctions according to law by the unit to which he belongs or by the interested unit.

Article 49 Whoever violates the provisions of this Law and concurrently the provisions of other laws shall be punished according to law by the interested departments within the scopes of their respective powers.

Chapter VII Supplemental Provisions

Article 50 The following terms used in this Law mean respectively:
Person in charge of a unit means the legal representative of a unit or the major person representing a unit in exercising functions and powers as provided for by laws and administrative regulations.
The State's unified accounting system means the system for accounting practice, accounting supervision, accounting offices, accounting personnel and the management of accounting work formulated by the department of finance under the State Council in accordance with this Law.

Article 51 Specific measures for accounting control in private industrial and commercial households shall be separately provided for by the department of finance under the State Council in the light of the principles of this Law.

Article 52 This Law shall go into effect as of July 1, 2000.

中华人民共和国会计法

（1999 年 10 月 31 日第九届全国人大常委会第十二次会议修订通过）

第一章　总 则

第一条 为了规范会计行为，保证会计资料真实、完整，加强经济管理和财务管理，提高经济效益，维护社会主义市场经济秩序，制定本法。

第二条 国家机关、社会团体、公司、企业、事业单位和其他组织（以下统称单位）必须依照本法办理会计事务。

第三条 各单位必须依法设置会计帐簿，并保证其真实、完整。

第四条 单位负责人对本单位的会计工作和会计资料的真实性、完整性负责。

第五条 会计机构、会计人员依照本法规定进行会计核算，实行会计监督。任何单位或者个人不得以任何方式授意、指使、强令会计机构、会计人员伪造、变造会计凭证、会计帐簿和其他会计资料，提供虚假财务会计报告。

任何单位或者个人不得对依法履行职责、抵制违反本法规定行为的会计人员实行打击报复。

第六条 对认真执行本法，忠于职守，坚持原则，做出显著成绩的会计人员，给予精神的或者物质的奖励。

第七条 国务院财政部门主管全国的会计工作。

县级以上地方各级人民政府财政部门管理本行政区域内的会计工作。

第八条 国家实行统一的会计制度。国家统一的会计制度由国务院财政部门根据本法制定并公布。

国务院有关部门可以依照本法和国家统一的会计制度制定对会计核算和会计监督有特殊要求的行业实施国家统一的会计制度的具体办法或者补充规定，报国务院财政部门审核批准。

中国人民解放军总后勤部可以依照本法和国家统一的会计制度制定军队实施国家统一的会计制度的具体办法，报国务院财政部门备案。

第二章　会计核算

第九条 各单位必须根据实际发生的经济业务事项进行会计核算，填制会计凭证，登记会计帐簿，编制财务会计报告。

任何单位不得以虚假的经济业务事项或者资料进行会计核算。

第十条 下列经济业务事项，应当办理会计手续，进行会计核算：

1、款项和有价证券的收付；

2、财物的收发、增减和使用；

3、债权债务的发生和结算；

4、资本、基金的增减；

5、收入、支出、费用、成本的计算；

6、财务成果的计算和处理；

7、需要办理会计手续、进行会计核算的其他事项

第十一条 会计年度自公历 1 月 1 日起至 12 月 31 日止。

第十二条 会计核算以人民币为记帐本位币。

业务收支以人民币以外的货币为主的单位，可以选定其中一种货币作为记帐本位币，但是编报的财务会计报告应当折算为人民币。

第十三条 会计凭证、会计帐簿、财务会计报告和其他会计资料，必须符合国家统一的会计制度的规定。

使用电子计算机进行会计核算的，其软件及其生成的会计凭证、会计帐簿、财务会计报告和其他会计资料，也必须符合国家统一的会计制度的规定。

任何单位和个人不得伪造、变造会计凭证、会计帐簿及其他会计资料，不得提供虚假的财务会计报告。

第十四条 会计凭证包括原始凭证和记帐凭证。

办理本法第十条所列的经济业务事项，必须填制或者取得原始凭证并及时送交会计机构。

会计机构、会计人员必须按照国家统一的会计制度的规定对原始凭证进行审核，对不真实、不合法的原始凭证有权不予接受，并向单位负责人报告；对记载不准确、不完整的原始凭证予以退回，并要求按照国家统一的会计制度的规定更正、补充。

原始凭证记载的各项内容均不得涂改；原始凭证有错误的，应当由出具单位重开或者更正，更正处应当加盖出具单位印章。原始凭证金额有错误的，应当由出具单位重开，不得在原始凭证上更正。

记帐凭证应当根据经过审核的原始凭证及有关资料编制。

第十五条 会计帐簿登记，必须以经过审核的会计凭证为依据，并符合有关法律、行政法规和国家统一的会计制度的规定。会计帐簿包括总帐、明细帐、日记帐和其他辅助性帐簿。

会计帐簿应当按照连续编号的页码顺序登记。会计帐簿记录发生错误或者隔页、缺号、跳行的，应当按照国家统一的会计制度规定的方法更正，并由会计人员和会计机构负责人（会计主管人员）在更正处盖章。

使用电子计算机进行会计核算的，其会计帐簿的登记、更正，应当符合国家统一的会计制度的规定。

第十六条 各单位发生的各项经济业务事项应当在依法设置的会计帐簿上统一登记、核算，不得违反本法和国家统一的会计制度的规定私设会计帐簿登记、核算。

第十七条 各单位应当定期将会计帐簿记录与实物、款项及有关资料相互核对，保证会计帐簿记录与实物及款项的实有数额相符、会计帐簿记录与会计凭证的有关内容相符、会计帐簿之间相对应的记录相符、会计帐簿记录与会计报表的有关内容相符。

第十八条 各单位采用的会计处理方法，前后各期应当一致，不得随意变更；确有必要变更的，应当按照国家统一的会计制度的规定变更，并将变更的原因、情况及影响在财务会计报告中说明。

第十九条 单位提供的担保、未决诉讼等或有事项，应当按照国家统一的会计制度的规定，在财务会计报告中予以说明。

第二十条 财务会计报告应当根据经过审核的会计帐簿记录和有关资料编制，并符合本法和国家统一的会计制度关于财务会计报告的编制要求、提供对象和提供期限的规定；其他法律、行政法规另有规定的，从其规定。

财务会计报告由会计报表、会计报表附注和财务情况说明书组成。向不同的会计资料使用者提供的财务会计报告，其编制依据应当一致。有关法律、行政法规规定会计报表、会计报表附注和财务情况说明书须经注册会计师审计的，注册会计师及其所在的会计师事务所出具的审计报告应当随同财务会计报告一并提供。

第二十一条 财务会计报告应当由单位负责人和主管会计工作的负责人、会计机构负责人（会计主管人员）签名并盖章；设置总会计师的单位，还须由总会计师签名并盖章。

单位负责人应当保证财务会计报告真实、完整。

第二十二条 会计记录的文字应当使用中文。在民族自治地方，会计记录可以同时使用当地通用的一种民族文字。在中华人民共和国境内的外商投资企业、外国企业和其他外国组织的会计记录可以同时使用一种外国文字。

第二十三条 各单位对会计凭证、会计帐簿、财务会计报告和其他会计资料应当建立档案，妥善保管。会计档案的保管期限和销毁办法，由国务院财政部门会同有关部门制定。

第三章　公司、企业会计核算的特别规定

第二十四条 公司、企业进行会计核算，除应当遵守本法的第二章的规定外，还应当遵守本章规定。

第二十五条 公司、企业必须根据实际发生的经济业务事项，按照国家统一的会计制度的规定确认、计量和记录资产、负债、所有者权益、收入、费用、成本和利润。

第二十六条 公司、企业进行会计核算不得有下列行为：

（一）随意改变资产、负债、所有者权益的确认标准或者计量方法，虚列、多列、不列或者少列资产、负债、所有者权益；

（二）虚列或者隐瞒收入，推迟或者提前确认收入；

（三）随意改变费用、成本的确认标准或者计量方法，虚列、多列、不列或者少列费用、成本；

（四）随意调整利润的计算、分配方法，编造虚假利润或者隐瞒利润；

（五）违反国家统一的会计制度规定的其他行为。

第四章　会计监督

第二十七条 各单位应当建立、健全本单位内部会计监督制度。单位内部会计监督制度应当符合下列要求：

（一）记帐人员与经济业务事项和会计事项的审批人员、经办人员、财物保管人员的职责权限应当明确，并相互分离、相互制约；

（二）重大对外投资、资产处置、资金调度和其他重要经济业务事项的决策和执行的相互监督、相互制约程序应当明确；

（三）财产清查的范围、期限和组织程序应当明确；

（四）对会计资料定期进行内部审计的办法和程序应当明确。

第二十八条 单位负责人应当保证会计机构、会计人员依法履行职责，不得授意、指使、强令会计机构、会计人员违法办理会计事项。

会计机构、会计人员对违反本法和国家统一的会计制度规定的会计事项，有权拒绝办理或者按照职权予以纠正。

第二十九条 会计机构、会计人员发现会计帐簿记录与实物、款项及有关资料不相符的，按照国家统一的会计制度的规定有权自行处理的，应当及时处理；无权处理的，应当立即向单位负责人报告，请求查明原因，作出处理。

第三十条 任何单位和个人对违反本法和国家统一的会计制度规定的行为，有权检举。收到检举的部门有权处理的，应当依法按照职责分工及时处理；无权

处理的，应当及时移送有权处理的部门处理。收到检举的部门、负责处理的部门应当为检举人保密，不得将检举人姓名和检举材料转给被检举单位和被检举人个人。

第三十一条 有关法律、行政法规规定，须经注册会计师进行审计的单位，应当向受委托的会计师事务所如实提供会计凭证、会计帐簿、财务会计报告和其他会计资料以及有关情况。

任何单位或者个人不得以任何方式要求或者示意注册会计师及其所在的会计师事务所出具不实或者不当的审计报告。

财政部门有权对会计师事务所出具审计报告的程序和内容进行监督。

第三十二条 财政部门对各单位的下列情况实施监督：

（一）是否依法设置会计帐簿；

（二）会计凭证、会计帐簿、财务会计报告和其他会计资料是否真实、完整；

（三）会计核算是否符合本法和国家统一的会计制度的规定；

（四）从事会计工作的人员是否具备从业资格。

在对前款第（二）项所列事项实施监督，发现重大违法嫌疑时，国务院财政部门及其派出机构可以向与被监督单位有经济业务往来的单位和被监督单位开立帐户的金融机构查询有关情况，有关单位和金融机构应当给予支持。

第三十三条 财政、审计、税务、人民银行、证券监管、保险监管等部门应当依照有关法律、行政法规规定的职责，对有关单位的会计资料实施监督检查。

前款所列监督检查部门对有关单位的会计资料依法实施监督检查后，应当出具检查结论。有关监督检查部门已经作出的检查结论能够满足其他监督检查部门履行本部门职责需要的，其他监督检查部门应当加以利用，避免重复查帐。

第三十四条 依法对有关单位的会计资料实施监督检查的部门及其工作人员对在监督检查中知悉的国家秘密和商业秘密负有保密义务。

第三十五条 各单位必须依照有关法律、行政法规的规定，受有关监督检查部门依法实施的监督检查，如实提供会计凭证、会计帐簿、财务会计报告和其他会计资料以及有关情况，不得拒绝、隐匿、谎报。

第五章　会计机构和会计人员

第三十六条 各单位应当根据会计业务的需要，设置会计机构，或者在有关机构中设置会计人员并指定会计主管人员；不具备设置条件的，应当委托经批准设立从事会计代理记帐业务的中介机构代理记帐。

国有的和国有资产占控股地位或者主导地位的大、中型企业必须设置总会计师。总会计师的任职资格、任免程序、职责权限由国务院规定。

第三十七条 会计机构内部应当建立稽核制度。

出纳人员不得兼任稽核、会计档案保管和收入、支出、费用、债权债务帐目的登记工作。

第三十八条 从事会计工作的人员，必须取得会计从业资格证书。

担任单位会计机构负责人（会计主管人员）的，除取得会计从业资格证书外，还应当具备会计师以上专业技术职务资格或者从事会计工作三年以上经历。

会计人员从业资格管理办法由国务院财政部门规定。

第三十九条 会计人员应当遵守职业道德，提高业务素质。对会计人员的教育和培训工作应当加强。

第四十条 因有提供虚假财务会计报告，做假帐，隐匿或者故意销毁会计凭证、会计帐簿、财务会计报告，贪污，挪用公款，职务侵占等与会计职务有关的违法行为被依法追究刑事责任的人员，不得取得或者重新取得会计从业资格证书。

除前款规定的人员外，因违法违纪行为被吊销会计从业资格证书的人员，自被吊销会计从业资格证书之日起五年内，不得重新取得会计从业资格证书。

第四十一条 会计人员调动工作或者离职，必须与接管人员办清交接手续。

一般会计人员办理交接手续，由会计机构负责人（会计主管人员）监交；会计机构负责人（会计主管人员）办理交接手续，由单位负责人监交，必要时主管单位可以派人会同监交。

第六章　法律责任

第四十二条 违反本法规定，有下列行为之一的，由县级以上人民政府财政部门责令限期改正，可以对单位并处三千元以上五万元以下的罚款；对其直接负责的主管人员和其他直接责任人员，可以处二千元以上二万元以下的罚款；属于国家工作人员的，还应当由其所在单位或者有关单位依法给予行政处分：

（一）不依法设置会计帐簿的；

（二）私设会计帐簿的；

（三）未按照规定填制、取得原始凭证或者填制、取得的原始凭证不符合规定的；

（四）以未经审核的会计凭证为依据登记会计帐簿或者登记会计帐簿不符合规定的；

（五）随意变更会计处理方法的；

（六）向不同的会计资料使用者提供的财务会计报告编制依据不一致的；

（七）未按照规定使用会计记录文字或者记帐本位币的；

（八）未按照规定保管会计资料，致使会计资料毁损、灭失的；

（九）未按照规定建立并实施单位内部会计监督制度或者拒绝依法实施的监督或者不如实提供有关会计资料及有关情况的；

（十）任用会计人员不符合本法规定的。

有前款所列行为之一，构成犯罪的，依法追究刑事责任。

会计人员有第一款所列行为之一，情节严重的，由县级以上人民政府财政部门吊销会计从业资格证书。

有关法律对第一款所列行为的处罚另有规定的，依照有关法律的规定的办理。

第四十三条 伪造、变造会计凭证、会计帐簿，编制虚假财务会计报告，构成犯罪的，依法追究刑事责任。

有前款行为，尚不构成犯罪的，由县级以上人民政府财政部门予以通报，可以对单位并处五千元以上十万元以下的罚款；对其直接负责的主管人员和其他直接责任人员，可以处三千元以上五万元以下的罚款；属于国家工作人员的，还应当由其所在单位或者有关单位依法给予撤职直至开除的行政处分；对其中的会计人员，并由县级以上人民政府财政部门吊销会计从业资格证书。

第四十四条 隐匿或者故意销毁依法应当保存的会计凭证、会计帐簿、财务会计报告，构成犯罪的，依法追究刑事责任。

有前款行为，尚不构成犯罪的，由县级以上人民政府财政部门予以通报，可以对单位并处五千元以上十万元以下的罚款；对其直接负责的主管人员和其他直接责任人员，可以处三千元以上五万元以下的罚款；属于国家工作人员的，还应当由其所在单位或者有关单位依法给予撤职直至开除的行政处分；对其中的会计人员，并由县级以上人民政府财政部门吊销会计从业资格证书。

第四十五条 授意、指使、强令会计机构、会计人员及其他人员伪造、变造会计赁证、会计帐簿，编制虚假财务会计报告或者隐匿、故意销毁依法应当保存的会计凭证、会计帐簿、财务会计报告，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，可以处五千元以上五万元以下的罚款；属于国家工作人员的，还应当由其所在单位或者有关单位依法给予降级、撤职、开除的行政处分。

第四十六条 单位负责人对依法履行职责、抵制违反本法规定行为的会计人员以降级、撤职、调离工作岗位、解聘或者开除等方式实行打击报复，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，由其所在单位或者有关单位依法给予行政处分。对受打击报复的会计人员，应当恢复其名誉和原有职务、级别。

第四十七条 财政部门及有关行政部门的工作人员在实施监督管理中滥用职权、玩忽职守、徇私舞弊或者泄露国家秘密、商业秘密，构成犯罪的，依法追究

刑事责任；尚不构成犯罪的，依法给予行政处分。

第四十八条 违反本法第三十条规定，将检举人姓名和检举材料转给被检举单位和被检举人个人的，由所在单位或者有关单位依法给予行政处分。

第四十九条 违反本法规定，同时违反其他法律规定的，由有关部门在各自职权范围内依法进行处罚。

第七章　附 则

第五十条 本法下列用语的含义：

单位负责人，是指单位法定代表人或者法律、行政法规规定代表单位行使职权的主要负责人。

国家统一的会计制度，是指国务院财政部门根据本法制定的关于会计核算、会计监督、会计机构和会计人员以及会计工作管理的制度。

第五十一条 个体工商户会计管理的具体办法，由国务院财政部门根据本法的原则另行规定。

第五十二条 本法自 2000 年 7 月 1 日起施行。

Labor Contract Law

Order of the President of the People's Republic of China

(No. 65)

The Labor Contract Law of the People's Republic of China, which was adopted at the 28th Session of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on June 29, 2007, is hereby promulgated and shall come into force as of January 1, 2008.

President of the People's Republic of China Hu Jintao

June 29, 2007

Labor Contract Law of the People's Republic of China

(Adopted at the 28th Session of Standing Committee of the Tenth National People's Congress of the People's Republic of China on June 29, 2007)

Contents

Chapter I General Provisions

Article 1 This Law is formulated for the purposes of improving the labor contractual system, clarifying the rights and obligations of both parties of labor contracts, protecting the legitimate rights and interests of employees, and establishing and developing a harmonious and stable employment relationship.

Article 2 This Law shall apply to the establishment of employment relationship between employees and enterprises, individual economic organizations, private

non-enterprise entities, or other organizations (hereafter referred to as employers), and to the formation, fulfillment, change, dissolution, or termination of labor contracts.

The state organs, public institutions, social organizations, and their employees among them there is an employment relationship shall observe this Law in the formation, fulfillment, change, dissolution, or termination of their labor contracts.

Article 3 The principle of lawfulness, fairness, equality, free will, negotiation for agreement and good faith shall be observed in the formation of a labor contract.

A labor contract concluded according to the law shall have a binding force. The employer and the employee shall perform the obligations as stipulated in the labor contract.

Article 4 An employer shall establish a sound system of employment rules so as to ensure that its employees enjoy the labor rights and perform the employment obligations.

Where an employer formulates, amends or decides rules or important events concerning the remuneration, working time, break, vacation, work safety and sanitation, insurance and welfare, training of employees, labor discipline, or management of production quota, which are directly related to the interests of the employees, such rules or important events shall be discussed at the meeting of employees' representatives or the general meeting of all employees, and the employer shall also put forward proposals and opinions to the employees and negotiate with the labor union or the employees' representatives on a equal basis to reach agreements on these rules or events.

During the process of execution of a rule or decision about an important event, if the labor union or the employees deems it improper, they may require the employer to amend or improve it through negotiations.

The employer shall make an announcement of the rules and important events which are directly related to the interests of the employees or inform the employees of these rules or events.

Article 5 The labor administrative department of the people's government at the county level or above shall, together with the labor union and the representatives of the enterprise, establish a sound three-party mechanism to coordinate employment relationship and shall jointly seek to solve the major problems related to employment relations.

Article 6 The labor union shall assist and direct the employees when they conclude with the employers and fulfill labor contracts and establish a collective negotiation mechanism with the employers so as to maintain the lawful rights and interests of the employees.

Chapter II Formation of Labor Contracts

Article 7 An employer establishes an employment relationship with an employee from the date when the employer puts the employee to work. The employer shall prepare a roster of employees for inspection.

Article 8 When an employer hires an employee, it shall faithfully inform him of the work contents, conditions and location, occupational harm, work safety state, remuneration, and other information which the employee requires to be informed. The employer has the right to know the basic information of the employer which is directly related to the labor contract and the employee shall faithfully provide such information.

Article 9 When an employer hires an employee, it shall not detain his identity card or other certificates, nor require him to provide a guaranty or collect money or property from him under any other excuse.

Article 10 A written labor contract shall be concluded in the establishment of an employment relationship.

Where an employment relationship has already been established with an employee but no written labor contract has been entered simultaneously, a written labor contract shall be concluded within one month from the date when the employee begins to work.

Where an employer and an employee conclude a labor contract prior to the employment, the employment relationship is established from the date when the employee begins to work.

Article 11 Where an employer fails to conclude a written labor contract when the employer put his employee to work, if the remuneration stipulated between the employer and the employee is not clear, the remuneration to the new employee shall conform to the provisions of the collective contract. If there is no collective contract or if there is no such stipulation in the collective contract, the principle of equal pay

for equal work shall be observed.

Article 12 Labor contracts are classified into fix-term labor contracts, labor contracts without a fixed term, and the labor contracts that set the completion of specific tasks as the term to end contracts.

Article 13 A fixed-term labor contract refers to a labor contract in which the employer and the employee stipulate the time of termination of the contract.

The employer and the employee may conclude a fixed-term labor contract upon negotiation.

Article 14 A labor contract without a fixed term refers to a labor contract in which the employer and the employee stipulate no certain time to end the contract.

An employer and an employee may, through negotiations, conclude a labor contract without a fixed term. Under any of the following circumstances, if the employee proposes or agrees to renew or conclude a labor contract, a labor contract without a fixed term shall be concluded unless the employee proposes to conclude a fixed-term labor contract:
1. The employee has already worked for the employer for 10 full years consecutively;
2. When the employer initially adopts the labor contract system or when a state-owned enterprise re-concludes the labor contract due to restructuring, the employee has already worked for this employer for 10 full years consecutively and he attains to the age which is less than 10 years up to the statutory retirement age; or
3. The labor contract is to be renewed after two fixed-term labor contracts have been concluded consecutively, and the employee is not under any of the circumstances as mentioned in Article 39 and Paragraphs (1) and (2) of Article 40 of this Law.

If the employer fails to sign a written labor contract with an employee after the lapse of one full year from the date when the employee begins to work, it shall be deemed that the employer and the employee have concluded a labor contract without a fixed term.

Article 15 A labor contract that sets the completion of a specific task as the term to end the contract refers to the labor contract in which the employer and the employee stipulate that the time period of the contract shall be based on the completion of a specific task.

An employer and an employee may, upon negotiation, conclude a labor contract that sets the completion of a specific task to end the contract.

Article 16 A labor contract shall be agreed with by the employer and the employee and shall come into effect after the employer and the employee affix their signatures or seals to the labor contract.

The employer and the employee shall each hold one copy of the labor contract.

Article 17 A labor contract shall include the following clauses:
1. The employer's name, domicile, legal representative, or major person-in-charge;
2. The employee's name, domicile, identity card number, or other valid identity certificate number;
3. The time limit for the labor contract;
4. The job descriptions and work locations;
5. The work hours, break time, and vocations;
6. The remunerations;
7. The social security;
8. The employment protection, work conditions, and protection against and prevention of occupational harm; and
9. Other items that shall be included in the labor contract under any laws or regulations.

Apart from the essential clauses as prescribed in the preceding paragraph, the employer and the employee may, in the labor contract, stipulate the probation time period, training, confidentiality, supplementary insurances, welfares and benefits, and other items.

Article 18 If remunerations, work conditions, and other criterions are not expressly stipulated in a labor contract and a dispute is triggered, the employer and the employee may re-negotiate the contract. If no agreement is reached through negotiations, the provisions of the collective contract shall be followed. If there is no collective contract or if there is no such stipulation about the remuneration, the principle of equal pay for equal work shall be observed. If there is no collective contract or if there is no such stipulation about the work conditions and other criterions in the collective contract, the relevant provisions of the state shall be followed.

Article 19 If the term of a labor contract is not less than 3 months but less than 1 year, the probation period shall not exceed one month. If the term of a labor contract is not less than one year but less than 3 years, the probation period shall not exceed 2 months. For a labor contract with a fixed term of 3 years or more or without a fixed term, the probation term shall not exceed 6 months.

An employer can only impose one probation time period on an employee.

For a labor contract that sets the completion of a specific task as the term to end the contract or with a fixed term of less than 3 months, no probation period may be stipulated.

The probation period shall be included in the term of a labor contract. If a labor contract only provides the term of probation, the probation shall be null and void and the term of the probation shall be treated as the term of the labor contract.

Article 20 The wage of an employee during the probation period shall not be lower than the minimum wage for the same position of the same employer or lower than 80% of the wage stipulated in the labor contract, nor may it be lower than the minimum wage of the locality where the employer is located.

Article 21 During the probation period, except when the employee is under any of the circumstances as described in Article 39 and Article 40 (i) and (ii), the employer shall not dissolve the labor contract. If an employer dissolves a labor contract during the probation period, it shall make an explanation.

Article 22 Where an employer pays special training expenses for the special technical training of his employees, the employer may enter an agreement with his employees to specify their service time period.

If an employee violates the stipulation regarding the service time period, he shall pay the employer a penalty for breach of contract. The amount of penalty for breach of contract shall not exceed the training fees provided by the employer. The penalty for breach of a contract in which the employer requires the employee to pay shall not exceed the training expenses attributable to the service time period that is unfulfilled.

The service time period stipulated by the employer and the employee does not affect the promotion of the remuneration of the employee during the probation period under the normal wage adjustment mechanism.

Article 23 An employer may enter an agreement with his employees in the labor contract to require his employees to keep the business secrets and intellectual property of the employer confidential.

For an employee who has the obligation of keeping confidential, the employer and the employee may stipulate non-competition clauses in the labor contract or in the confidentiality agreement and come to an agreement that, when the labor contract is dissolved or terminated, the employee shall be given economic compensations within

the non-competition period. If the employee violates the stipulation of non-competition, it shall pay the employer a penalty for breaching the contract.

Article 24 The persons who should be subject to non-competition shall be limited to the senior mangers, senior technicians, and the other employees, who have the obligation to keep secrets, of employers. The scope, geographical range and time limit for non-competition shall be stipulated by the employer and the employee. The stipulation on non-competition shall not be contrary to any laws or regulations.

After the dissolution or termination of a labor contract, the non-competition period for any of the persons as mentioned in the preceding paragraph to work in any other employer producing or engaging in products of the same category or engaging in business of the same category as this employer shall not exceed two years.

Article 25 Except for the circumstances as prescribed in Articles 22 and 23 of this Law, the employer shall not stipulate with the employee that the employee shall pay the penalty for breaching contract.

Article 26 The following labor contracts are invalid or are partially invalid if:
1. a party employs the means of deception or coercion or takes advantage of the other party's difficulties to force the other party to conclude a labor contract or to make an amendment to a labor contract, which is contrary to his will;
2. an employer disclaims its legal liability or denies the employee's rights; or
3. the mandatory provisions of laws or administrative regulations are violated.

If there is any dispute over the invalidating or partially invalidating of a labor contract, the dispute shall be settled by the labor dispute arbitration institution or by the people's court.

Article 27 The invalidity of any part of a labor contract does not affect the validity of the other parts of the contract. The other parts shall still remain valid.

Article 28 If a labor contract has been confirmed to be invalid, the employer shall pay remunerations to his employees who have labored for the employer. The amount of remunerations shall be determined by analogy to the remuneration to the employees taking up the same or similar positions of the employer .

Chapter III Fulfillment and Change of Labor Contracts

Article 29 An employer and an employee shall, according to the stipulations of the

labor contract, fully perform their respective obligations.

Article 30 An employer shall, under the contractual stipulations and the provisions of the state, timely pay its employees the full amount of remunerations.

Where an employer defers paying or fails to pay the full amount of remunerations, the employees may apply to the local people's court for an order of payment. The people's court shall issue an order of payment according to the law.

Article 31 An employer shall strictly execute the criterion on production quota, it shall not force any of its employees to work overtime or make any of his employees to do so in a disguised form. If an employer arranges overtime work, it shall pay its employee for the overtime work according to the relevant provisions of the state.

Article 32 If an employee refuses to perform the dangerous operations ordered by the manager of his employer who violates the safety regulations or forces the employee to risk his life, the employee shall not be deemed to have violated the labor contract.

An employee may criticize, expose to the authorities, or charge against the employer if the work conditions may endanger his life and health.

Article 33 An employer's change of its name, legal representative, key person-in-charge, or investor shall not affect the fulfillment of the labor contracts.

Article 34 In case of merger or split the original labor contracts of the employer still remain valid. Such labor contracts shall be performed by the new employer who succeeds the rights and obligations of the aforesaid employer.

Article 35 An employer and an employee may modify the contents stipulated in the labor contract if they so agree upon negotiations. The modifications to the labor contract shall be made in writing.

The employer and the employee shall each hold one copy of the modified labor contract.

Chapter IV Dissolution and Termination of Labor Contracts

Article 36 An employer and an employee may dissolve the labor contract if they so

agree upon negotiations.

Article 37 An employee may dissolve the labor contract if he notifies in writing the employer 30 days in advance. During the probation period, an employee may dissolve the labor contract if he notifies the employer 3 days in advance.

Article 38 Where an employer is under any of the following circumstances, its employees may dissolve the labor contract:
1. It fails to provide labor protection or work conditions as stipulated in the labor contract;
2. It fails to timely pay the full amount of remunerations;
3. It fails to pay social security premiums for the employees;
4. The rules and procedures set up by the employer are contrary to any law or regulation and impair the rights and interests of the employees;
5. The labor contract is invalidated due to the circumstance as mentioned in Article 26 (1) of this Law; or
6. Any other circumstances prescribed by other laws or administrative regulations that authorize employees to dissolve labor contracts.

If an employer forces any employee to work by the means of violence, threat, or illegally restraining personal freedom, or an employer violates the safety regulations to order or forces any employee to perform dangerous operations that endanger the employee's personal life, the employee may immediately dissolve the labor contract without notifying the employer in advance.

Article 39 Where an employee is under any of the following circumstances, his employer may dissolve the labor contract:
1. It is proved that the employee does not meet the recruitment conditions during the probation period;
2. The employee seriously violates the rules and procedures set up by the employer;
3. The employee causes any severe damage to the employer because he seriously neglects his duties or seeks private benefits;
4. The employee simultaneously enters an employment relationship with other employers and thus seriously affects his completion of the tasks of the employer, or the employee refuses to make the ratification after his employer points out the problem;
5. The labor contract is invalidated due to the circumstance as mentioned in Item (1), paragraph 1, Article 26 of this Law; or
6. The employee is under investigation for criminal liabilities according to law.

Article 40 Under any of the following circumstances, the employer may dissolve the

labor contract if it notifies the employee in writing 30 days in advance or after it pays the employee an extra month's wages:
1. The employee is sick or is injured for a non-work-related reason and cannot resume his original position after the expiration of the prescribed time period for medical treatment, nor can he assume any other position arranged by the employer;
2. The employee is incompetent to his position or is still so after training or changing his position; or
3. The objective situation, on which the conclusion of the labor contract is based, has changed considerably, the labor contract is unable to be performed and no agreement on changing the contents of the labor contract is reached after negotiations between the employer and the employee.

Article 41 Under any of the following circumstances, if it is necessary to lay off 20 or more employees, or if it is necessary to lay off less than 20 employees but the layoff accounts for 10% of the total number of the employees, the employer shall, 30 days in advance, make an explanation to the labor union or to all its employees. After it has solicited the opinions from the labor union or of the employees, it may lay off the number of employees upon reporting the employee reduction plan to the labor administrative department:

1. It is under revitalization according to the Enterprise Bankruptcy Law;
2. It encounters serious difficulties in production and business operation;
3. The enterprise changes products, makes important technological renovation, or adjusts the methods of its business operation, and it is still necessary to lay off the number of employees after changing the labor contract; or
4. The objective economic situation, on which the labor contract is based, has changed considerably and the employer is unable to perform the labor contract.

The following employees shall be given a priority to be kept when the employer cuts down the number of employees:
1. Those who have concluded a fixed-term labor contract with a long time period
2. Those who have concluded a labor contract without fixed term; and
3. Those whose family has no other employee and has the aged or minors to support.

If the employer intends to hire new employees within 6 months after it cuts down the number of employees according to the first paragraph of this Article, it shall notify the employees cut down and shall, in the equal conditions, give a priority to the employees cut down.

Article 42 An employer shall not dissolve the labor contract under Articles 40 and 41 of this Law if any of its employee:
1. is engaging in operations exposing him to occupational disease hazards and has not

undergone an occupational health check-up before he leaves his position, or is suspected of having an occupational disease and is under diagnosis or medical observation;
2. has been confirmed as having lost or partially lost his capacity to work due to an occupational disease or a work-related injury during his employment with the employer ;
3. has contracted an illness or sustained a non-work-related injury and the proscribed time period of medical treatment has not expired;
4. is a female who is in her pregnancy, confinement, or nursing period;
5. has been working for the employer continuously for not less than 15 years and is less than 5 years away from his legal retirement age; or
6. finds himself in other circumstances under which an employer shall not dissolve the labor contract as proscribed in laws or administrative regulations

Article 43 Where an employer unilaterally dissolves a labor contract, it shall notify the labor union of the reasons in advance. If the employer violates any laws, administrative regulation, or stipulations of the labor contract, the labor union has the power to require the employer to make ratification. The employer shall consider the opinions of the labor union and notify the labor union of the relevant result in writing.

Article 44 A labor contract may be terminated under any of the following circumstances:
1. the term of a labor contract has expired;
2. the employee has begun to enjoy the basic benefits of his pension;
3. the employee is deceased, or is declared dead or missing by the people's court;
4. the employer is declared bankrupt;
5. the employer's business license is revoked or the employer is ordered to close down its business or to dissolve its business entity, or the employer makes a decision to liquidate its business ahead of the schedule; or
6. other circumstances proscribed by other laws or administrative regulations.

Article 45 If a labor contract expires and it is under any of the circumstances as described in Article 42 of this Law, the term of labor contract shall be extended until the disappearance of the relevant circumstance. However, the matters relating to the termination of the labor contract of an employee who has lost or partially lost his capacity to work as prescribed in Article 42 (ii) of this Law shall be handled according to the pertinent provisions on work-related injury insurance.

Article 46 The employer shall, under any of the following circumstances, pay the employee an economic compensation:
1. The employee dissolves the labor contract in pursuance of Article 38 of this Law;

2. The employer proposes to dissolve the labor contract, and it reaches an agreement with the employee on the dissolution through negotiations;
3. The employer dissolves the labor contract according to Article 40 of this Law;
4. The employer dissolves the labor contract according to the first Paragraph of Article 41 of this Law; or
5.The termination of a fixed-term labor contract according to Article 44 (i) of this Law unless the employee refuses to renew the contract even though the conditions offered by the employer are the same as or better than those stipulated in the current contract;
6. The labor contract is terminated according to Article 44 (iv) and (v) of this Law; or
7. Other circumstances as proscribed in other laws and administrative regulations.

Article 47 An employee shall be given an economic compensation based on the number of years he has worked for the employer and at the rate of one month's wage for each full year he worked. Any period of not less than six months but less than one year shall be counted as one year. The economic compensations payable to an employee for any period of less than six months shall be one-half of his monthly wages.

If the monthly wage of an employee is higher than three times the average monthly wage of employees declared by the people's government at the level of municipality directly under the central government or at the level of a districted city where the employer is located, the rate for the economic compensations to be paid to him shall be three times the average monthly wage of employees and shall be for no more than 12 years of his work.

The term of “monthly wage” mentioned in this Article refers to the employee's average monthly wage for the 12 months prior to the dissolution or termination of his labor contract.

Article 48 If an employer dissolves or terminates a labor contract in violation of this Law but the employee demands the continuous fulfillment of the contract, the employer shall do so. If the employee does not demand the continuous fulfillment of the contract or if the continuous fulfillment of the labor contract is impossible, the employer shall pay compensation to the employee according to Article 87 of this Law.

Article 49 The State shall take measures to establish and improve a comprehensive system to ensure that the employees' social security relationship can be transferred from one region to another and can be continued after the transfer.
Article 50 At the time of dissolution or termination of a labor contract, the employer shall issue a document to prove the dissolution or termination of the labor contract and complete, within 15 days, the procedures for the transfer of the employee's personal file and social security relationship.

The employee shall complete the procedures for the handover of his work as agreed upon between both parties. If relevant provisions of this Law require the employer to pay an economic compensation, it shall make a payment upon completion of the procedures for the handover of the employee's work.

The employer shall preserve the labor contracts, which have been dissolved or terminated, for not less than two years for reference purposes.

Chapter V Special Provisions

Section 1 Collective Contracts

Article 51 The employees of an enterprise may get together as a party to negotiate with their employer to conclude a collective contract on the matters of remuneration, working hours, breaks, vacations, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the general assembly of employees or all the employees for discussion and approval.

A collective contract may be concluded by the labor union on behalf of the employees of enterprise with the employer. If the enterprise does not have a labor union yet, the contract may be concluded between the employer and the representatives chosen by the employees under the guidance of the labor union at the next higher level.

Article 52 The employees of an enterprise as a party may negotiate with the employer to enter specialized collective contracts regarding the issues of the work safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.

Article 53 Industrial or regional collective contracts may be concluded between the labor unions and the representatives of enterprises in industries such as construction, mining, catering services, etc. in the regions at or below the county level.

Article 54 After a collective contract has been concluded, it shall be submitted to the labor administrative department. The collective contract shall become effective after the lapse of 15 days from the date of receipt thereof by the labor administrative department, unless the said department raises any objections to the contract.

A collective contract that has been concluded according to law is binding on both the employer and the employees. An industrial or regional collective contract is binding on both the employers and employees in the local industry or the region.

Article 55 The standards for remunerations, working conditions, etc. as stipulated in a

collective contract shall not be lower than the minimum criterions as prescribed by the local people's government. The standards for remunerations, working conditions, etc. as stipulated in the labor contract between an employer and an employee shall not be lower than those as specified in the collective contract.

Article 56 If an employer's breach of the collective contract infringes upon the labor rights and interests of the employees, the labor union may, according to law, require the employer to bear the liability. If a dispute arising from the performance of the collective contract is not resolved after negotiations, the labor union may apply for arbitration or lodge a lawsuit in pursuance of law.

Section 2 Worker Dispatch Service

Article 57 A worker dispatch service provider shall be established according to the Company Lawand have a registered capital of not less than RMB 500,000 yuan.

Article 58 Worker dispatch service providers are employers as mentioned in this Law and shall perform an employer's obligations for its employees. The labor contract between a worker dispatch service provider and a worker to be dispatched shall, in addition to the matters specified in Article 17 of this law, specify such matters as the entity to which the worker will be dispatched, the term of dispatch, positions, etc.

The labor contracts between a worker dispatch service provider and the workers to be dispatched shall be fixed-term labor contract with a term of not less than two years. The worker dispatch service provider shall pay the remunerations on a monthly basis. During the time period when there is no work for the workers, the worker dispatch service provider shall compensate the workers on monthly basis at the minimum wage prescribed by the people's government of the place where the worker dispatch service provider is located.

Article 59 To dispatch workers, a worker dispatch service provider shall enter into dispatch agreements with the entity that accepts the workers under the dispatch arrangement (hereinafter referred to as the “accepting entity”). The dispatch agreements shall stipulate the positions to which the workers are dispatched, the number of persons to be dispatched, the term of dispatch, the amounts and terms of payments of remunerations and social security premiums, and the liability for breach of agreement.

An accepting entity shall decide with the worker service dispatch provider on the term of dispatch based on the actual requirements of the positions, and it shall not dismember a continuous term of labor use into two or more short-term dispatch

agreements.

Article 60 A worker dispatch service provider shall inform the workers dispatched of the content of the dispatch agreements.

No worker dispatch service provider may skimp any remuneration that an accepting entity pays to the workers according to the dispatch agreement.

No worker dispatch service provider or accepting entity may charge any fee against any dispatched worker.

Article 61 If a worker dispatch service provider assigns a worker to an accepting entity in another region, the worker's remuneration and work conditions shall be in line with the relevant standards of the place where the accepting entity is located.

Article 62 An accepting entity shall perform the following obligations:
1. To implement state labor standards and provide the corresponding working conditions and labor protection;
2. To communicate the job requirements and labor compensations for the dispatched workers;
3. To pay overtime remunerations and performance bonuses and provide benefits relevant to the position;
4. To provide the dispatched employees who assume the positions with required training; and
5. To implement a normal wage adjustment system in the case of continuous dispatch.

No accepting entity may in turn dispatch the workers to any other employer.

Article 63 The workers dispatched shall have the right to receive the same pay as that received by employees of the accepting entity for the same work. If an accepting entity has no employee in the same position, the remunerations shall be determined with reference to that paid in the place where the accepting entity is located to employees at the same or a similar position.

Article 64 The workers dispatched have the right to join the labor union of the worker dispatch service provider or of the accepting entity or to organize such unions, so as to protect their own lawful rights and interests.

Article 65 A worker dispatched may, according to Articles 36 and 38 of this Law, dissolve the labor contract between him and the worker dispatch service provider.

Where a worker dispatched is under any of the circumstances as mentioned in Article 39 and Article 40 (i) and (ii), the accepting entity may return the worker to the worker dispatch service provider, the worker dispatch service provider may dissolve the labor contract with the worker.

Article 66 The worker dispatch services shall normally be used for temporary, auxiliary, or substituting positions.

Article 67 No accepting entity may establish any worker dispatch service to dispatch the workers to itself and to its subsidiaries.

Section 3 Part-time Employments

Article 68 The “part-time employment” is a form of labor in which the remuneration is mainly calculated on hourly basis, the average working hours of a worker per day shall not exceed 4 hours, and the aggregate working hours per week for the same employer shall not exceed 24 hours.

Article 69 Both parties to a part-time employment may reach an oral agreement.

A worker who engages in part-time employment may conclude a labor contract with one or more employers, but a labor contract concluded subsequently may not prejudice the performance of a labor contract previously concluded.

Article 70 No probation period may be stipulated by both parties for a part-time employment.

Article 71 Either of the parties to part-time employment may inform the other party of the termination of labor at any time. Upon the termination of a part-time employment, the employer will pay no economic compensation to the employee.

Article 72 The criterions for the calculation of part-time employment on hourly basis shall not be lower than the minimum hourly wage prescribed by the people's government of the place where the employer is located.

The maximum remuneration settlement and payment cycle for part-time employment shall not exceed 15 days.

Chapter VI Supervision and Inspection

Article 73 The labor administrative department of the State Council shall be responsible for the supervision and inspection of the implementation of the system of labor contracts throughout the country.

The labor administrative department of the local people's governments at the county level and above shall be responsible for the supervision and inspection of the implementation of the system of labor contracts within their respective administrative areas.

During the supervision and inspection of the implementation of the system of labor contracts, the labor administrative departments of the people's governments at the county level and above shall solicit the opinions of the labor unions, enterprise representatives and relevant industrial administrative departments.

Article 74 The labor administrative department of the local people's government at the county level or above shall exercise supervision and inspection in respect of the implementation of the system of labor contracts:

1. The employers' formulation of rules and regulations directly related to the interests of workers, and the implementation thereof;
2. The formation and dissolution of labor contracts by employers and workers;
3. The compliance with relevant regulations on dispatch by worker dispatch service providers and the accepting entities;
4.The employers' compliance with provisions of the state on workers' working hours, breaks and vacations;
5. The employers' payment for remuneration as specified in the labor contracts and compliance with the minimum wage criterions;
6. The employers' participation in the social security and the payment for social security premiums; and
7. Other labor supervision matters as prescribed by laws and regulations.

Article 75 During the supervision and inspection process, the labor administrative department of the people's government at the county level or above has the power to consult the materials relevant to the labor contracts and collective contracts and to conduct on-the-spot inspections to the work places. The employers and employees shall faithfully provide pertinent information and materials.

When the functionaries of the labor administrative department conduct an inspection, they shall show their badges, exercise their duties and powers pursuant to laws and enforce the law in a well-disciplined manner.

Article 76 The relevant administrative departments of construction, health, work safety supervision and administration, etc. of the people's governments at the county level and above shall, with the scope of their respective functions, supervise and administer the employers' implementation of the system of labor contracts.

Article 77 For any employer whose lawful rights and interests are impaired, he may require the relevant department to deal with the case, apply for an arbitration, or lodge a lawsuit.

Article 78 A labor union shall protect the employees' legitimate rights and interests and supervise the employer's fulfillment of the labor contracts and collective contracts. If the employer violates any law or regulation or breaches any labor contract or collective contract, the labor union may put forward its opinions and require the employer to make ratification. If the employee applies for arbitration or lodges a lawsuit, the labor union shall support and help him in pursuance of law.

Article 79 Any organization or individual may report the violations of this law. The labor administrative departments of the people's governments at the county level and above shall timely verify and deal with such violations and shall grant awards to the meritorious persons who report the violations.

Chapter VII Legal Liabilities

Article 80 If the rules and procedure of an employer directly related to the employees' interests is contrary to any laws or regulations, the labor administration department shall order the employer to make ratification and give it a warning. If the rules and procedures cause any damage to the employees, the employer shall bear the liability for compensation.

Article 81 If the text of a labor contract provided by an employer does not include the mandatory clauses required by this Law or if an employer fails to deliver a copy of the labor contract to its employee, the labor administration department shall order the employer to make ratification. If any damage is caused to the employee, the employer shall bear the liability for compensation.

Article 82 If an employer fails to conclude a written labor contract with an employee after the lapse of more than one month but less than one year as of the day when it started using him, it shall pay to the worker his monthly wages at double amount.

If an employer fails, in violation of this Law, to conclude with an employee a labor

contract without fixed term, it shall pay to the employee his monthly wage at double amount, starting from the date on which a labor contract without fixed term should have been concluded.

Article 83 If an employer stipulates the probation period with an employee to violate this Law, the labor administration department shall order the employer to make ratification. If the illegally stipulated probation has been performed, the employer shall pay compensation to the employee according to the time worked on probation beyond the statutory probation period, at the rate of the employee's monthly wage following the completion of his probation.

Article 84 Where an employer violates this Law by detaining the resident identity cards or other certificates of the employees, the labor administrative department shall order the employer to return the ID and certificates to the employees within a time limit and shall punish the employer according to the relevant laws.

Where an employer violates this Law by collecting money and property from employees in the name of guaranty or in any other excuses, the labor administrative department shall order the employer to return the said property to the employees within a time limit and fine the employer not less than 500 yuan but not more than 2,000 yuan for each person. If any damage is caused to the employees, the employer shall be liable for compensation.

When an employee dissolves or terminates the labor contract in pursuance of law, if the employer retains the archives or other articles of the employees, it shall be punished according to the provisions of the preceding paragraph.

Article 85 Where an employing entity is under any of the following circumstances, the labor administrative department shall order it to pay the remunerations, overtime remunerations or economic compensations within a time limit. If the remuneration is lower than the local minimum wage, the employer shall pay the shortfall. If payment is not made within the time limit, the employer shall be ordered to pay an extra compensation to the employee at a rate of not less than 50 percent and not more than 100 percent of the payable amount:
1. Failing to pay an employee his remunerations in full amount and on time as stipulated in the labor contract or prescribed by the state;
2. Paying an employee the wage below the local minimum wage standard;
3. Arranging overtime work without paying overtime remunerations; or
4. Dissolving or terminating a labor contract without paying the employee the economic compensation under this Law.

Article 86 Where a labor contract is confirmed invalid under Article 26 of this Law and any damage is caused to the other party, the party at fault shall be liable for compensation.

Article 87 If an employer violates this Law by dissolving or terminating the labor contract, it shall pay compensation to the employee at the rate of twice the economic compensations as prescribed in Article 47 of this Law.

Article 88 Where an employer is under any of the following circumstances, it shall be given an administrative punishment. If any crime is constituted, it shall be subject to criminal liabilities. If any damage is caused to the employee, the employer shall be liable for compensation:
1. To force the employee to work by violence, threat or illegal limitation of personal freedom;
2. To illegally command or force any employee to perform dangerous operations endangering the employee's life;
3. To insult, corporally punish, beat, illegally search, or restrain any employee; or
4. To cause damages to the physical or mental health of employees because of poor working conditions or severely polluted environments;

Article 89 Where an employer violates this Law by failing to issue to an employee a written certificate for the dissolution or termination of a labor contract, it shall be ordered to make a ratification by the labor administrative department. If any damage is caused to an employee, the employer shall be liable for compensation.

Article 90 Where an employee violates this Law to dissolve the labor contract, or violates the stipulations of the labor contract about the confidentiality obligation or non-competition, if any loss is caused to the employer, he shall be liable for compensation.

Article 91 Where an employer hires any employee whose labor contract with another employer has not been dissolved or terminated yet, if any loss is caused to the employer mentioned later, the employer first mentioned shall bear joint and several liability of compensation.

Article 92 Where a worker dispatch service provider violates this Law, it shall be ordered to make ratification by the labor administrative department and other relevant administrative departments. If the circumstance is severe, it shall be fined at the rate of not less than 1, 000 yuan but not more than 5, 000 yuan per person and have its business license revoked by the administrative department for industry and

commerce. If any damage is caused to the workers dispatched, the worker dispatch service provider and the accepting entity shall bear joint and several liability of compensation.

Article 93 Where an employer without the lawful business operation qualifications commits any violation or crime, it shall be subject to legal liabilities. If the employees have already worked for the employer, the employer or its capital contributors shall, under the relevant provisions of this Law, pay the employees remunerations, economic compensations or indemnities. If any damage is caused to the employee, it shall be liable for compensation.

Article 94 Where an individual as a business operation contractor hires employees in violation of this Law and causes any damage to any employee, the contracting organization and the individual business operation contractor shall be jointly and severally liable for compensation.

Article 95 If the labor administrative department, or any other relevant administrative department, or any of the functionaries thereof neglects its (his) duties, does not perform the statutory duties, or exercises its (his) duties in violation of law, it (he) shall be liable for compensation. The directly liable person-in-charge and other directly liable persons shall be given an administrative sanction. If any crime is constituted, they shall be subject to criminal liabilities.

Chapter VIII Supplementary Provisions

Article 96 For the formation, performance, modification, dissolution, or termination of a labor contract between a public institution and an employee under the system of employment, if it is otherwise provided for in any law, administrative regulation or by the State Council, the latter shall be followed. If there is no such provision, the relevant provisions of this Law shall be observed.

Article 97 Labor contracts concluded before the implementation of this Law and continue to exist on the implementation date of this Law shall continue to be performed. For the purposes of Item (3) of the second Paragraph of Article 14 of this Law, the number of consecutive times on which a fixed-term labor contract is concluded shall be counted from the first renewal of such contract to occur after the implementation of this Law.

If an employment relationship was established prior to the implementation of this Law without the conclusion of a written labor contract, such contract shall be concluded

within one month from the date when this Law becomes effective.

If a labor contract existing on the implementation date of this Law is dissolved or terminated after the implementation of this Law and, according to Article 46 of this Law, an economic compensation is payable, the number of years for which the economic compensation is payable shall be counted from the implementation date of this Law. If, under relevant effective regulations prior to the implementation of this Law, the employee is entitled to the economic compensation from the employer in respect of a period prior to the implementation of this Law, the matters shall be handled according to the relevant effective regulations at that time.

Article 98 This Law shall come into force as of January 1, 2008.

http://www.gov.cn/ziliao/flfg/2007-06/29/content_669394.htm

《中华人民共和国劳动合同法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十八次会议于 2007 年 6 月 29 日通过，现予公布，自 2008 年 1 月 1 日起施行。

中华人民共和国主席令

第六十五号

《中华人民共和国劳动合同法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十八次会议于 2007 年 6 月 29 日通过，现予公布，自 2008 年 1 月 1 日起施行。

中华人民共和国主席胡锦涛

2007 年 6 月 29 日

中华人民共和国劳动合同法(2007 年 6 月 29 日第十届全国人民代表大会常务委员会第二十八次会议通过)

目录

第一章总则

第一条为了完善劳动合同制度，明确劳动合同双方当事人的权利和义务，保护劳动者的合法权益，构建和发展和谐稳定的劳动关系，制定本法。

第二条中华人民共和国境内的企业、个体经济组织、民办非企业单位等组织(以下称用人单位)与劳动者建立劳动关系，订立、履行、变更、解除或者终止劳动合同，适用本法。

国家机关、事业单位、社会团体和与其建立劳动关系的劳动者，订立、履行、变更、解除或者终止劳动合同，依照本法执行。

第三条订立劳动合同，应当遵循合法、公平、平等自愿、协商一致、诚实信用的原则。
依法订立的劳动合同具有约束力，用人单位与劳动者应当履行劳动合同约定的义务。

第四条用人单位应当依法建立和完善劳动规章制度，保障劳动者享有劳动权利、履行劳动义务。

用人单位在制定、修改或者决定有关劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利、职工培训、劳动纪律以及劳动定额管理等直接涉及劳动者切身利益的规章制度或者重大事项时，应当经职工代表大会或者全体职工讨论，提出方案和意见，与工会或者职工代表平等协商确定。

在规章制度和重大事项决定实施过程中，工会或者职工认为不适当的，有权向用人单位提出，通过协商予以修改完善。

用人单位应当将直接涉及劳动者切身利益的规章制度和重大事项决定公示，或者告知劳动者。

第五条县级以上人民政府劳动行政部门会同工会和企业方面代表，建立健全协调劳动关系三方机制，共同研究解决有关劳动关系的重大问题。

第六条工会应当帮助、指导劳动者与用人单位依法订立和履行劳动合同，并与用人单位建立集体协商机制，维护劳动者的合法权益。

第二章 劳动合同的订立

第七条用人单位自用工之日起即与劳动者建立劳动关系。用人单位应当建立职工名册备查。

第八条用人单位招用劳动者时，应当如实告知劳动者工作内容、工作条件、工作地点、职业危害、安全生产状况、劳动报酬，以及劳动者要求了解的其他情况;用人单位有权了解劳动者与劳动合同直接相关的基本情况，劳动者应当如实说明。

第九条用人单位招用劳动者，不得扣押劳动者的居民身份证和其他证件，不得要求劳动者提供担保或者以其他名义向劳动者收取财物。

第十条建立劳动关系，应当订立书面劳动合同。

已建立劳动关系，未同时订立书面劳动合同的，应当自用工之日起一个月内订立书面劳动合同。

用人单位与劳动者在用工前订立劳动合同的，劳动关系自用工之日起建立。

第十一条用人单位未在用工的同时订立书面劳动合同，与劳动者约定的劳动报酬不明确的，新招用的劳动者的劳动报酬按照集体合同规定的标准执行;没有集体合同或者集体合同未规定的，实行同工同酬。

第十二条劳动合同分为固定期限劳动合同、无固定期限劳动合同和以完成一定工作任务为期限的劳动合同。

第十三条固定期限劳动合同，是指用人单位与劳动者约定合同终止时间的劳动合同。

用人单位与劳动者协商一致，可以订立固定期限劳动合同。

第十四条无固定期限劳动合同，是指用人单位与劳动者约定无确定终止时间的劳动合同。

用人单位与劳动者协商一致，可以订立无固定期限劳动合同。有下列情形之一，劳动者提出或者同意续订、订立劳动合同的，除劳动者提出订立固定期限劳动合同外，应当订立无固定期限劳动合同：

(一)劳动者在该用人单位连续工作满十年的;

(二)用人单位初次实行劳动合同制度或者国有企业改制重新订立劳动合同时，劳动者在该用人单位连续工作满十年且距法定退休年龄不足十年的;

(三)连续订立二次固定期限劳动合同，且劳动者没有本法第三十九条和第四十条第一

项、第二项规定的情形，续订劳动合同的。

用人单位自用工之日起满一年不与劳动者订立书面劳动合同的，视为用人单位与劳动者已订立无固定期限劳动合同。

第十五条以完成一定工作任务为期限的劳动合同，是指用人单位与劳动者约定以某项工作的完成为合同期限的劳动合同。

用人单位与劳动者协商一致，可以订立以完成一定工作任务为期限的劳动合同。

第十六条劳动合同由用人单位与劳动者协商一致，并经用人单位与劳动者在劳动合同文本上签字或者盖章生效。

劳动合同文本由用人单位和劳动者各执一份。

第十七条劳动合同应当具备以下条款：

(一)用人单位的名称、住所和法定代表人或者主要负责人;

(二)劳动者的姓名、住址和居民身份证或者其他有效身份证件号码;

(三)劳动合同期限;

(四)工作内容和工作地点;

(五)工作时间和休息休假;

(六)劳动报酬;

(七)社会保险;

(八)劳动保护、劳动条件和职业危害防护;

(九)法律、法规规定应当纳入劳动合同的其他事项。

劳动合同除前款规定的必备条款外，用人单位与劳动者可以约定试用期、培训、保守秘密、补充保险和福利待遇等其他事项。

第十八条劳动合同对劳动报酬和劳动条件等标准约定不明确，引发争议的，用人单位与劳动者可以重新协商;协商不成的，适用集体合同规定;没有集体合同或者集体合同未规定劳动报酬的，实行同工同酬;没有集体合同或者集体合同未规定劳动条件等标准的，适用国家有关规定。

第十九条劳动合同期限三个月以上不满一年的，试用期不得超过一个月;劳动合同期限一年以上不满三年的，试用期不得超过二个月;三年以上固定期限和无固定期限的劳动合同，试用期不得超过六个月。

同一用人单位与同一劳动者只能约定一次试用期。

以完成一定工作任务为期限的劳动合同或者劳动合同期限不满三个月的，不得约定试用期。

试用期包含在劳动合同期限内。劳动合同仅约定试用期的，试用期不成立，该期限为劳动合同期限。

第二十条劳动者在试用期的工资不得低于本单位相同岗位最低档工资或者劳动合同约定工资的百分之八十，并不得低于用人单位所在地的最低工资标准。

第二十一条在试用期中，除劳动者有本法第三十九条和第四十条第一项、第二项规定的情形外，用人单位不得解除劳动合同。用人单位在试用期解除劳动合同的，应当向劳动者说

明理由。

第二十二条用人单位为劳动者提供专项培训费用，对其进行专业技术培训的，可以与该劳动者订立协议，约定服务期。

劳动者违反服务期约定的，应当按照约定向用人单位支付违约金。违约金的数额不得超过用人单位提供的培训费用。用人单位要求劳动者支付的违约金不得超过服务期尚未履行部分所应分摊的培训费用。

用人单位与劳动者约定服务期的，不影响按照正常的工资调整机制提高劳动者在服务期期间的劳动报酬。

第二十三条用人单位与劳动者可以在劳动合同中约定保守用人单位的商业秘密和与知识产权相关的保密事项。

对负有保密义务的劳动者，用人单位可以在劳动合同或者保密协议中与劳动者约定竞业限制条款，并约定在解除或者终止劳动合同后，在竞业限制期限内按月给予劳动者经济补偿。劳动者违反竞业限制约定的，应当按照约定向用人单位支付违约金。

第二十四条竞业限制的人员限于用人单位的高级管理人员、高级技术人员和其他负有保密义务的人员。竞业限制的范围、地域、期限由用人单位与劳动者约定，竞业限制的约定不得违反法律、法规的规定。

在解除或者终止劳动合同后，前款规定的人员到与本单位生产或者经营同类产品、从事同类业务的有竞争关系的其他用人单位，或者自己开业生产或者经营同类产品、从事同类业务的竞业限制期限，不得超过二年。

第二十五条除本法第二十二条和第二十三条规定的情形外，用人单位不得与劳动者约定由劳动者承担违约金。

第二十六条下列劳动合同无效或者部分无效：

(一)以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下订立或者变更劳动合同的;

(二)用人单位免除自己的法定责任、排除劳动者权利的;

(三)违反法律、行政法规强制性规定的。

对劳动合同的无效或者部分无效有争议的，由劳动争议仲裁机构或者人民法院确认。

第二十七条劳动合同部分无效，不影响其他部分效力的，其他部分仍然有效。

第二十八条劳动合同被确认无效，劳动者已付出劳动的，用人单位应当向劳动者支付劳动报酬。劳动报酬的数额，参照本单位相同或者相近岗位劳动者的劳动报酬确定。

第三章 劳动合同的履行和变更

第二十九条用人单位与劳动者应当按照劳动合同的约定，全面履行各自的义务。

第三十条用人单位应当按照劳动合同约定和国家规定，向劳动者及时足额支付劳动报酬。

用人单位拖欠或者未足额支付劳动报酬的，劳动者可以依法向当地人民法院申请支付

令，人民法院应当依法发出支付令。

第三十一条用人单位应当严格执行劳动定额标准，不得强迫或者变相强迫劳动者加班。用人单位安排加班的，应当按照国家有关规定向劳动者支付加班费。

第三十二条劳动者拒绝用人单位管理人员违章指挥、强令冒险作业的，不视为违反劳动合同。

劳动者对危害生命安全和身体健康的劳动条件，有权对用人单位提出批评、检举和控告。

第三十三条用人单位变更名称、法定代表人、主要负责人或者投资人等事项，不影响劳动合同的履行。

第三十四条用人单位发生合并或者分立等情况，原劳动合同继续有效，劳动合同由承继其权利和义务的用人单位继续履行。

第三十五条用人单位与劳动者协商一致，可以变更劳动合同约定的内容。变更劳动合同，应当采用书面形式。

变更后的劳动合同文本由用人单位和劳动者各执一份。

第四章 劳动合同的解除和终止

第三十六条用人单位与劳动者协商一致，可以解除劳动合同。

第三十七条劳动者提前三十日以书面形式通知用人单位，可以解除劳动合同。劳动者在试用期内提前三日通知用人单位，可以解除劳动合同。

第三十八条用人单位有下列情形之一的，劳动者可以解除劳动合同：

(一)未按照劳动合同约定提供劳动保护或者劳动条件的;

(二)未及时足额支付劳动报酬的;

(三)未依法为劳动者缴纳社会保险费的;

(四)用人单位的规章制度违反法律、法规的规定，损害劳动者权益的;

(五)因本法第二十六条第一款规定的情形致使劳动合同无效的;

(六)法律、行政法规规定劳动者可以解除劳动合同的其他情形。

用人单位以暴力、威胁或者非法限制人身自由的手段强迫劳动者劳动的，或者用人单位违章指挥、强令冒险作业危及劳动者人身安全的，劳动者可以立即解除劳动合同，不需事先告知用人单位。

第三十九条劳动者有下列情形之一的，用人单位可以解除劳动合同：

(一)在试用期间被证明不符合录用条件的;

(二)严重违反用人单位的规章制度的;

(三)严重失职，营私舞弊，给用人单位造成重大损害的;

(四)劳动者同时与其他用人单位建立劳动关系，对完成本单位的工作任务造成严重影响，或者经用人单位提出，拒不改正的;

(五)因本法第二十六条第一款第一项规定的情形致使劳动合同无效的;

(六)被依法追究刑事责任的。

第四十条有下列情形之一的，用人单位提前三十日以书面形式通知劳动者本人或者额外支付劳动者一个月工资后，可以解除劳动合同：

(一)劳动者患病或者非因工负伤，在规定的医疗期满后不能从事原工作，也不能从事由用人单位另行安排的工作的;

(二)劳动者不能胜任工作，经过培训或者调整工作岗位，仍不能胜任工作的;

(三)劳动合同订立时所依据的客观情况发生重大变化，致使劳动合同无法履行，经用人单位与劳动者协商，未能就变更劳动合同内容达成协议的。

第四十一条有下列情形之一，需要裁减人员二十人以上或者裁减不足二十人但占企业职工总数百分之十以上的，用人单位提前三十日向工会或者全体职工说明情况，听取工会或者

职工的意见后，裁减人员方案经向劳动行政部门报告，可以裁减人员：

(一)依照企业破产法规定进行重整的;

(二)生产经营发生严重困难的;

(三)企业转产、重大技术革新或者经营方式调整，经变更劳动合同后，仍需裁减人员的;

(四)其他因劳动合同订立时所依据的客观经济情况发生重大变化，致使劳动合同无法履行的。

裁减人员时，应当优先留用下列人员：

(一)与本单位订立较长期限的固定期限劳动合同的;

(二)与本单位订立无固定期限劳动合同的;

(三)家庭无其他就业人员，有需要扶养的老人或者未成年人的。

用人单位依照本条第一款规定裁减人员，在六个月内重新招用人员的，应当通知被裁减的人员，并在同等条件下优先招用被裁减的人员。

第四十二条劳动者有下列情形之一的，用人单位不得依照本法第四十条、第四十一条的规定解除劳动合同：

(一)从事接触职业病危害作业的劳动者未进行离岗前职业健康检查，或者疑似职业病病人在诊断或者医学观察期间的;

(二)在本单位患职业病或者因工负伤并被确认丧失或者部分丧失劳动能力的;

(三)患病或者非因工负伤，在规定的医疗期内的;

(四)女职工在孕期、产期、哺乳期的;

(五)在本单位连续工作满十五年，且距法定退休年龄不足五年的;

(六)法律、行政法规规定的其他情形。

第四十三条用人单位单方解除劳动合同，应当事先将理由通知工会。用人单位违反法律、行政法规规定或者劳动合同约定的，工会有权要求用人单位纠正。用人单位应当研究工会的意见，并将处理结果书面通知工会。

第四十四条有下列情形之一的，劳动合同终止：

(一)劳动合同期满的;

(二)劳动者开始依法享受基本养老保险待遇的;

(三)劳动者死亡，或者被人民法院宣告死亡或者宣告失踪的;

(四)用人单位被依法宣告破产的;

(五)用人单位被吊销营业执照、责令关闭、撤销或者用人单位决定提前解散的;

(六)法律、行政法规规定的其他情形。

第四十五条劳动合同期满，有本法第四十二条规定情形之一的，劳动合同应当续延至相应的情形消失时终止。但是，本法第四十二条第二项规定丧失或者部分丧失劳动能力劳动者的劳动合同的终止，按照国家有关工伤保险的规定执行。

第四十六条有下列情形之一的，用人单位应当向劳动者支付经济补偿：

(一)劳动者依照本法第三十八条规定解除劳动合同的;

(二)用人单位依照本法第三十六条规定向劳动者提出解除劳动合同并与劳动者协商一致解除劳动合同的;

(三)用人单位依照本法第四十条规定解除劳动合同的;

(四)用人单位依照本法第四十一条第一款规定解除劳动合同的;

(五)除用人单位维持或者提高劳动合同约定条件续订劳动合同，劳动者不同意续订的情形外，依照本法第四十四条第一项规定终止固定期限劳动合同的;

(六)依照本法第四十四条第四项、第五项规定终止劳动合同的;
(七)法律、行政法规规定的其他情形。

第四十七条经济补偿按劳动者在本单位工作的年限，每满一年支付一个月工资的标准向劳动者支付。六个月以上不满一年的，按一年计算;不满六个月的，向劳动者支付半个月工资的经济补偿。

劳动者月工资高于用人单位所在直辖市、设区的市级人民政府公布的本地区上年度职工月平均工资三倍的，向其支付经济补偿的标准按职工月平均工资三倍的数额支付，向其支付经济补偿的年限最高不超过十二年。

本条所称月工资是指劳动者在劳动合同解除或者终止前十二个月的平均工资。
第四十八条用人单位违反本法规定解除或者终止劳动合同，劳动者要求继续履行劳动合同的，用人单位应当继续履行;劳动者不要求继续履行劳动合同或者劳动合同已经不能继续履行的，用人单位应当依照本法第八十七条规定支付赔偿金。

第四十九条国家采取措施，建立健全劳动者社会保险关系跨地区转移接续制度。
第五十条用人单位应当在解除或者终止劳动合同时出具解除或者终止劳动合同的证明，并在十五日内为劳动者办理档案和社会保险关系转移手续。

劳动者应当按照双方约定，办理工作交接。用人单位依照本法有关规定应当向劳动者支付经济补偿的，在办结工作交接时支付。

用人单位对已经解除或者终止的劳动合同的文本，至少保存二年备查。

第五章 特别规定
第一节集体合同
第五十一条企业职工一方与用人单位通过平等协商，可以就劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利等事项订立集体合同。集体合同草案应当提交职工代表大会或者全体职工讨论通过。
集体合同由工会代表企业职工一方与用人单位订立;尚未建立工会的用人单位，由上级工会指导劳动者推举的代表与用人单位订立。

第五十二条企业职工一方与用人单位可以订立劳动安全卫生、女职工权益保护、工资调整机制等专项集体合同。

第五十三条在县级以下区域内，建筑业、采矿业、餐饮服务业等行业可以由工会与企业方面代表订立行业性集体合同，或者订立区域性集体合同。

第五十四条集体合同订立后，应当报送劳动行政部门;劳动行政部门自收到集体合同文本之日起十五日内未提出异议的，集体合同即行生效。
依法订立的集体合同对用人单位和劳动者具有约束力。行业性、区域性集体合同对当地本行业、本区域的用人单位和劳动者具有约束力。
第五十五条集体合同中劳动报酬和劳动条件等标准不得低于当地人民政府规定的最低

标准;用人单位与劳动者订立的劳动合同中劳动报酬和劳动条件等标准不得低于集体合同规定的标准。

第五十六条用人单位违反集体合同，侵犯职工劳动权益的，工会可以依法要求用人单位承担责任;因履行集体合同发生争议，经协商解决不成的，工会可以依法申请仲裁、提起诉讼。

第二节劳务派遣

第五十七条劳务派遣单位应当依照公司法的有关规定设立，注册资本不得少于五十万元。

第五十八条劳务派遣单位是本法所称用人单位，应当履行用人单位对劳动者的义务。劳务派遣单位与被派遣劳动者订立的劳动合同，除应当载明本法第十七条规定的事项外，还应当载明被派遣劳动者的用工单位以及派遣期限、工作岗位等情况。

劳务派遣单位应当与被派遣劳动者订立二年以上的固定期限劳动合同，按月支付劳动报酬;被派遣劳动者在无工作期间，劳务派遣单位应当按照所在地人民政府规定的最低工资标准，向其按月支付报酬。

第五十九条劳务派遣单位派遣劳动者应当与接受以劳务派遣形式用工的单位(以下称用工单位)订立劳务派遣协议。劳务派遣协议应当约定派遣岗位和人员数量、派遣期限、劳动报酬和社会保险费的数额与支付方式以及违反协议的责任。

用工单位应当根据工作岗位的实际需要与劳务派遣单位确定派遣期限，不得将连续用工期限分割订立数个短期劳务派遣协议。

第六十条劳务派遣单位应当将劳务派遣协议的内容告知被派遣劳动者。

劳务派遣单位不得克扣用工单位按照劳务派遣协议支付给被派遣劳动者的劳动报酬。

劳务派遣单位和用工单位不得向被派遣劳动者收取费用。

第六十一条劳务派遣单位跨地区派遣劳动者的，被派遣劳动者享有的劳动报酬和劳动条件，按照用工单位所在地的标准执行。

第六十二条用工单位应当履行下列义务：

(一)执行国家劳动标准，提供相应的劳动条件和劳动保护;

(二)告知被派遣劳动者的工作要求和劳动报酬;

(三)支付加班费、绩效奖金，提供与工作岗位相关的福利待遇;

(四)对在岗被派遣劳动者进行工作岗位所必需的培训;

(五)连续用工的，实行正常的工资调整机制。

用工单位不得将被派遣劳动者再派遣到其他用人单位。

第六十三条被派遣劳动者享有与用工单位的劳动者同工同酬的权利。用工单位无同类岗位劳动者的，参照用工单位所在地相同或者相近岗位劳动者的劳动报酬确定。

第六十四条被派遣劳动者有权在劳务派遣单位或者用工单位依法参加或者组织工会，维护自身的合法权益。

第六十五条被派遣劳动者可以依照本法第三十六条、第三十八条的规定与劳务派遣单位解除劳动合同。

被派遣劳动者有本法第三十九条和第四十条第一项、第二项规定情形的，用工单位可以将劳动者退回劳务派遣单位，劳务派遣单位依照本法有关规定，可以与劳动者解除劳动合同。

第六十六条劳务派遣一般在临时性、辅助性或者替代性的工作岗位上实施。

第六十七条用人单位不得设立劳务派遣单位向本单位或者所属单位派遣劳动者。

第三节非全日制用工

第六十八条非全日制用工，是指以小时计酬为主，劳动者在同一用人单位一般平均每日工作时间不超过四小时，每周工作时间累计不超过二十四小时的用工形式。

第六十九条非全日制用工双方当事人可以订立口头协议。

从事非全日制用工的劳动者可以与一个或者一个以上用人单位订立劳动合同;但是，后订立的劳动合同不得影响先订立的劳动合同的履行。

第七十条非全日制用工双方当事人不得约定试用期。

第七十一条非全日制用工双方当事人任何一方都可以随时通知对方终止用工。终止用工，用人单位不向劳动者支付经济补偿。

第七十二条非全日制用工小时计酬标准不得低于用人单位所在地人民政府规定的最低小时工资标准。

非全日制用工劳动报酬结算支付周期最长不得超过十五日。

第六章 监督检查

第七十三条国务院劳动行政部门负责全国劳动合同制度实施的监督管理。

县级以上地方人民政府劳动行政部门负责本行政区域内劳动合同制度实施的监督管理。

县级以上各级人民政府劳动行政部门在劳动合同制度实施的监督管理工作中，应当听取工会、企业方面代表以及有关行业主管部门的意见。

第七十四条县级以上地方人民政府劳动行政部门依法对下列实施劳动合同制度的情况进行监督检查：

(一)用人单位制定直接涉及劳动者切身利益的规章制度及其执行的情况;

(二)用人单位与劳动者订立和解除劳动合同的情况;

(三)劳务派遣单位和用工单位遵守劳务派遣有关规定的情况;

(四)用人单位遵守国家关于劳动者工作时间和休息休假规定的情况;

(五)用人单位支付劳动合同约定的劳动报酬和执行最低工资标准的情况;

(六)用人单位参加各项社会保险和缴纳社会保险费的情况;

(七)法律、法规规定的其他劳动监察事项。

第七十五条县级以上地方人民政府劳动行政部门实施监督检查时，有权查阅与劳动合同、集体合同有关的材料，有权对劳动场所进行实地检查，用人单位和劳动者都应当如实提供有关情况和材料。

劳动行政部门的工作人员进行监督检查，应当出示证件，依法行使职权，文明执法。

第七十六条县级以上人民政府建设、卫生、安全生产监督管理等有关主管部门在各自职责范围内，对用人单位执行劳动合同制度的情况进行监督管理。

第七十七条劳动者合法权益受到侵害的，有权要求有关部门依法处理，或者依法申请仲裁、提起诉讼。

第七十八条工会依法维护劳动者的合法权益，对用人单位履行劳动合同、集体合同的情况进行监督。用人单位违反劳动法律、法规和劳动合同、集体合同的，工会有权提出意见或者要求纠正;劳动者申请仲裁、提起诉讼的，工会依法给予支持和帮助。

第七十九条任何组织或者个人对违反本法的行为都有权举报，县级以上人民政府劳动行政部门应当及时核实、处理，并对举报有功人员给予奖励。

第七章 法律责任

第八十条用人单位直接涉及劳动者切身利益的规章制度违反法律、法规规定的，由劳动行政部门责令改正，给予警告;给劳动者造成损害的，应当承担赔偿责任。

第八十一条用人单位提供的劳动合同文本未载明本法规定的劳动合同必备条款或者用人单位未将劳动合同文本交付劳动者的，由劳动行政部门责令改正;给劳动者造成损害的，应当承担赔偿责任。

第八十二条用人单位自用工之日起超过一个月不满一年未与劳动者订立书面劳动合同的，应当向劳动者每月支付二倍的工资。

用人单位违反本法规定不与劳动者订立无固定期限劳动合同的，自应当订立无固定期限劳动合同之日起向劳动者每月支付二倍的工资。

第八十三条用人单位违反本法规定与劳动者约定试用期的，由劳动行政部门责令改正;违法约定的试用期已经履行的，由用人单位以劳动者试用期满月工资为标准，按已经履行的超过法定试用期的期间向劳动者支付赔偿金。

第八十四条用人单位违反本法规定，扣押劳动者居民身份证等证件的，由劳动行政部门责令限期退还劳动者本人，并依照有关法律规定给予处罚。

用人单位违反本法规定，以担保或者其他名义向劳动者收取财物的，由劳动行政部门责令限期退还劳动者本人，并以每人五百元以上二千元以下的标准处以罚款;给劳动者造成损害的，应当承担赔偿责任。

劳动者依法解除或者终止劳动合同，用人单位扣押劳动者档案或者其他物品的，依照前款规定处罚。

第八十五条用人单位有下列情形之一的，由劳动行政部门责令限期支付劳动报酬、加班费或者经济补偿;劳动报酬低于当地最低工资标准的，应当支付其差额部分;逾期不支付的，责令用人单位按应付金额百分之五十以上百分之一百以下的标准向劳动者加付赔偿金：

(一)未按照劳动合同的约定或者国家规定及时足额支付劳动者劳动报酬的;

(二)低于当地最低工资标准支付劳动者工资的;

(三)安排加班不支付加班费的;

(四)解除或者终止劳动合同，未依照本法规定向劳动者支付经济补偿的。

第八十六条劳动合同依照本法第二十六条规定被确认无效，给对方造成损害的，有过错的一方应当承担赔偿责任。

第八十七条用人单位违反本法规定解除或者终止劳动合同的，应当依照本法第四十七条规定的经济补偿标准的二倍向劳动者支付赔偿金。

第八十八条用人单位有下列情形之一的，依法给予行政处罚;构成犯罪的，依法追究刑事责任;给劳动者造成损害的，应当承担赔偿责任：

(一)以暴力、威胁或者非法限制人身自由的手段强迫劳动的;
(二)违章指挥或者强令冒险作业危及劳动者人身安全的;
(三)侮辱、体罚、殴打、非法搜查或者拘禁劳动者的;
(四)劳动条件恶劣、环境污染严重，给劳动者身心健康造成严重损害的。

第八十九条用人单位违反本法规定未向劳动者出具解除或者终止劳动合同的书面证明，由劳动行政部门责令改正;给劳动者造成损害的，应当承担赔偿责任。

第九十条劳动者违反本法规定解除劳动合同，或者违反劳动合同中约定的保密义务或者竞业限制，给用人单位造成损失的，应当承担赔偿责任。

第九十一条用人单位招用与其他用人单位尚未解除或者终止劳动合同的劳动者，给其他用人单位造成损失的，应当承担连带赔偿责任。

第九十二条劳务派遣单位违反本法规定的，由劳动行政部门和其他有关主管部门责令改正;情节严重的，以每人一千元以上五千元以下的标准处以罚款，并由工商行政管理部门吊销营业执照;给被派遣劳动者造成损害的，劳务派遣单位与用工单位承担连带赔偿责任。

第九十三条对不具备合法经营资格的用人单位的违法犯罪行为，依法追究法律责任;劳动者已经付出劳动的，该单位或者其出资人应当依照本法有关规定向劳动者支付劳动报酬、经济补偿、赔偿金;给劳动者造成损害的，应当承担赔偿责任。

第九十四条个人承包经营违反本法规定招用劳动者，给劳动者造成损害的，发包的组织与个人承包经营者承担连带赔偿责任。

第九十五条劳动行政部门和其他有关主管部门及其工作人员玩忽职守、不履行法定职责，或者违法行使职权，给劳动者或者用人单位造成损害的，应当承担赔偿责任;对直接负责的主管人员和其他直接责任人员，依法给予行政处分;构成犯罪的，依法追究刑事责任。

第八章 附则

第九十六条事业单位与实行聘用制的工作人员订立、履行、变更、解除或者终止劳动合同，法律、行政法规或者国务院另有规定的，依照其规定;未作规定的，依照本法有关规定执行。

第九十七条本法施行前已依法订立且在本法施行之日存续的劳动合同，继续履行;本法第十四条第二款第三项规定连续订立固定期限劳动合同的次数，自本法施行后续订固定期限劳动合同时开始计算。

本法施行前已建立劳动关系，尚未订立书面劳动合同的，应当自本法施行之日起一个月内订立。

本法施行之日存续的劳动合同在本法施行后解除或者终止，依照本法第四十六条规定应当支付经济补偿的，经济补偿年限自本法施行之日起计算;本法施行前按照当时有关规定，用人单位应当向劳动者支付经济补偿的，按照当时有关规定执行。

第九十八条本法自2008年1月1日起施行。

基本流量表

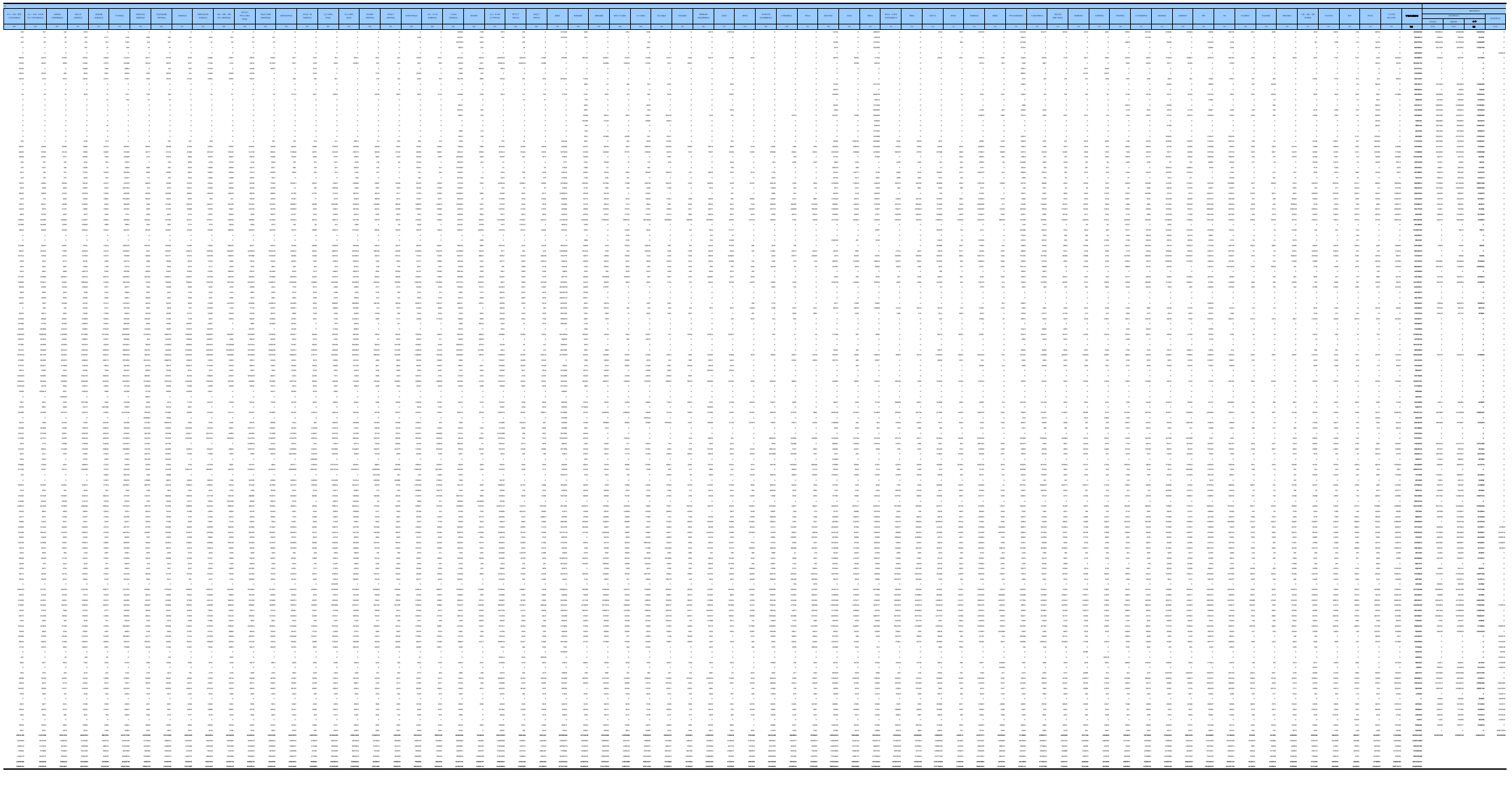
Basic Matrix

(按当年生产者价格计算) (Data are calculated at producers' prices in 2007)

单位：万元

投入 \ 产出	代码	农业	林业	畜牧业	渔业	农、林、牧、渔服务业	煤炭开采和洗选业	石油和天然气开采业	黑色金属矿采选业	有色金属矿采选业	非金属矿及其他矿采选业
代码	-	001	002	003	004	005	006	007	008	009	010
农业	001	21086505	245502	19772186	1375381	1415443	1918	0	0	1598	4193
林业	002	75607	1208970	43452	69758	66142	699041	1618	23086	22399	4736
畜牧业	003	399619	19755	13231699	44152	539960	0	0	0	362	1053
渔业	004	244	99	9004	1597427	59696	0	0	0	60	209
农、林、牧、渔服务业	005	4135684	571859	1128987	937362	737071	0	0	0	0	0
煤炭开采和洗选业	006	144071	11824	93778	13137	5402	9698763	224913	136278	119979	88272
石油和天然气开采业	007	0	2711	10765	0	0	90453	1282450	595687	100590	470581
黑色金属矿采选业	008	0	0	0	0	0	0	0	4154517	24472	0
有色金属矿采选业	009	0	0	0	0	0	0	0	0	2163996	0
非金属矿及其他矿采选业	010	16098	2418	6212	16367	8069	39181	49018	10354	52543	2579576
谷物磨制业	011	1311842	700	7260392	492930	154216	0	0	0	0	0
饲料加工业	012	1011122	2969	30170236	4905617	426221	0	0	0	0	0
植物油加工业	013	109191	8217	784499	92815	119414	832	587	279	247	860
制糖业	014	216	9	185	2	0	0	0	0	0	0
屠宰及肉类加工业	015	0	0	0	0	0	0	0	0	0	0
水产品加工业	016	0	0	5193	16106	0	0	0	0	0	0
其他食品加工业	017	0	0	0	0	39298	0	0	0	0	0

[illegible]

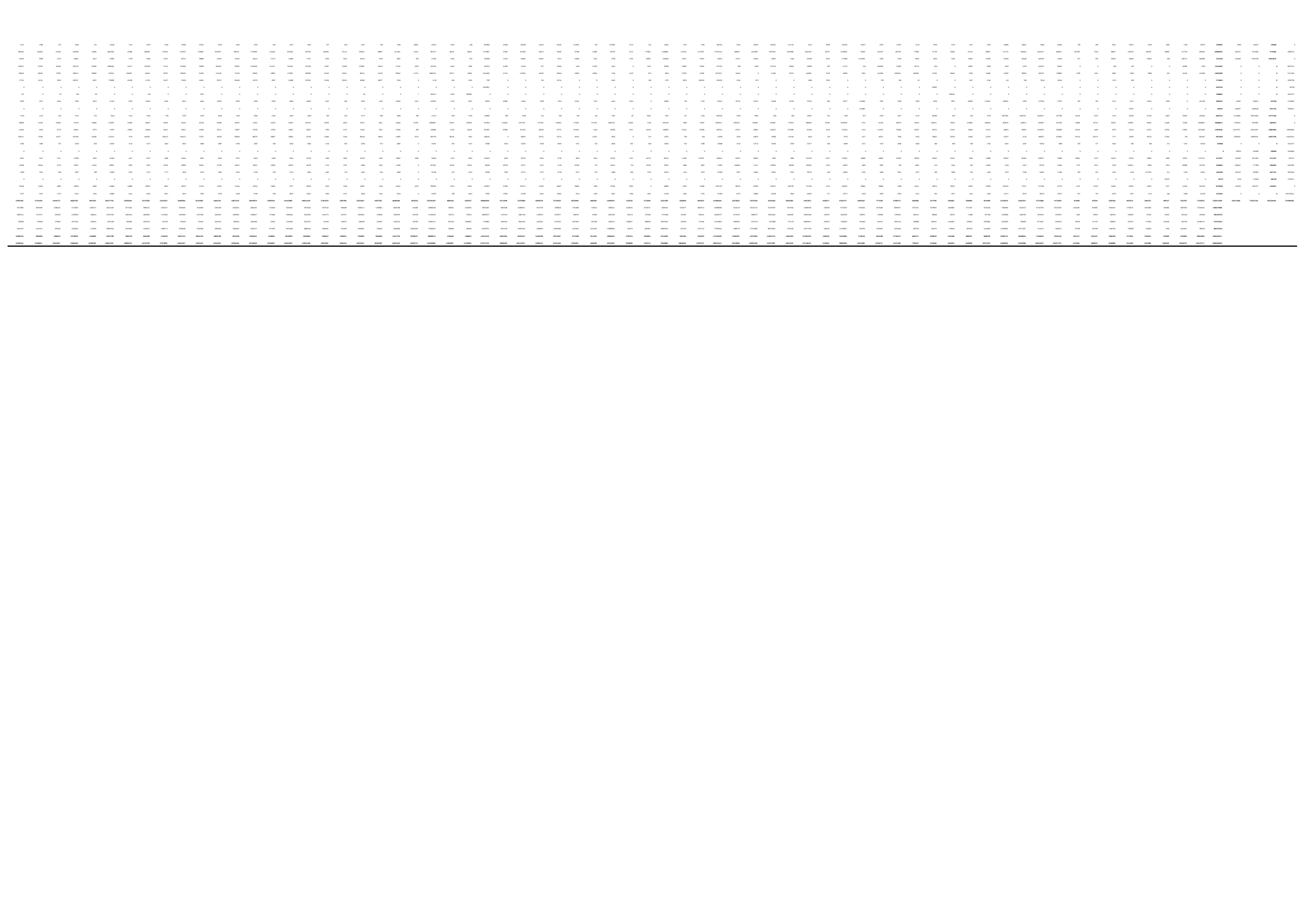


Basic Matrix

Data are calculated at producers' prices in 2007

Unit： Ten Thousand CNY

Input \ Output	Code	Agriculture	Forestry	Animal Husbandry	Fishery	Services in Support of Agriculture	Mining and Washing of Coal	Extraction of Petroleum and Natural Gas	Mining of Ferrous Metal Ores	Mining of Non-Ferrous Metal Ores
Code	-	001	002	003	004	005	006	007	008	009
Agriculture	001	21086505	245502	19772186	1375381	1415443	1918	0	0	1598
Forestry	002	75607	1208970	43452	69758	66142	699041	1618	33086	33399
Animal Husbandry	003	399619	19755	13231699	44152	539960	0	0	0	362
Fishery	004	244	99	9004	1597427	59696	0	0	0	60
Services in Support of Agriculture	005	4135684	571859	1128987	937362	737071	0	0	0	0
Mining and Washing of Coal	006	144071	11824	93778	13137	5402	9698763	224913	136278	119979
Extraction of Petroleum and Natural Gas	007	0	2711	10765	0	0	90453	1282450	595687	100590
Mining of Ferrous Metal Ores	008	0	0	0	0	0	0	0	4154517	24472
Mining of Non-Ferrous Metal Ores	009	0	0	0	0	0	0	0	0	2163996
Mining and Processing of Nonmetal Ores and Other Ores	010	16098	2418	6212	16367	8069	39181	49018	10354	53543
Grinding of Grains	011	1311842	700	7260392	492830	154216	0	0	0	0
Processing of Forage	012	1011122	2969	30170236	4905617	426221	0	0	0	0
Refining of Vegetable Oil	013	109191	8217	784499	92815	119414	832	587	379	247
Manufacture of Sugar	014	216	9	185	2	0	0	0	0	0
Slaughtering and Processing of Meat	015	0	0	0	0	0	0	0	0	0
Processing of Aquatic Product	016	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Processing of Other Foods	017	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Convenience Food	018	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Liquid Milk and Dairy Products	019	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Flavoring and Ferment Products	020	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Other Foods	021	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Alcohol and Wine	022	25676	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Processing of Soft Drinks and Purified Tea	023	1596	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Tobacco	024	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Spinning and Weaving, Printing and Dyeing of Cotton and Chemical Fiber	025	3599	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Spinning and Weaving, Dyeing and Finishing of Wool	026	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Spinning and Weaving of Hemp and Tiffany	027	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Textile Products	028	3818	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Knitted Fabric and Its Products	029	1632	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Textile Wearing Apparel, Footwear and Caps	030	1581	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Leather, Fur, Feather(Down) and Its Products	031	3993	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Processing of Timbers and Manufacture of Wood, Bamboo, Rattan, Palm and Straw Products	032	90227	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Furniture	033	112513	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Paper and Paper Products	034	84446	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Printing,Reproduction of Recording Media	035	83481	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Articles for Culture,Education and Sports Activities	036	6868	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Processing of Petroleum and Nuclear Fuel	037	1956281	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Coking	038	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Basic Chemical Raw Materials	039	4873	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Fertilizers	040	27181176	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Pesticides	041	4436738	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Paints,Printing Inks, Pigments and Similar Products	042	2304	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Synthetic Materials	043	10319	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Special Chemical Products	044	2922	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Chemical Products for Daily Use	045	22054	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Medicines	046	12827	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Chemical Fiber	047	45735	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Rubber	048	30279	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Plastic	049	2147550	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Cement,Lime and Plaster	050	44865	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Products of Cement and Plaster	051	23586	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Brick,Stone and Other Building Materials	052	68020	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Glass and Its Products	053	20611	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Pottery and Porcelain	054	43294	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufature of Fire-resistant Materials	055	12466	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Graphite and Other Nonmetallic Mineral Products	056	37883	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Iron-Smelting	057	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Steel making	058	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rolling of Steel	059	29801	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Smelting of Ferroalloy	060	188	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Smelting of Non-Ferrous Metals and Manufacture of Alloy	061	540	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Rolling of Non-Ferrous Metals	062	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Metal Products	063	792746	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Boiler and Prime Mover	064	88	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Metalworking Machinery	065	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Lifter	066	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Pump, Value and Similar Machinery	067	28453	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Other General Purpose Machinery	068	45268	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Intermediate Input: Manufacture of Special Purpose Machinery for Mining,Metallurgy and Construction	069	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Special Purpose Machinery for Chemical Industry,Processing of Timber and Nonmetals	070	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Special Purpose Machinery for Agriculture,Forestry,Animal Husbandry and Fishery	071	1697585	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Other Special Purpose Machinery	072	5181	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Railroad Transport Equipment	073	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Automobiles	074	81791	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Boats and Ships and Floating Devices	075	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Other Transport Equipment	076	142218	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Generators	077	9040	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Equipments for Power Transmission and Distribution and Control	078	2402	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Wire,Cable,Optical Cable and Electrial Appliances	079	5029	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Household Electric and Non-electric Appliances	080	13112	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Other Electrical Machinery and Equipment	081	6839	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Communication Equipment, Computer and Other Electronic Equipment	082	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Radar and Broadcasting Equipment	083	84	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Computer	084	2534	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Electronic Component	085	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Household Audiovisual Apparatus	086	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Other Electronic Equipment	087	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Measuring Instruments	088	1787	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Machinery for Cultural Activity & Office Work	089	12929	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufacture of Artwork,Other Manufacture	090	190282	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Scrap and Waste	091	17011	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Production and Supply of Electric Power and Heat Power	092	3553636	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Production and Distribution of Gas	093	10222	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Production and Distribution of Water	094	22931	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Construction	095	93195	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Transport Via Railway	096	885466	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Transport Via Road	097	1163267	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Urban Public Traffic	098	79310	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Water Traffic	099	391524	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Air Transport	100	138956	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Transport Via Pipeline	101	11325	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Loading,Unloading,Portage and Other Transport Services	102	106206	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Storage	103	1389515	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Post	104	139695	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Telecom & Other Information Transmission Services	105	954702	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Computer Services	106	4116	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Software Industry	107	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Wholesale and Retail Trades	108	2506388	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Hotels	109	153695	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Catering Services	110	302936	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Banking,Security, Other Financial Activities	111	1442107	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Insurance	112	398799	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Real Estate	113	99107	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]



(10000 CNY)

End Use						Import	Other	Total Output
	Total Capital Formation			Export	Total End Use			
Total	Total Fixed Capital Formation	Increase in Stock	Total					
TC	FU201	FU202	GCF	EX	TFU	IM	ERR	GO
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416419	0	-7618	-7618	34259	443061	6565406	-422769	18620000
42339955	10671736	10244162	20915898	536842	63792695	1625680	12685789	161250000
14764795	0	1113155	1113155	672384	16550334	150755	1718467	44580000
3416230	0	0	0	623	3416852	36253	685917	17890000
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12994013	0	3558700	3558700	455939	17008653	5756721	1925666	43126889
1033303	0	234272	234272	215316	1482891	442238	282825	6322703
22781961	0	164074	164074	1802070	24748104	2126907	2200967	47154881
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9318748	588465912	0	588465912	4088747	601873407	2212627	7557011	627217352
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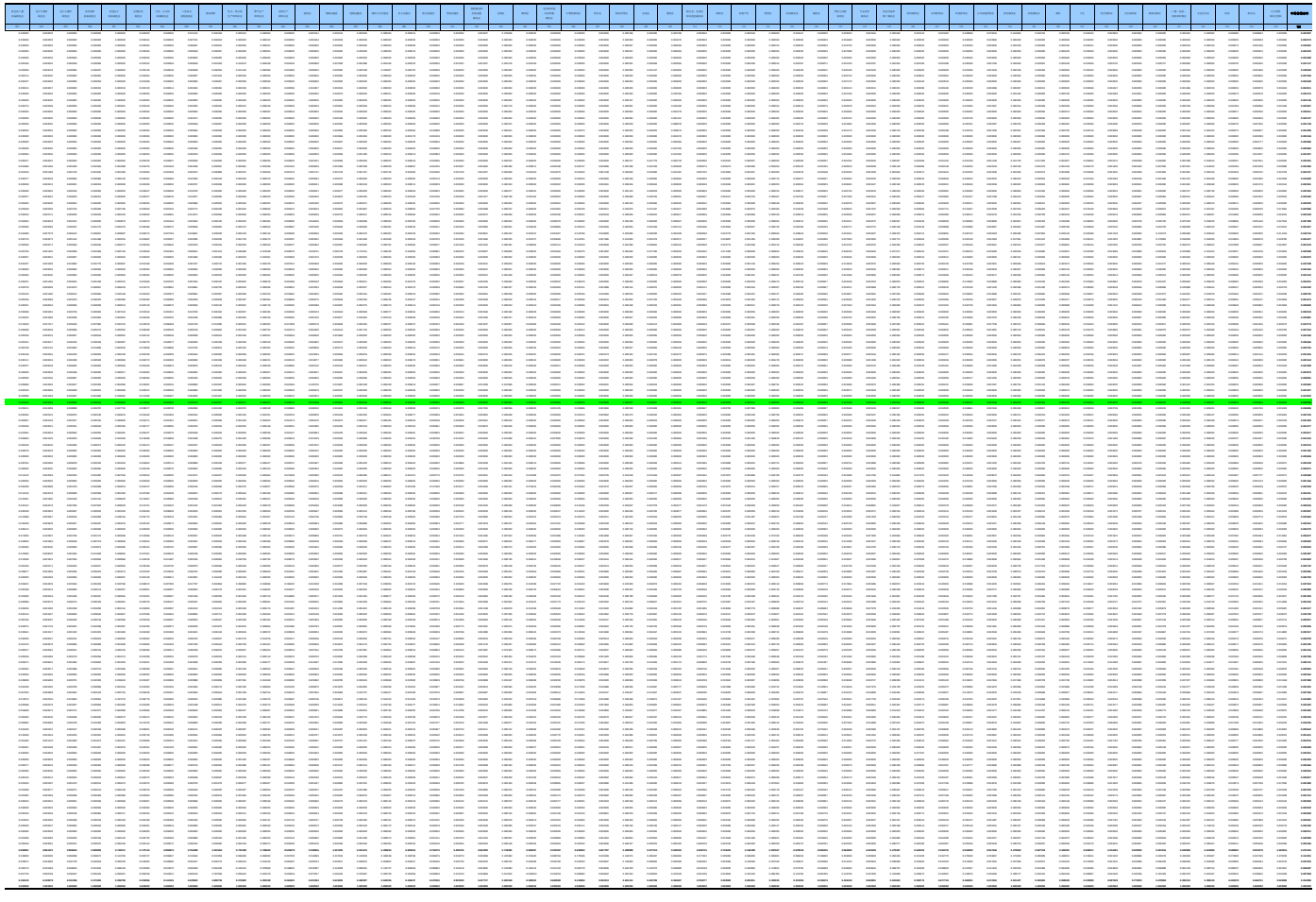
12911780	777923	64256	842180	3633928	17387888	884563	-20722	104172935
13674415	0	0	0	944417	14618832	671067	800844	21883147
4797377	942867	93567	1036435	18486024	24319836	486252	-105758	67911436
2565249	255539	11616	267155	12936072	15768476	7408965	-50874	27283871
305201	0	14686	14686	31383	351271	0	-66238	4196038
2213311	541969	46005	587975	1286846	4088132	0	-47796	43225695
0	0	0	0	0	0	0	-38329	9918890
596016	0	0	0	485691	1081708	407114	171358	7307574
26937265	0	0	0	986101	27923365	826565	2835553	76940881
2348711	0	0	0	1321499	3670210	671607	201423	10028016
519950	12341578	0	12341578	2157643	15019171	2491700	-516709	13335325
77477085	18821092	1027192	19848284	40075644	137401012	0	3787842	288325411
922805	0	0	0	4515255	5438060	3208369	-119794	28159099
56557087	0	0	0	2849979	59407066	2025087	3610031	119995258
30323903	0	0	0	175265	30499167	423482	5079796	154575997
13826836	0	0	0	687173	14514009	868250	446583	40234243
75645407	34062554	0	34062554	0	109707961	0	1248663	147746232

1599185	0	0	0	0	1599185	0	e1d0f2b3	3734b861	
15d0f851	0	0	0	5972f3b2	0b9b4d8d	d7e7b5f4	e7d1	7f8b3d24	
1b5b4c7d	0	0	0	25d07c8	14d0f39b	5f1d2a8	a2f7c37	4a2c1d9e	
6d07c1d	0	0	0	6d05c8b	7d9b0f17	0a3b5c2d	2d4e6f1	63790d7c	
7c1c1a2d	0	0	0	0	7c1c1a2d	0	7c1c1a2d	0e1c7a9b	
4d2c7f0e	0	0	0	0	4d2c7f0e	0	e67c7	7f4b2d1c	
6df7f3	0.005345	0	0.0f1d8b	0	0.0d7f3	0	d7b8c3	0.e4c2a1	
2b0e4f7c	0	0	0	0	2b0e4f7c	0	c47d3d2	a2c3d1f2	
2f3194c4	0	0	0	0	2f3194c4	0	1e47c4	9c6d8f0d	
5b09d07f	0	0	0	0	5b09d07f	0	5df35d2	6677c2e6	
31f7f1d6	0	0	0	d1d6f1f	3798f7b5	01d6c07	4f4d3e19	45b6d38d	
1d83b47c	0	0	0	7137f3f	4f83b4d1	5f8b0f3c	7c3d5b2e	4f1d3c8b	
417b4e2f	0	0	0	2f3b05c	61f8b4d2	4f1d7c3	a6f27e2	5f8b3d1f	
4b3d6f7d	0	0	0	4c1c6f1	4b1d2c8b	3b1f7c	2f6f2e1d	6d7c2e7b	
4d2b3f7c	0	0	0	0	4d2b3f7c	0	4b1d6f	2e4f3b1a	
6b7d9f1	0	0	0	0	6b7d9f1	0	5b4c2f	6b4d8a2c	
4b5f7c9e	0	0	0	5b4d2c	7c9d3e8f	1f8f7b2d	2a4f7c	6c3d8b4e	
7c5b8d0f	0	0	0	1a8f3d7	7f8d5c2a	1e3d8f0	2b4d6f1	9c1e7d6f	
5f8f7c2d	0	0	0	7c4e2d	1d5c8f3a	3f7b1e4	8c2d5f	7d1f9b3c	
4d2c6e8f	0	0	0	0	4d2c6e8f	0	a7d4c2	4e8f1b3d	
1d3b6e2c	0	0	0	6f2e4a8d	2f3b5c1d	1c4d6f2e	1f8a3c5b	6b1d4f7e	
4b2d7f9e3c	0	0	0	a1f3b5d	4b2d6f1e3c	8c1f2d	d6f4c2b	6b8c7f2d	
4b4f3d2e	4b4d3f8d	1a6f2c4e	4d8f6b2e4c	7f1a6f8d2b	4b2d3f6d1c	7a6d8f2e4f	4b6d4e3c	6b8f2d6e4a	

直接消耗系数表

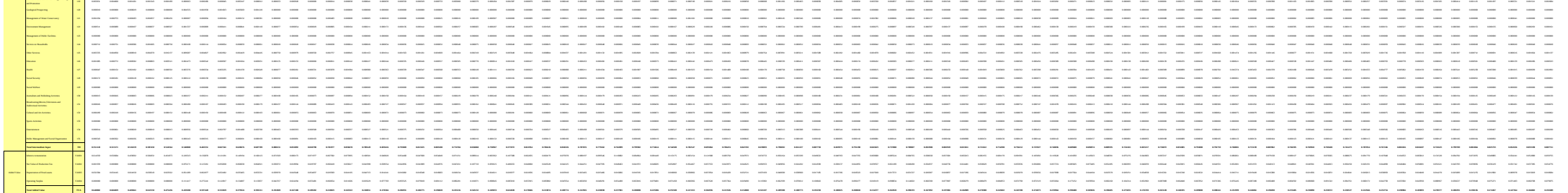
Matris of Direct Input Coefficients

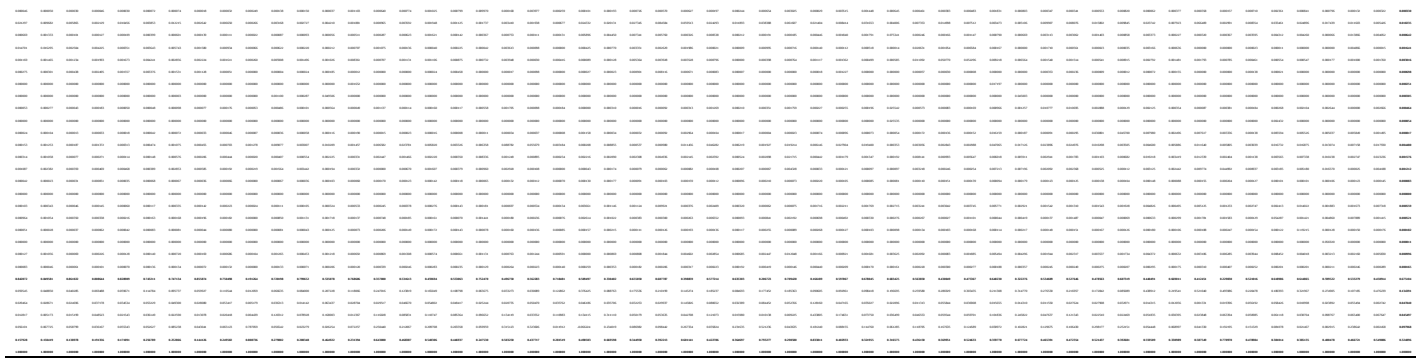
	代码	农业	林业	畜牧业	渔业	农、林、牧、渔服务业	煤炭开采和洗选业	石油和天然气开采业	黑色金属矿采选业	有色金属矿采选业	非金属矿及其他矿采选业	谷物磨制业	饲料加工业
代码	-	001	002	003	004	005	006	007	008	009	010	011	012
农业	001	0.085512	0.013185	0.122618	0.030852	0.079119	0.000020	0.000000	0.000000	0.000063	0.000109	0.644518	0.365095
林业	002	0.000307	0.064929	0.000269	0.001565	0.003697	0.007248	0.000017	0.000913	0.001322	0.000123	0.004336	0.000001
畜牧业	003	0.001621	0.001061	0.082057	0.000990	0.030182	0.000000	0.000000	0.000000	0.000014	0.000027	0.000008	0.022968
渔业	004	0.000001	0.000005	0.000056	0.035823	0.002237	0.000000	0.000000	0.000000	0.000002	0.000005	0.000000	0.039820
农、林、牧、渔服务业	005	0.016771	0.030712	0.007001	0.021027	0.041200	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000
煤炭开采和洗选业	006	0.000584	0.000635	0.000582	0.000295	0.000302	0.100557	0.002359	0.003762	0.004749	0.002292	0.000717	0.000535
石油和天然气开采业	007	0.000000	0.000146	0.000067	0.000000	0.000000	0.000938	0.013450	0.016442	0.003982	0.012218	0.000019	0.000190
黑色金属矿采选业	008	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.114672	0.000969	0.000000	0.000000	0.000000
有色金属矿采选业	009	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.085656	0.000000	0.000000	0.000000
非金属矿及其他矿采选业	010	0.000065	0.000130	0.000039	0.000267	0.000451	0.000406	0.000514	0.000286	0.002119	0.066974	0.000021	0.000794
谷物磨制业	011	0.005320	0.000038	0.045026	0.011055	0.008620	0.000000	0.000000	0.000000	0.000000	0.000000	0.023385	0.065257
饲料加工业	012	0.004100	0.000159	0.187102	0.110041	0.023825	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.038461
植物油加工业	013	0.000443	0.000441	0.004865	0.002082	0.006675	0.000009	0.000006	0.000010	0.000010	0.000022	0.006965	0.053841
制糖业	014	0.000001	0.000000	0.000001	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000
屠宰及肉类加工业	015	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.007240
水产品加工业	016	0.000000	0.000000	0.000032	0.000361	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.053968
其他食品加工业	017	0.000000	0.000000	0.000000	0.000000	0.002197	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.040685
方便食品制造业	018	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000
液体乳及乳制品制造业	019	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000
调味品、发酵制品制造业	020	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.002294
其他食品制造业	021	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.004864	0.022555



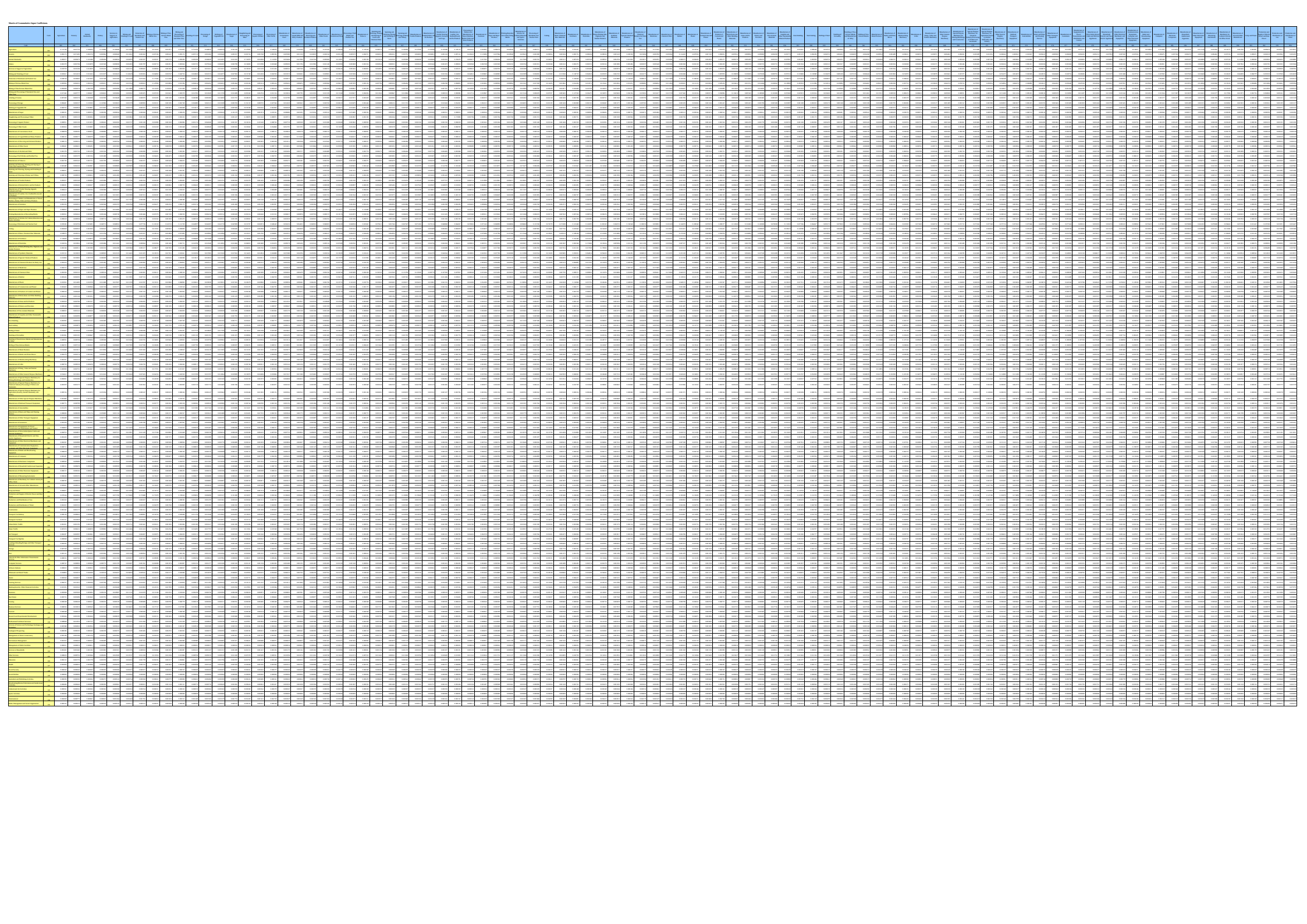
Matris of Direct Input Coefficients

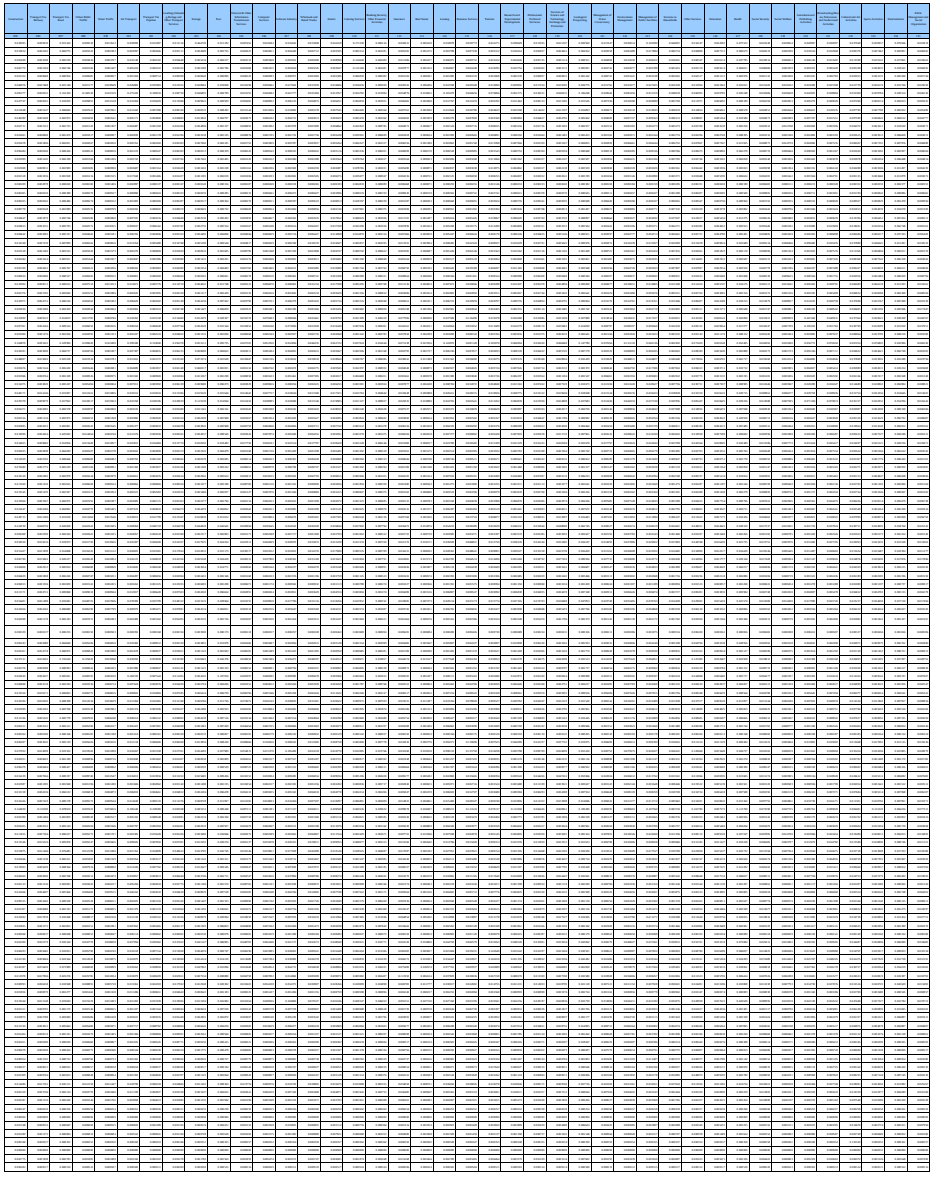
	Code	Agriculture	Forestry	Animal Husbandry	Fishery	Services in Support of Agriculture	Mining and Washing of Coal	Extraction of Petroleum and Natural Gas	Mining of Ferrous Metal Ores	Mining of Non-Ferrous Metal Ores	Mining and Processing of Nonmetal Ores and Other Ores	Grinding of Grains	Processing of Forage
Code	-	001	002	003	004	005	006	007	008	009	010	011	012
Agriculture	001	0.085512	0.013185	0.122618	0.030852	0.079119	0.000020	0.000000	0.000000	0.000063	0.000109	0.644518	0.365095
Forestry	002	0.000307	0.064929	0.000269	0.001565	0.003697	0.007248	0.000017	0.000913	0.001322	0.000123	0.004336	0.000001
Animal Husbandry	003	0.001621	0.001061	0.082057	0.000990	0.030182	0.000000	0.000000	0.000000	0.000014	0.000027	0.000008	0.022968
Fishery	004	0.000001	0.000005	0.000056	0.035833	0.003337	0.000000	0.000000	0.000000	0.000002	0.000005	0.000000	0.039820
Services in Support of Agriculture	005	0.016771	0.030712	0.007001	0.021027	0.041200	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000
Mining and Washing of Coal	006	0.000584	0.000635	0.000582	0.000295	0.000302	0.100557	0.002359	0.003762	0.004749	0.002292	0.000717	0.000535
Extraction of Petroleum and Natural Gas	007	0.000000	0.000146	0.000067	0.000000	0.000000	0.000938	0.013450	0.016442	0.003982	0.012218	0.000019	0.000190
Mining of Ferrous Metal Ores	008	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.114672	0.000969	0.000000	0.000000	0.000000
Mining of Non-Ferrous Metal Ores	009	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.085656	0.000000	0.000000	0.000000
Mining and Processing of Nonmetal Ores and Other Ores	010	0.000065	0.000130	0.000039	0.000367	0.000451	0.000406	0.000514	0.000286	0.002119	0.066974	0.000021	0.000794
Grinding of Grains	011	0.005320	0.000038	0.045026	0.011055	0.008620	0.000000	0.000000	0.000000	0.000000	0.000000	0.033385	0.065257
Processing of Forage	012	0.004100	0.000159	0.187102	0.110041	0.023825	0.000000	0.000000	0.000000	0.000000	0.000000	0.000000	0.038461
Refining of Vegetable Oil	013	0.000443	0.000441	0.004865	0.002082	0.006675	0.000009	0.000006	0.000010	0.000010	0.000022	0.006965	0.053841





Matrix of Commodities' Super Coefficients

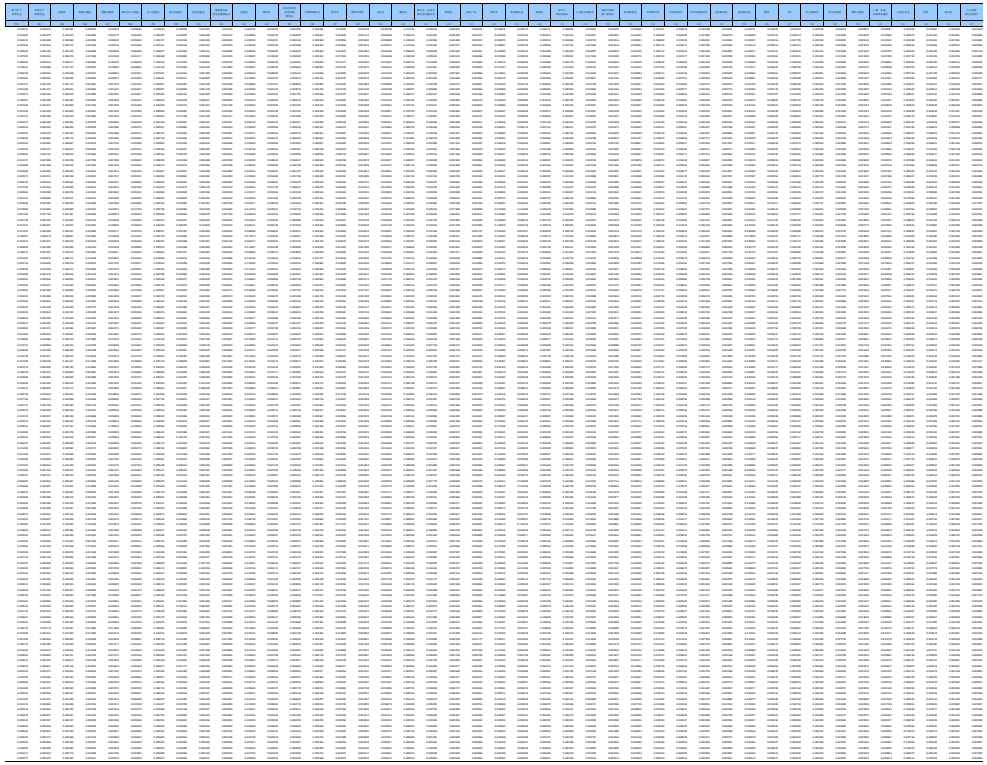




完全消耗系数表

Matrix of Cummulative Input Coefficients

	代码	农业	林业	畜牧业	渔业	农、林、牧、渔服务业	煤炭开采和洗选业	石油和天然气开采业	黑色金属矿采选业	有色金属矿采选业	非金属矿及其他矿采选业
代码	-	001	002	003	004	005	006	007	008	009	010
农业	001	0.111740	0.027739	0.309450	0.119080	0.145690	0.011046	0.008034	0.012203	0.012875	0.014203
林业	002	0.002173	0.071493	0.002170	0.003962	0.006940	0.014341	0.003263	0.007160	0.006147	0.005172
畜牧业	003	0.005071	0.005879	0.101460	0.009494	0.045934	0.004970	0.002597	0.005597	0.005770	0.006286
渔业	004	0.001379	0.001704	0.016979	0.047420	0.009830	0.002493	0.001797	0.002713	0.002811	0.003024
农、林、牧、渔服务业	005	0.019759	0.025106	0.014029	0.025419	0.045920	0.001155	0.000647	0.000984	0.001063	0.001030
煤炭开采和洗选业	006	0.025651	0.014218	0.012424	0.012237	0.016522	0.146520	0.035055	0.064094	0.050747	0.043754
石油和天然气开采业	007	0.038744	0.030003	0.021824	0.037188	0.052184	0.052258	0.072410	0.117280	0.112280	0.102580
黑色金属矿采选业	008	0.003965	0.004325	0.002510	0.005017	0.005403	0.023354	0.020613	0.147990	0.016806	0.013396
有色金属矿采选业	009	0.005069	0.004276	0.002740	0.003612	0.005098	0.011880	0.008775	0.013459	0.108120	0.011260
非金属矿及其他矿采选业	010	0.017442	0.007777	0.006057	0.004632	0.005806	0.005832	0.005675	0.007239	0.010415	0.083579
谷物磨制业	011	0.007450	0.001574	0.069468	0.022590	0.016648	0.001237	0.000979	0.001495	0.001549	0.001696
饲料加工业	012	0.006401	0.002537	0.218100	0.122960	0.036923	0.001378	0.000993	0.001521	0.001585	0.001740
植物油加工业	013	0.002755	0.002834	0.024861	0.013505	0.015838	0.002732	0.002221	0.003304	0.003673	0.004468
制糖业	014	0.000181	0.000201	0.000574	0.000399	0.000656	0.000330	0.000284	0.000447	0.000435	0.000470
屠宰及肉类加工业	015	0.000725	0.001118	0.002694	0.001887	0.002979	0.001804	0.001369	0.001986	0.002078	0.002222
水产品加工业	016	0.000951	0.001130	0.013672	0.008422	0.004592	0.001737	0.001238	0.001888	0.001949	0.002086
其他食品加工业	017	0.001024	0.001178	0.010683	0.006332	0.006286	0.001318	0.000964	0.001458	0.001536	0.001648
方便食品制造业	018	0.000078	0.000107	0.000075	0.000082	0.000217	0.000207	0.000130	0.000222	0.000227	0.000254



附录三　部门分类、增加值和最终使用项指标中英文对照

APPENDIX Ⅲ　Comparison for Indices of Sector Classification, Value Added and Final Uses in Chinese and in English

一、中国 2007 年投入产出表部门分类

1. Sector Classification in 2007 Input-Output Tables of China

部门分类及代码	Sector Classification and Code
01. 农林牧渔业	01. Agriculture, Forestry, Animal Husbandry & Fishery
001 农业	001 Farming
002 林业	002 Forestry
003 畜牧业	003 Animal Husbandry
004 渔业	004 Fishery
005 农、林、牧、渔服务业	005 Services in Support of Agriculture
02. 煤炭开采和洗选业	02. Mining and Washing of Coal
006 煤炭开采和洗选业	006 Mining and Washing of Coal
03. 石油和天然气开采业	03. Extraction of Petroleum and Natural Gas
007 石油和天然气开采业	007 Extraction of Petroleum and Natural Gas
04. 金属矿采选业	04. Mining of Metal Ores
008 黑色金属矿采选业	008 Mining of Ferrous Metal Ores
009 有色金属矿采选业	009 Mining of Non-Ferrous Metal Ores
05. 非金属矿及其他矿采选业	05. Mining and Processing of Nonmetal Ores and Other Ores
010 非金属矿及其他矿采选业	010 Mining and Processing of Nonmetal Ores and Other Ores
06. 食品制造及烟草加工业	06. Manufacture of Foods and Tobacco
011 谷物磨制业	011 Grinding of Grains
012 饲料加工业	012 Processing of Forage
013 植物油加工业	013 Refining of Vegetable Oil
014 制糖业	014 Manufacture of Sugar
015 屠宰及肉类加工业	015 Slaughtering and Processing of Meat
016 水产品加工业	016 Processing of Aquatic Product
017 其他食品加工业	017 Processing of Other Foods
018 方便食品制造业	018 Manufacture of Convenience Food
019 液体乳及乳制品制造业	019 Manufacture of Liquid Milk and Dairy Products
020 调味品、发酵制品制造业	020 Manufacture of Flavoring and Ferment Products

附录三 续1 (APPENDIX Ⅲ Continue 1)

部门分类及代码	Sector Classification and Code
021 其他食品制造业	021 Manufacture of Other Foods
022 酒精及酒的制造业	022 Manufacture of Alcohol and Wine
023 软饮料及精制茶加工业	023 Processing of Soft Drinks and Purified Tea
024 烟草制品业	024 Manufacture of Tobacco
07. 纺织业	07. Manufacture of Textiles
025 棉、化纤纺织及印染精加工业	025 Spinning and Weaving, Printing and Dyeing of Cotton and Chemical Fiber
026 毛纺织和染整精加工业	026 Spinning and Weaving, Dyeing and Finishing of Wool
027 麻纺织、丝绢纺织及精加工业	027 Spinning and Weaving of Hemp and Tiffany
028 纺织制成品制造业	028 Manufacture of Textile Products
029 针织品、编织品及其制品制造业	029 Manufacture of Knitted Fabric and Its Products
08. 纺织服装鞋帽皮革羽绒及其制品业	08. Manufacture of Textile Wearing Apparel, Footwear, Caps, Leather, Fur, Feather(Down) and Its products
030 纺织服装、鞋、帽制造业	030 Manufacture of Textile Wearing Apparel, Footwear and Caps
031 皮革、毛皮、羽毛(绒)及其制品业	031 Manufacture of Leather, Fur, Feather(Down) and Its Products
09. 木材加工及家具制造业	09. Processing of Timbers and Manufacture of Furniture
032 木材加工及木、竹、藤、棕、草制品业	032 Processing of Timbers, Manufacture of Wood, Bamboo, Rattan, Palm and Straw Products
033 家具制造业	033 Manufacture of Furniture
10. 造纸印刷及文教体育用品制造业	10. Papermaking, Printing and Manufacture of Articles for Culture, Education and Sports Activities
034 造纸及纸制品业	034 Manufacture of Paper and Paper Products
035 印刷业和记录媒介的复制业	035 Printing, Reproduction of Recording Media
036 文教体育用品制造业	036 Manufacture of Articles for Culture, Education and Sports Activities
11. 石油加工、炼焦及核燃料加工业	11. Processing of Petroleum, Coking, Processing of Nuclear Fuel
037 石油及核燃料加工业	037 Processing of Petroleum and Nuclear Fuel
038 炼焦业	038 Coking
12. 化学工业	12. Chemical Industry
039 基础化学原料制造业	039 Manufacture of Basic Chemical Raw Materials
040 肥料制造业	040 Manufacture of Fertilizers
041 农药制造业	041 Manufacture of Pesticides

附录三　续 2　(APPENDIX Ⅲ　Continue 2)

部门分类及代码	Sector Classification and Code
042 涂料、油墨、颜料及类似产品制造业	042 Manufacture of Paints, Printing Inks, Pigments and Similar Products
043 合成材料制造业	043 Manufacture of Synthetic Materials
044 专用化学产品制造业	044 Manufacture of Special Chemical Products
045 日用化学产品制造业	045 Manufacture of Chemical Products for Daily Use
046 医药制造业	046 Manufacture of Medicines
047 化学纤维制造业	047 Manufacture of Chemical Fiber
048 橡胶制品业	048 Manufacture of Rubber
049 塑料制品业	049 Manufacture of Plastic
13. 非金属矿物制品业	13. Manufacture of Nonmetallic Mineral Products
050 水泥、石灰和石膏制造业	050 Manufacture of Cement, Lime and Plaster
051 水泥及石膏制品制造业	051 Manufacture of Products of Cement and Plaster
052 砖瓦、石材及其他建筑材料制造业	052 Manufacture of Brick, Stone and Other Building Materials
053 玻璃及玻璃制品制造业	053 Manufacture of Glass and Its Products
054 陶瓷制品制造业	054 Manufacture of Pottery and Porcelain
055 耐火材料制品制造业	055 Manufacture of Fire-resistant Materials
056 石墨及其他非金属矿物制品制造业	056 Manufacture of Graphite and Other Nonmetallic Mineral Products
14. 金属冶炼及压延加工业	14. Smelting and Rolling of Metals
057 炼铁业	057 Iron-Smelting
058 炼钢业	058 Steel making
059 钢压延加工业	059 Rolling of Steel
060 铁合金冶炼业	060 Smelting of Ferroalloy
061 有色金属冶炼及合金制造业	061 Smelting of Non-Ferrous Metals and Manufacture of Alloys
062 有色金属压延加工业	062 Rolling of Non-Ferrous Metals
15. 金属制品业	15. Manufacture of Metal Products
063 金属制品业	063 Manufacture of Metal Products
16. 通用、专用设备制造业	16. Manufacture of General Purpose and Special Purpose Machinery
064 锅炉及原动机制造业	064 Manufacture of Boiler and Prime Mover
065 金属加工机械制造业	065 Manufacture of Metalworking Machinery
066 起重运输设备制造业	066 Manufacture of Lifters
067 泵、阀门、压缩机及类似机械的制造业	067 Manufacture of Pump, Valve and Similar Machinery
068 其他通用设备制造业	068 Manufacture of Other General Purpose Machinery

附录三 续 3 (APPENDIX Ⅲ Continue 3)

部门分类及代码	Sector Classification and Code
069 矿山、冶金、建筑专用设备制造业	069 Manufacture of Special Purpose Machinery for Mining, Metallurgy and Construction
070 化工、木材、非金属加工专用设备制造业	070 Manufacture of Special Purpose Machinery for Chemical Industry, Processing of Timber and Nonmetals
071 农林牧渔专用机械制造业	071 Manufacture of Special Purpose Machinery for Agriculture, Forestry, Animal Husbandry and Fishery
072 其他专用设备制造业	072 Manufacture of Other Special Purpose Machinery
17. 交通运输设备制造业	17. Manufacture of Transport Equipment
073 铁路运输设备制造业	073 Manufacture of Railroad Transport Equipment
074 汽车制造业	074 Manufacture of Automobiles
075 船舶及浮动装置制造业	075 Manufacture of Boats and Ships and Floating Devices
076 其他交通运输设备制造业	076 Manufacture of Other Transport Equipment
18. 电气机械及器材制造业	18. Manufacture of Electrical Machinery and Equipment
077 电机制造业	077 Manufacture of Generators
078 输配电及控制设备制造业	078 Manufacture of Equipments for Power Transmission and Distribution and Control
079 电线、电缆、光缆及电工器材制造业	079 Manufacture of Wire, Cable, Optical Cable and Electrical Appliances
080 家用电力和非电力器具制造业	080 Manufacture of Household Electric and Non-electric Appliances
081 其他电气机械及器材制造业	081 Manufacture of Other Electrical Machinery and Equipment
19. 通信设备、计算机及其他电子设备制造业	19. Manufacture of Communication Equipment, Computer and Other Electronic Equipment
082 通信设备制造业	082 Manufacture of Communication Equipment
083 雷达及广播设备制造业	083 Manufacture of Radar and Broadcasting Equipment
084 电子计算机制造业	084 Manufacture of Computer
085 电子元器件制造业	085 Manufacture of Electronic Component
086 家用视听设备制造业	086 Manufacture of Household Audiovisual Apparatus
087 其他电子设备制造业	087 Manufacture of Other Electronic Equipment
20. 仪器仪表及文化办公用机械制造业	20. Manufacture of Measuring Instrument and Machinery for Cultural Activity & Office Work
088 仪器仪表制造业	088 Manufacture of Measuring Instruments
089 文化、办公用机械制造业	089 Manufacture of Machinery for Cultural Activity & Office Work
21. 工艺品及其他制造业	21. Manufacture of Artwork, Other Manufacture
090 工艺品及其他制造业	090 Manufacture of Artwork, Other Manufacture

附录三　续 4　(APPENDIX Ⅲ　Continue 4)

部门分类及代码	Sector Classification and Code
22. 废品废料	22. Scrap and Waste
091 废品废料	091 Scrap and Waste
23. 电力、热力的生产和供应业	23. Production and Supply of Electric Power and Heat Power
092 电力、热力的生产和供应业	092 Production and Supply of Electric Power and Heat Power
24. 燃气生产和供应业	24. Production and Distribution of Gas
093 燃气生产和供应业	093 Production and Distribution of Gas
25. 水的生产和供应业	25. Production and Distribution of Water
094 水的生产和供应业	094 Production and Distribution of Water
26. 建筑业	26. Construction
095 建筑业	095 Construction
27. 交通运输及仓储业	27. Traffic, Transport and Storage
096 铁路运输业	096 Transport Via Railway
097 道路运输业	097 Transport Via Road
098 城市公共交通运输业	098 Urban Public Traffic
099 水上运输业	099 Water Transport
100 航空运输业	100 Air Transport
101 管道运输业	101 Transport Via Pipeline
102 装卸搬运和其他运输服务业	102 Loading, Unloading, Portage and Other Transport Services
103 仓储业	103 Storage
28. 邮政业	28. Post
104 邮政业	104 Post
29. 信息传输、计算机服务和软件业	29. Information Transmission, Computer Services and Software
105 电信和其他信息传输服务业	105 Telecom & Other Information Transmission Services
106 计算机服务业	106 Computer Services
107 软件业	107 Software Industry
30. 批发和零售业	30. Wholesale and Retail Trades
108 批发和零售业	108 Wholesale and Retail Trades
31. 住宿和餐饮业	31. Hotels and Catering Services
109 住宿业	109 Hotels
110 餐饮业	110 Catering Services
32. 金融业	32. Financial Intermediation
111 银行业、证券业和其他金融活动	111 Banking, Security, Other Financial Activities
112 保险业	112 Insurance
33. 房地产业	33. Real Estate
113 房地产业	113 Real Estate

附录三 续5 (APPENDIX Ⅲ Continue 5)

部门分类及代码	Sector Classification and Code
34. 租赁和商务服务业	34. Leasing and Business Services
114 租赁业	114 Leasing
115 商务服务业	115 Business Services
116 旅游业	116 Tourism
35. 研究与试验发展业	35. Research and Experimental Development
117 研究与试验发展业	117 Research and Experimental Development
36. 综合技术服务业	36. Comprehensive Technical Services
118 专业技术服务业	118 Professional Technical Services
119 科技交流和推广服务业	119 Services of Science and Technology Exchanges and Promotion
120 地质勘查业	120 Geological Prospecting
37. 水利、环境和公共设施管理业	37. Management of Water Conservancy, Environment and Public Facilities
121 水利管理业	121 Management of Water Conservancy
122 环境管理业	122 Environment Management
123 公共设施管理业	123 Management of Public Facilities
38. 居民服务和其他服务业	38. Services to Households and Other Services
124 居民服务业	124 Services to Households
125 其他服务业	125 Other Services
39. 教育	39. Education
126 教育	126 Education
40. 卫生、社会保障和社会福利业	40. Health, Social Security and Social Welfare
127 卫生	127 Health
128 社会保障业	128 Social Security
129 社会福利业	129 Social Welfare
41. 文化、体育和娱乐业	41. Culture, Sports and Entertainment
130 新闻出版业	130 Journalism and Publishing Activities
131 广播、电视、电影和音像业	131 Broadcasting, Movies, Televisions and Audiovisual Activities
132 文化艺术业	132 Cultural and Art Activities
133 体育	133 Sports Activities
134 娱乐业	134 Entertainment
42. 公共管理和社会组织	42. Public Management and Social Organization
135 公共管理和社会组织	135 Public Management and Social Organization

Regulations of the People’s Republic of China on the Administration of Company Registration (Revised 2005)

(Promulgated by Order No. 156 of the State Council of the People’s Republic of China on June 24, 1994 and revised according to the Decision of the State Council on Revising the Regulations of the People’s Republic of China on the Administration of Company Registration on December 18, 2005)

Chapter I General Provisions

Article 1 To validate the status of enterprise legal person of companies and standardize the conduct of company registration, these Regulations have been formulated in accordance with the Company Law of the People’s Republic of China (hereinafter referred to as "company law").

Article 2 A limited liability company or a joint stock limited company (hereinafter referred to as "company") shall conduct company registration of its formation, modification and termination.

To apply for company registration, an applicant shall be responsible for the authenticity of the application documents and materials.

Article 3 A company may acquire the status of enterprise legal person only after having been legally registered by the company registration organ and collected a Business License of Enterprise Legal Person.

A company formed after these Regulations becoming effective shall not engage in any business activity in the name of a company without registration with the company registration organ.

Article 4 The administration for industry and commerce shall be the company registration organ.

A company registration organ at a lower level shall carry out company registration under the leadership of a company registration organ at a higher level.

A company registration organ shall perform its functions according to law, free from any unlawful interference.

Article 5 The State Administration for Industry and Commerce shall be in charge of the work of company registration across the country.

Chapter II Jurisdiction over Registration

Article 6 The State Administration for Industry and Commerce shall take charge of the registration of the following companies:

(1) a company where the state-owned asset supervision and administration institution of the State Council performs the functions of a contributor, and a company which is formed by the aforesaid company as an investor holding more than 50% of the shares therein;

(2) a foreign-funded company;

(3) a company which shall be registered by the State Administration for Industry and Commerce in accordance with a relevant law, administrative regulation or decision of the State Council; and

(4) any other company which shall be registered by the State Administration for Industry and Commerce in accordance with the provisions of the State Administration for Industry and Commerce.

Article 7 The administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government shall take charge of the registration of the following companies within its administrative division:

(1) a company where the state-owned asset supervision and administration institution of the people's government of a province, autonomous region or municipality directly under the Central Government performs the functions of a contributor, and a company which is formed by the aforesaid company as an investor holding more than 50% of the shares therein;

(2) a company formed by a natural person as an investor which shall be registered by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government in accordance with the provisions of the administration for industry and commerce of the province, autonomous region or municipality directly under the Central Government;

(3) a company which shall be registered by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government in accordance with a relevant law, administrative regulation or decision of the State Council; and

(4) any other company which shall be registered as empowered by the State Administration for Industry and Commerce.

Article 8 The administration for industry and commerce of a districted city (region) or county, the sub-administration for industry and commerce of a municipality directly under the Central Government, or the district sub-administration of the administration for industry and commerce of a districted city shall take charge of the registration of the following companies within its administrative division:

(1) a company other than a company as set out in Articles 6 and 7 of these Regulations; and

(2) a company which shall registered as empowered by the State Administration for Industry and Commerce or the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government.

The specific jurisdiction over registration as set out in the preceding paragraph shall be formulated by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government. However, the administration

for industry and commerce of a districted city (region) shall take charge of the registration of joint stock limited companies.

Chapter III Items for Registration

Article 9 The items for company registration shall include:

(1) name;

(2) residence;

(3) name of the legal representative;

(4) registered capital;

~~(5) paid-up capital;~~

~~(6)~~ (5) type of company;

~~(7)~~ (6) business scope;

~~(8)~~ (7) duration of business operation; and

~~(9)~~ (8) names of the shareholders of a limited liability company or names of promoters of a joint stock limited company~~, and amounts, time and forms of contributions as subscribed to and paid up~~.

Article 10 The items for company registration shall conform to the provisions of laws and administrative regulations. A company registration organ shall not register an item for registration which does not conform to the provisions of a law or administrative regulation.

Article 11 The name of a company shall conform to the relevant provisions of the state. A company may use one name only. The name of a company, which has been approved and registered by the company registration organ, shall be protected by law.

Article 12 The residence of a company shall be the seat of the principal office of the company. There may be only one residence registered with the company registration organ. The residence of a company shall be within the territorial jurisdiction of the company registration organ.

Article 13 The registered capital ~~and paid-in capital~~ of a company shall be denominated in Renminbi, except as otherwise provided for by a law or administrative regulation.

Article 14 The form of contribution by a shareholder shall conform to the provisions of Article 27 of the Company Law. ~~Where a shareholder contributes any property other than currency, property in kind, intellectual property or land use right, the measures for registration thereof shall be formulated by the State Administration for Industry and Commerce in conjunction with the relevant departments of the State Council. No~~ However, no shareholder shall contribute, through evaluation, labor, credit, name of a natural person, goodwill, franchise or any property over which a security has been posted.

Article 15 The business scope of a company shall be prescribed in the bylaws of the company and registered according to law.

For the description of the business scope of a company, the standards for industrial categories of the national economy shall be referred to.

Article 16 The types of companies shall include limited liability company and joint stock limited company.

For a one-person limited liability company, the sole investor of a natural person or a legal person shall be stated in the registration of the company, and shall be also stated in the business license of the company.

Chapter IV Registration of Formation

Article 17 To form a company, an application shall be filed for the pre-approval of the company name.

For a company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, or whose business scope includes an item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, an application shall be filed for the pre-approval of the company name before report for approval in the company name as pre-approved by the company registration organ.

Article 18 To form a limited liability company, a representative designated or an agent jointly authorized by all the shareholders shall apply for the pre-approval of the company name to the company registration organ; to form a joint stock limited company, a representative designated or an agent jointly authorized by all the promoters shall apply for the pre-approval of the company name to the company registration organ.

In the application for the pre-approval of company name, the following documents shall be submitted:

(1) a written application for pre-approval of company name, which is signed by all the shareholders of a limited liability company or by all the promoters of a joint stock limited company;

(2) a certificate of designation of a representative or joint authorization of an agent by all the shareholders or promoters; and

(3) any other document as required by the State Administration for Industry and Commerce.

Article 19 A pre-approved company name shall be reserved for six months, and within such a period, the pre-approved name shall not be used for any business operation or transferred.

Article 20 To form a limited liability company, a representative designated or an agent jointly authorized by all the shareholders shall apply for registration of formation to the company registration organ. To form a company wholly owned by the state, the state-owned asset supervision and administration institution of the State Council or the local people’s government as empowered by the local people’s government shall act as

an applicant to apply for registration of formation. For a limited liability company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, an application shall be filed for registration of formation within 90 days from the date of approval; for an overdue application for registration for formation, the applicant shall report to the examination and approval organ for confirmation of validity of the original approval document or for a separate approval.

To apply for forming a limited liability company, an applicant shall submit the following documents to the company registration organ:

(1) a written application for registration of formation, which is signed by the legal representative of the company;

(2) a certificate of designation of a representative or joint authorization of an agent by all the shareholders;

(3) bylaws of the company;

~~(4) a certificate of capital verification produced by a legally formed capital verification institution, except as otherwise provided for by a law or administrative regulation;~~

~~(5) a certificate of transfer of title, which shall be submitted at the time of registration of formation, where the initial contribution made by a shareholder is non-monetary property;~~

~~(6)~~ (4) a certificate of capacity of each shareholder which is an entity or certificate of identification of each shareholder which is a natural person;

~~(7)~~ (5) documents stating the names and residences of the directors, supervisors and managers and certificates of the relevant appointment, election or employment;

~~(8)~~ (6) an appointment document and a certificate of identification of the legal representative of the company;

~~(9)~~ (7) a notice of pre-approval of enterprise name;

~~(10)~~ (8) a certificate of residence of the company; and

~~(11)~~ (9) any other document as required by the State Administration for Industry and Commerce.

~~The amount of initial contribution made by a shareholder of a foreign-funded limited liability company shall conform to laws and administrative regulations, and the rest of contribution shall be paid up within two years from the date of formation of the company. In particular, for an investment company, the rest of contribution may be paid up within five years.~~

For a limited liability company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 21 To form a joint stock limited company, the board of directors of the company shall apply for registration of formation to the company registration organ. For a joint stock

limited company which is formed by stock floatation, the board of directors of the company shall apply for registration of formation to the company registration organ within 30 days after the end of the meeting of foundation.

To apply for forming a joint stock limited company, an applicant shall submit the following documents to the company registration organ:

(1) a written application for registration of formation, which is signed by the legal representative of the company;

(2) a certificate of designation of a representative or joint authorization of an agent by the board of directors;

(3) bylaws of the company;

~~(4) a certificate of capital verification produced by a legally formed capital verification institution;~~

~~(5) a certificate of transfer of title, which shall be submitted at the time of registration of formation, where the initial contribution made by a shareholder is non-monetary property;~~

~~(6)~~ (4) a certificate of capacity of each promoter which is an entity or certificate of identification of each promoter which is a natural person;

~~(7)~~ (5) documents stating the names and residences of the directors, supervisors and managers and certificates of the relevant appointment, election or employment;

~~(8)~~ (6) an appointment document and a certificate of identification of the legal representative of the company;

~~(9)~~ (7) a notice of pre-approval of enterprise;

~~(10)~~ (8) a certificate of residence of the company; and

~~(11)~~ (9) any other document as required by the State Administration for Industry and Commerce.

For a joint stock limited company which is formed by stock floatation, the minutes of the meeting of foundation, and certificate of capital verification produced by a legally formed capital verification institution, shall be also submitted among other things; for a joint stock limited company which is formed by stock floatation and issues stocks publicly, the relevant approval document of the state-owned asset supervision and administration institution of the State Council shall be also submitted among other things.

For a joint stock limited company whose formation must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 22 Where the business scope in the application for company registration includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the item shall be reported to the

relevant department of the state for approval before the application for registration, and the relevant approval document shall be submitted to the company registration organ.

Article 23 Where any provision of the bylaws of a company violates a law or administrative regulation, a company registration organ shall have the authority to require the company to amend it correspondingly.

Article 24 The certificate of residence of a company refers to a document that may certify that the company enjoys the right to use the residence.

Article 25 A company registration organ shall issue a Business License of Enterprise Legal Person to a legally formed company. The date of issuance of the business license of the company shall be the date of formation of the company. The company shall have its corporate seal made, open a bank account and apply for the registration of tax payment on the strength of the Business License of Enterprise Legal Person issued by the company registration organ.

Chapter V Registration of Modification

Article 26 To modify any registered item, a company shall apply for registration of modification to the original company registration organ.

Without registration of modification, no company shall modify any registered item.

Article 27 To apply for registration of modification, a company shall submit the following documents to the company registration organ:

(1) a written application for registration of modification, which is signed by the legal representative of the company;

(2) a resolution or decision on modification made according to the Company Law; and

(3) any other document as required by the State Administration for Industry and Commerce.

Where any registered item to be modified by a company involves the amendment of the bylaws of the company, the amended bylaws of the company or an amendment to the bylaws of the company signed by the legal representative of the company shall be submitted.

For a registered item to be modified which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted to the company registration organ.

Article 28 To modify the company name, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

Article 29 To modify the company residence, a company shall apply for registration of modification before it moves into the new residence, and submit a certificate of use of the new residence.

Where the modification of residence crosses the territorial jurisdictions of the company registration organs, a company shall apply for registration of modification to the company registration organ at the place of its new residence before moving into its new residence; where the company registration organ at the place of new residence of the company accepts the application, the original company registration organ shall transfer the company registration files of the company to the company registration organ at the place of new residence of the company.

Article 30 To modify the legal representative, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

Article 31 ~~To modify the registered capital, a company shall submit a certificate of capital verification produced by a legally formed capital verification institution.~~ To increase the registered capital, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the modification is made.

~~Where a company increases its registered capital, the contributions of the shareholders of a limited liability company for the increased capital and the subscriptions to new stocks by the shareholders of a joint stock limited company shall be respectively subject to the relevant provisions of the Company Law on the payment of contribution for the formation of a limited liability company and the payment for stock subscription for the formation of a joint stock company. Where a joint stock limited company increases its registered capital by publicly issuing new stocks or where a listed company increases its registered capital by privately issuing new stocks, the relevant approval document of the securities regulatory organ of the State Council shall be also submitted.~~

~~Where the statutory common reserve of a company is converted into its registered capital, the certificate of capital verification shall show that the retained statutory common reserve of the company is not be lower than 25% of the registered capital of the company before the conversion.~~

To reduce the registered capital, a company shall apply for registration of modification within 45 days from the date of announcement, and submit the relevant proof that the company has published an announcement on reduction of registered capital in a newspaper and a statement on debt repayment or debt guarantee by the company.

~~The registered capital of a company after reduction shall not be lower than the minimum statutory amount.~~

~~Article 32 To modify the paid-up capital, a company shall submit a certificate of capital verification produced by a legally formed capital verification institution, and the capital contributions shall be made according to the time and form of contribution as prescribed in the bylaws of the company. A company shall apply for registration of modification within 30 days from the date when the capital contributions or stock payments are paid up.~~

Article 33 To modify the business scope, a company shall apply for registration of modification within 30 days from the date when a resolution or decision on the

modification is made; where the modification of the business scope of a company involves any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the company shall apply for registration of modification within 30 days from the date of approval by the relevant state department.

Where a license or any other approval document for an item in the business scope of a company which must be reported for approval according to a law, administrative regulation or decision of the State Council is suspended or revoked, or the term of validity of the license or any other approval document expires, the company shall, within 30 days from the date of suspension or revocation of the license or any other approval document or from the date of expiration of the license or any other approval document, apply for registration of modification or conduct the formalities for deregistration according to the provisions of Chapter VI of these Regulations.

Article 34 To modify the type of company, a company shall apply for registration of modification to a company registration organ within the prescribed time limit according to the formation requirements for the type of company after modification, and submit the relevant documents.

~~Article 35~~ Article 34 Where ~~a shareholder of a limited liability company transfers any shares in the company~~ a change of shareholder of a limited liability company occurs, the company shall apply for registration of modification within 30 days from the date of ~~transfer of shares~~ change, and submit the certificate of capacity of the new shareholder which is an entity or certificate of identification of the new shareholder ~~which~~ who is a natural person.

Where the legal inheritor of a deceased natural person shareholder of a limited liability company succeeds to the status of shareholder, the company shall apply for registration of modification according to the preceding paragraph.

Where a shareholder of a limited liability company or a promoter of a joint stock limited company changes its name, the company shall apply for registration of modification within 30 days from the date of change of name.

Article 36 Where the modification of any registered item of a company involves the modification of any registered item of its branch, the company shall apply for registration of modification of its branch within 30 days from the date of registration of modification of the company.

Article 37 Where the amendment of the bylaws of a company does not involve any registered item, the company shall submit the amended bylaws or an amendment to the bylaws to the original company registration organ for the record.

Article 38 Where any director, supervisor or manager of a company changes, the company shall file the change with the original company registration organ for the record.

Article 39 Where any registered item of a surviving company changes after a merger or separation, the company shall apply for registration of modification; a company which is

dissolved after a merger or separation shall apply for deregistration; a company newly formed after a merger or separation shall apply for registration of formation.

For a merger or separation of a company, the company shall apply for registration within 45 days from the date of announcement, and submit the merger agreement, the resolution or decision on merger or separation, the relevant proof that the company has published an announcement on merger or separation in a newspaper and a statement on debt repayment or debt guarantee by the company. For a merger or separation of a company, which must be reported for approval according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

Article 40 Where the modification of a registered item involves any item stated in the Business License of Enterprise Legal Person, a company registration organ shall reissue a business license to replace the original one.

Article 41 To apply for revocation of registration of modification to the company registration organ according to the provision of Article 22 of the Company Law, a company shall submit the following documents:

(1) a written application, which is signed by the legal representative of the company; and

(2) a judgment of the people's court.

Chapter VI Deregistration

Article 42 Where a company is dissolved and shall be liquidated according to law, a liquidation group shall, within 10 days from the date of its formation, submit a list of the members and person in charge of the liquidation group to the company registration organ for the record.

Article 43 Under any of the following circumstances, the liquidation group of a company shall apply for deregistration to the original company registration organ within 30 days from the date of conclusion of liquidation of the company:

(1) the company is declared bankrupt according to law;

(2) the duration of business operation prescribed in the bylaws of the company expires or any other situation for dissolution prescribed in the bylaws of the company occurs, unless the company continues to exist by virtue of an amendment to the bylaws of the company;

(3) the company is dissolved by a resolution of the shareholders' meeting or shareholder's assembly or is dissolved by the shareholder of a one-person limited liability company or a resolution of the board of directors of a foreign-funded company;

(4) the business license of the company is revoked or the company is ordered to be closed down or dissolved according to law;

(5) the company is dissolved by the people's court according to law; or

(6) any other circumstance of dissolution set out by a law or administrative regulation.

Article 44 To apply for deregistration, a company shall submit the following documents:

(1) a written application for deregistration, which is signed by the person in charge of the liquidation group of the company;

(2) a bankruptcy ruling or dissolution judgment of the people's court, a resolution or decision made by the company according to the Company Law or a document of the administration organ on ordered closedown or dissolution of the company;

(3) a liquidation report archived and affirmed by the shareholders' meeting or shareholder's assembly, the shareholder of a one-person limited liability company, the board of directors of a foreign-funded company, the people's court or the organ approving the company;

(4) the Business License of Enterprise Legal Person; and

(5) any other document as required by a law or administrative regulation.

To apply for deregistration, a wholly state-owned company shall also submit a decision of the state-owned asset supervision and administration institution. In particular, a key wholly state-owned company as determined by the State Council shall also submit the approval document of the people's government at the same level.

To apply for deregistration, a company which has a branch shall also submit the certificate of deregistration of its branch.

Article 45 A company shall be terminated upon the deregistration by the company registration organ.

Chapter VII Registration of a Branch of a Company

Article 46 A branch of a company refers to an organization formed by a company to engage in business operation at a place other than the residence of the company. A branch shall not have the status of enterprise legal person.

Article 47 The items for registration of a branch of a company shall include: name, business premises, person in charge and business scope of the branch.

The name of a branch of a company shall conform to the relevant provisions of the state.

The business scope of a branch of a company shall not be outside the business scope of the company.

Article 48 To form a branch, a company shall apply for registration to the company registration organ at the place of residence of the branch within 30 days from the date when a decision is made; where the formation of a branch must be reported to the relevant department for approval according to a law, administrative regulation or decision of the State Council, a company shall apply for registration to the company registration organ within 30 days from the date of approval.

To form a branch, a company shall submit the following documents to the company registration organ:

(1) a written application for registration of formation of a branch, which is signed by the legal representative of the company;

(2) bylaws of the company, and a photocopy of the Business License of Enterprise Legal Person on which the corporate seal is affixed;

(3) a certificate of use of business premises;

(4) an appointment document and a certificate of identification of the person in charge of the branch; and

(5) any other document as required by the State Administration for Industry and Commerce.

Where the formation of a branch must be reported for approval according to a law, administrative regulation or decision of the State Council, or the business scope of a branch includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted.

The company registration organ of a branch shall issue a Business License to a branch whose registration is approved. A company shall, within 30 days from the date of registration of its branch, file a record with the company registration organ on the strength of the Business License of its branch.

Article 49 To modify a registered item, a branch of a company shall apply for registration of modification to the company registration organ.

To apply for registration of modification, a branch shall submit a written application for registration of modification which is signed by the legal representative of the company. To modify the name or business scope, a branch shall submit a photocopy of the Business License of Enterprise Legal Person on which the corporate seal of the company is affixed, and where the business scope of a branch includes any item which must be reported for approval before registration according to a laws, administrative regulation or decision of the State Council, the relevant approval document shall be also submitted. To modify the business premises, a branch shall submit a certificate of use of the new business premises. To modify the person in charge, a branch shall submit the appointment and removal documents and certificates of identification.

Upon approving the registration of modification, the company registration organ shall reissue a Business License to replace the original one.

Article 50 Where a branch of a company is dissolved by the company or ordered to be closed down according to law, or the business license of a branch of a company is revoked, the company shall apply for deregistration to the company registration organ of the branch within 30 days from the date when a decision is taken. To apply for deregistration, the company shall submit a written application for deregistration which is signed by the legal representative of the company and the Business License of the

branch. Upon approving the deregistration, the company registration organ shall recover the Business License of the branch.

Chapter VIII Procedures for Registration

Article 51 To apply for registration of a company or a branch of a company, an applicant may come to the company registration organ to file an application, or file an application by such means as letter, telegraph, telex, fax, electronic data exchange or e-mail.

Where an application is filed by such means as telegraph, telex, fax, electronic data exchange or e-mail, the contact method and mailing address of the applicant shall be provided.

Article 52 The company registration organ shall decide whether or not to accept an application according to the following circumstances respectively:

(1) Where the application documents and materials are complete and consistent with the statutory formats, or an applicant has submitted all the additional or corrected application documents and materials as required by the company registration organ, the company registration organ shall decide to accept the application.

(2) Where the application documents and materials are complete and consistent with the statutory formats but the company registration organ deems that the application documents and materials need verification, the company registration organ shall decide to accept the application, and, at the same time, notify in writing the applicant of the items to be verified and reasons and time limit for verification.

(3) Where an application document or material has any error which may be corrected on the spot, the applicant shall be allowed to correct the error on the spot, affix its signature or seal on the place of correction and note the date of correction; after confirming that the application documents and materials are complete and consistent with the statutory formats, the company registration organ shall decide to accept the application.

(4) Where the application documents and materials are incomplete or inconsistent with the statutory formats, the company registration organ shall, on the spot or within 5 days, inform the applicant of all additions and corrections needed at one time; for notification on the spot, the company registration organ shall return the application documents and materials to the applicant; for notification within 5 days, the company registration organ shall receive the application documents and materials and issue a receipt of the application documents and materials, and where the company registration organ does not notify the applicant within the time limit, it shall be deemed that the company registration organ has accepted the application from the date of receipt of the application documents and materials.

(5) Where an item does not fall within the scope of company registration or does not fall within the scope of its registration jurisdiction, the company registration organ shall immediately decide not to accept the application, and notify the applicant to apply to a relevant administrative organ.

A company registration organ shall, within 5 days from the date of receipt of the application documents and materials, decide whether or not to accept an application which is filed by such means as letter, telegraph, telex, fax, electronic data exchange or e-mail.

Article 53 Unless a decision on approval of registration is made according to paragraph 1(1) of Article 54 of these Regulations, a company registration organ shall issue a Notice of Acceptance after deciding to accept an application; or after deciding to disapprove an application, shall issue a Notice of Disapproval, explaining the reasons for disapproval and notifying the applicant of its right to apply for an administrative reconsideration or file an administrative lawsuit according to law.

Article 54 After deciding to accept an application for registration, a company registration organ shall decide whether or not to approve the registration within the prescribed time limit according to the different circumstances:

(1) Where an application filed by an applicant coming to the company registration organ is accepted, the company registration organ shall decide whether or not to approve the registration on the spot.

(2) Where an application filed by an applicant by letter is accepted, the company registration organ shall decide whether or not to approve the registration within 15 days from the date of acceptance.

(3) Where an application filed by an applicant by such means as telegraph, telex, fax, electronic data exchange or e-mail, the applicant shall, within 15 days from the date of receipt of the Notice of Acceptance, submit the original application documents and materials which are consistent with the contents of the telegraph, telex, fax, electronic data exchange or e-mail and the statutory formats; where the applicant comes to the company registration organ to submit the original application documents and materials, the company registration organ shall decide whether or not to approve the registration on the spot; where the applicant submits the original application documents and materials by letter, the company registration organ shall decide whether or not to approve the registration within 15 days from the date of acceptance.

(4) Where a company registration organ does not receive the original application documents and materials within 60 days from the date of issuance of the Notice of Acceptance, or the original application documents and materials are inconsistent with the application documents and materials accepted by the company registration organ, the company registration organ shall decide to disapprove the registration.

Where a company registration organ needs to verify the application documents and materials, it shall decide whether or not to approve the registration within 15 days from the date of acceptance.

Article 55 Where a company registration organ decides to grant the pre-approval of a company name, it shall issue a Notice of Pre-approval of Enterprise Name; where the organ decides to approve the registration of formation of a company, it shall issue a Notice

of Approval of Formation Registration, and notify the applicant to collect a business license within 10 days from the date of decision; where the organ decides to approve the registration of modification of a company, it shall issue a Notice of Approval of Modification Registration, and notify the applicant to replace its business license within 10 days from the date of decision; where the organ decides to approve the deregistration of a company, it shall issue a Notice of Approval of Deregistration, and recover the business license.

Where a company registration organ decides not to grant the pre-approval of a company name or decides to disapprove a registration, it shall issue a Notice of Rejection of Enterprise Name or a Notice of Rejection of Registration, explaining the reasons for its not granting the pre-approval or for its disapproval of registration and notifying the applicant of its right to apply for an administrative reconsideration or file an administrative lawsuit according to law.

Article 56 To conduct the registration of formation or registration of modification, a company shall pay a registration fee to the company registration organ according to legal provisions.

To collect a Business License of Enterprise Legal Person, the fee for registration of formation shall be charged at 0.8‰ of the total amount of the registered capital; where the registered capital exceeds 10 million yuan, for the excess, such a fee shall be charged at 0.4‰; where the registered capital exceeds 100 million yuan, for the excess, no such a fee shall be charged.

To collect a Business License, the fee for registration of formation shall be 300 yuan.

To modify any registered item, the fee for registration of modification shall be 100 yuan.

~~Article 57~~ Article 56 ~~A company registration organ shall enter a company registration item which is approved to be registered into the company register book for the public to consult and copy.~~ A company registration organ shall disclose the registered and recorded information to the public by the Enterprise Credit Information Disclosure System.

Article 58 An announcement of revocation of the Business License of Enterprise Legal Person or Business License shall be published by a company registration organ.

~~Chapter IX Annual Inspection~~

~~Article 59 From March 1 to June 30 each year, a company registration organ shall conduct the annual inspection of companies.~~

~~Article 60 A company shall accept the annual inspection within the prescribed period of time according to the requirements of the company registration organ, and submit an annual inspection report, an annual balance sheet and profit and loss statement, and a duplicate of the Business License of Enterprise Legal Person.~~

~~A company which has a branch shall clearly reflect the relevant information on the branch in the submitted annual inspection materials, and submit a photocopy of the Business License.~~

~~Article 61 A company registration organ shall examine the information on the company registration items, on the basis of the annual inspection materials submitted by the company.~~

~~Article 62 A company shall pay an annual inspection fee to a company registration organ. The annual inspection fee shall be 50 yuan.~~

~~Chapter X Management of Licenses and Archives~~ Chapter IX Public Disclosure of Annual Report and Management of Licenses and Archives

Article 58 A company shall submit its annual report of previous year to the company registration organ for public disclosure by the Enterprise Credit Information Disclosure System between January 1st and June 30th of each year.

The content of the annual report for public disclosure and the method of supervision and inspection of the annual report shall be formulated by the State Council.

~~Article 63~~ Article 59 The Business License of Enterprise Legal Person or Business License shall be divided into original and duplicates, and the original and duplicates shall have equal legal effect.

The state advocates the use of Electronic Business License. The Electronic Business License and the paper-based Business License shall have equal legal effect.

The original of the Business License of Enterprise Legal Person or the original of the Business License should be placed on a conspicuous position at the residence of a company or business premises of a branch of a company.

A company may, according to the business needs, apply for issuance of several duplicates of the business license to the company registration organ.

Article 64 No entity or individual shall forge, alter, lease, lend or transfer a business license.

Where a business license is lost or damaged, a company shall declare its invalidity in a newspaper or periodical designated by a company registration organ, and apply for the reissue of the business license.

Where a company registration organ decides to approve a registration of modification, a deregistration or a revocation of registration of modification, and a company refuses to or cannot hand in its business license, the company registration organ shall announce the invalidity of the business license.

Article 65 A company registration organ may temporarily withhold a business license which needs authentication, but the withholding period shall not exceed 10 days.

Article 66 The borrowing, excerpting, carrying or duplicating of the company registration archives shall be carried out according to the prescribed powers and procedures.

No entity or individual shall modify, alter, mark or damage the company registration archives.

~~Article 67~~ Article 63 The patterns of the original and duplicates of a business license, the standard of the Electronic Business License, and the major formats of documents or forms concerning the company registration shall be uniformly formulated by the State Administration for Industry and Commerce.

Chapter XI Legal Liability

Article 68 Where a company registration is acquired by falsification of the registered capital, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 15% of the falsified registered capital; if the case is serious, shall revoke the company registration or revoke the business license.

Article 69 Where a company registration is acquired by false submissions or other fraudulent means, a company registration organ shall order correction, and impose a fine of not less than 50,000 yuan but not more than 500,000 yuan; if the case is serious, shall revoke the company registration or revoke the business license.

Article 70 Where a promoter or shareholder of a company makes any false capital contribution, failing to deliver or failing to deliver as scheduled the monetary or non-monetary property as the contribution, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 10% of the amount of the false capital contribution.

Article 71 Where a promoter or shareholder illegally withdraws its capital contribution after the company is formed, the company registration organ shall order correction, and impose a fine of not less than 5% but not more than 15% of the amount of illegally withdrawn capital.

Article 72 Where a company fails to open business more than six months after its formation without good reasons, or ceases business operation for more than six months consecutively after opening business, a company registration organ may revoke its business license.

Article 73 Where a company fails to conduct the relevant registration of modification according to these Regulations for any modification of the company registration items, a company registration organ shall order the company to conduct the registration within a prescribed time limit; and, if the company fails to do so within the prescribed time limit, shall impose a fine of not less than10,000 yuan but not more than100,000 yuan. In particular, where the business scope of a company to be modified includes any item which must be reported for approval according to a law, administrative regulation or decision of the State Council and such an approval is not acquired, if the company engages in the relevant business operation without the approval and the case is serious, the company registration organ shall revoke its business license.

Where a company fails to conduct the relevant record-filing formality according to these Regulations, the company registration organ shall order the company to conduct it within a prescribed time limit; and, if the company fails to do so within the prescribed time limit, shall impose a fine of not more than 30, 000 yuan.

Article 74 Where a company fails to notify its creditors by a notice or by an announcement of a merger, separation, reduction of registered capital or liquidation, a company registration organ shall order correction, and impose a fine of not less than 10, 000 yuan but not more than 100, 000 yuan.

Where, in liquidation, a company conceals any property, makes any false record in its balance sheet or property checklist, or distributes the company property before repayment of debts, a company registration organ shall order correction, and impose a fine of not less than 5% but not more than 10% of the amount of concealed property or distributed property before repayment of debts on the company; and shall impose a fine of not less than 10, 000 yuan but not more than100, 000 yuan on the directly responsible person in charge and other directly liable persons.

Where, during the period of liquidation, a company engages in any business operation irrelevant to the liquidation, the company registration organ shall impose a warning, and confiscate the illegal proceeds.

Article 75 Where a liquidation group fails to submit a liquidation report to the company registration organ according to legal provisions, or the submitted liquidation report conceals any major fact or has any major omission, a company registration organ shall order correction.

Where any member of a liquidation group takes advantage of his power to practice favoritism, seeks any illegal proceeds or encroaches on any company asset, the company registration organ shall order return of the company asset and confiscate the illegal proceeds, and may impose a fine of not less than the amount but not more than 5 times the amount of illegal proceeds.

~~Article 76 Where a company fails to accept the annual inspection according to legal provisions, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan, and order it to accept the annual inspection within a prescribed time limit; and, if the company still fails to accept the annual inspection within the prescribed time limit, shall revoke its business license. Where a company conceals the truth or make falsification in the annual inspection, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 50,000 yuan, and order correction within a prescribed time limit; and, if the case is serious, shall revoke its business license.~~

Article 77 Where a company forges, alters, leases, lends or transfers its business license, a company registration organ shall impose a fine of not less than 10,000 yuan but not more than 100,000 yuan; and, if the case is serious, shall revoke its business license.

Article 78 Where a business license is not placed on a conspicuous position at the residence of a company or business premises of a branch of a company, a company registration organ shall order correction; and if the ordered correction is refused, shall impose a fine of not less than 1,000 yuan but not more than 5,000 yuan.

Article 79 Where an institution which undertakes the asset appraisal, capital verification or verification of certificates provides any false materials, a company registration organ shall confiscate the illegal proceeds and impose a fine of not less than the amount but not more than 5 times the amount of the illegal proceeds, and the relevant competent department may also order the institution to suspend business operation, revoke the qualification certificates of the directly liable persons, and revoke its business license.

Where an institution which undertakes the asset appraisal, capital verification or verification of certificates negligently submits a report containing any major omission, a company registration organ shall order correction; and if the case is relatively serious, shall impose a fine of not less than the amount but not more than 5 times the amount of its proceeds, and the relevant competent department may order the institution to suspend business operation, revoke the qualification certificates of the directly liable persons and revoke its business license.

Article 80 Where any entity fails to register itself as a limited liability company or a joint stock limited company according to law but acts in the name of a limited liability company or a joint stock limited company, or fails to register itself as a branch of a limited liability company or a joint stock limited company according to law but acts in the name of a branch of a limited liability company or a joint stock limited company, a company registration organ shall order correction or impose a ban, and may impose a fine of not more than 100,000 yuan.

Article 81 Where a company registration organ approves an application for company registration which does not meet the prescribed conditions, or disapproves an application for company registration which meets the prescribed conditions, the administrative sanctions shall be imposed on the directly responsible person in charge and other directly liable persons according to law.

Article 82 Where a superior department of a company registration organ orders the company registration organ to approve an application for company registration which does not meet the prescribed conditions or disapprove an application for company registration which meets the prescribed conditions, or covers up any illegal registration, the administrative sanctions shall be imposed on the directly responsible person in charge and other directly liable persons according to law.

Article 83 Where a foreign company forms any branch within the territory of China without approval in violation of the Company Law, the company registration organ shall order correction or closedown, and may impose a fine of not less than 50, 000 yuan but not more than 200, 000 yuan.

Article 84 Where a company engages in serious illegal activities in the name of the company, which compromises the national security or public interest, its business license shall be revoked.

Article 85 Where a branch of a company commits any illegal act as prescribed in this Chapter, the provisions of this Chapter shall apply.

Article 86 Where a violation of these Regulations constitutes a crime, the criminal liability shall be investigated according to law.

Chapter XII Supplementary Provisions

Article 87 The registration of a foreign-funded company shall be subject to these Regulations. Where a law on foreign-funded enterprise provides otherwise for the registration of a foreign-funded enterprise, such a law shall apply.

Article 88 Where the formation of a company must be reported for approval according to a law, administrative regulation or decision of the State Council, or the business scope of a company includes any item which must be reported for approval before registration according to a law, administrative regulation or decision of the State Council, the State Administration for Industry and Commerce shall compile and publish a Catalogue of Administrative Licensing before Enterprise Registration according to the relevant laws, administrative regulations and decisions of the State Council.

Article 89 These Regulations shall come into force on July 1, 1994.

中华人民共和国公司登记管理条例

（1994 年 6 月 24 日中华人民共和国国务院令第 156 号发布，根据 2005 年 12 月 18 日《国务院关于修改〈中华人民共和国公司登记管理条例〉的决定》修订）

第一章　总则

第一条　为了确认公司的企业法人资格，规范公司登记行为，依据《中华人民共和国公司法》（以下简称《公司法》），制定本条例。

第二条　有限责任公司和股份有限公司（以下统称公司）设立、变更、终止，应当依照本条例办理公司登记。

申请办理公司登记，申请人应当对申请文件、材料的真实性负责。

第三条　公司经公司登记机关依法登记，领取《企业法人营业执照》，方取得企业法人资格。

自本条例施行之日起设立公司，未经公司登记机关登记的，不得以公司名义从事经营活动。

第四条　工商行政管理机关是公司登记机关。

下级公司登记机关在上级公司登记机关的领导下开展公司登记工作。

公司登记机关依法履行职责，不受非法干预。

第五条　国家工商行政管理总局主管全国的公司登记工作。

第二章　登记管辖

第六条　国家工商行政管理总局负责下列公司的登记：

（一）国务院国有资产监督管理机构履行出资人职责的公司以及该公司投资设立并持有 50%以上股份的公司；

（二）外商投资的公司；

（三）依照法律、行政法规或者国务院决定的规定，应当由国家工商行政管理总局登记的公司；

（四）国家工商行政管理总局规定应当由其登记的其他公司。

第七条　省、自治区、直辖市工商行政管理局负责本辖区内下列公司的登记：

（一）省、自治区、直辖市人民政府国有资产监督管理机构履行出资人职责的公司以及该公司投资设立并持有 50%以上股份的公司；

（二）省、自治区、直辖市工商行政管理局规定由其登记的自然人投资设立的公司；

（三）依照法律、行政法规或者国务院决定的规定，应当由省、自治区、直辖市工商行政管理局登记的公司；

（四）国家工商行政管理总局授权登记的其他公司。

第八条　设区的市（地区）工商行政管理局、县工商行政管理局，以及直辖市的工商行政管理分局、设区的市工商行政管理局的区分局，负责本辖区内下列公司的登记：

（一）本条例第六条和第七条所列公司以外的其他公司；

（二）国家工商行政管理总局和省、自治区、直辖市工商行政管理局授权登记的公司。

前款规定的具体登记管辖由省、自治区、直辖市工商行政管理局规定。但是，其中的股份有限公司由设区的市（地区）工商行政管理局负责登记。

第三章　登记事项

第九条　公司的登记事项包括：

（一）名称；

（二）住所；

（三）法定代表人姓名；

（四）注册资本；

（五）实收资本；

（六）公司类型；

（七）经营范围；

（八）营业期限；

（九）有限责任公司股东或者股份有限公司发起人的姓名或者名称，以及认缴和实缴的出资额、出资时间、出资方式。

第十条　公司的登记事项应当符合法律、行政法规的规定。不符合法律、行政法规规定的，公司登记机关不予登记。

第十一条　公司名称应当符合国家有关规定。公司只能使用一个名称。经公司登记机关核准登记的公司名称受法律保护。

第十二条　公司的住所是公司主要办事机构所在地。经公司登记机关登记的公司的住所只能有一个。公司的住所应当在其公司登记机关辖区内。

第十三条　公司的注册资本和实收资本应当以人民币表示，法律、行政法规另有规定的除外。

第十四条　股东的出资方式应当符合《公司法》第二十七条的规定。股东以货币、实物、知识产权、土地使用权以外的其他财产出资的，其登记办法由国家工商行政管理总局会同国务院有关部门规定。

股东不得以劳务、信用、自然人姓名、商誉、特许经营权或者设定担保的财产等作价出资。

第十五条　公司的经营范围由公司章程规定，并依法登记。

公司的经营范围用语应当参照国民经济行业分类标准。

第十六条　公司类型包括有限责任公司和股份有限公司。

一人有限责任公司应当在公司登记中注明自然人独资或者法人独资，并在公司营业执照中载明。

第四章　设立登记

第十七条　设立公司应当申请名称预先核准。

法律、行政法规或者国务院决定规定设立公司必须报经批准，或者公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当在报送批准前办理公司名称预先核准，并以公司登记机关核准的公司名称报送批准。

第十八条　设立有限责任公司，应当由全体股东指定的代表或者共同委托的代理人向公司登记机关申请名称预先核准；设立股份有限公司，应当由全体发起人指定的代表或者共同委托的代理人向公司登记机关申请名称预先核准。

申请名称预先核准，应当提交下列文件：

（一）有限责任公司的全体股东或者股份有限公司的全体发起人签署的公司名称预先核准申请书；

（二）全体股东或者发起人指定代表或者共同委托代理人的证明；

（三）国家工商行政管理总局规定要求提交的其他文件。

第十九条　预先核准的公司名称保留期为6个月。预先核准的公司名称在保留期内，不得用于从事经营活动，不得转让。

第二十条　设立有限责任公司，应当由全体股东指定的代表或者共同委托的代理人向公司登记机关申请设立登记。设立国有独资公司，应当由国务院或者地方人民政府授权的本级人民政府国有资产监督管理机构作为申请人，申请设立登记。法律、行政法规或者国务院决定规定设立有限责任公司必须报经批准的，应当自批准之日起90日内向公司登记机关申请设立登记；逾期申请设立登记的，申请人应当报批准机关确认原批准文件的效力或者另行报批。

申请设立有限责任公司，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的设立登记申请书；

（二）全体股东指定代表或者共同委托代理人的证明；

（三）公司章程；

（四）依法设立的验资机构出具的验资证明，法律、行政法规另有规定的除外；

（五）股东首次出资是非货币财产的，应当在公司设立登记时提交已办理其财产权转移手续的证明文件；

（六）股东的主体资格证明或者自然人身份证明；

（七）载明公司董事、监事、经理的姓名、住所的文件以及有关委派、选举或者聘用的证明；

（八）公司法定代表人任职文件和身份证明；

（九）企业名称预先核准通知书；

（十）公司住所证明；

（十一）国家工商行政管理总局规定要求提交的其他文件。

外商投资的有限责任公司的股东首次出资额应当符合法律、行政法规的规定，其余部分应当自公司成立之日起 2 年内缴足，其中，投资公司可以在 5 年内缴足。

法律、行政法规或者国务院决定规定设立有限责任公司必须报经批准的，还应当提交有关批准文件。

第二十一条　设立股份有限公司，应当由董事会向公司登记机关申请设立登记。以募集方式设立股份有限公司的，应当于创立大会结束后 30 日内向公司登记机关申请设立登记。

申请设立股份有限公司，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的设立登记申请书；

（二）董事会指定代表或者共同委托代理人的证明；

（三）公司章程；

（四）依法设立的验资机构出具的验资证明；

（五）发起人首次出资是非货币财产的，应当在公司设立登记时提交已办理其财产权转移手续的证明文件；

（六）发起人的主体资格证明或者自然人身份证明；

（七）载明公司董事、监事、经理姓名、住所的文件以及有关委派、选举或者聘用的证明；

（八）公司法定代表人任职文件和身份证明；

（九）企业名称预先核准通知书；

（十）公司住所证明；

（十一）国家工商行政管理总局规定要求提交的其他文件。

以募集方式设立股份有限公司的，还应当提交创立大会的会议记录；以募集方式设立股份有限公司公开发行股票的，还应当提交国务院证券监督管理机构的核准文件。

法律、行政法规或者国务院决定规定设立股份有限公司必须报经批准的，还应当提交有关批准文件。

第二十二条　公司申请登记的经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当在申请登记前报经国家有关部门批准，并向公司登记机关提交有关批准文件。

第二十三条　公司章程有违反法律、行政法规的内容的，公司登记机关有权要求公司作相应修改。

第二十四条　公司住所证明是指能够证明公司对其住所享有使用权的文件。

第二十五条　依法设立的公司，由公司登记机关发给《企业法人营业执照》。公司营业执照签发日期为公司成立日期。公司凭公司登记机关核发的《企业法人营业执照》刻制印章，开立银行账户，申请纳税登记。

第五章　变更登记

第二十六条　公司变更登记事项，应当向原公司登记机关申请变更登记。

未经变更登记，公司不得擅自改变登记事项。

第二十七条　公司申请变更登记，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的变更登记申请书；

（二）依照《公司法》作出的变更决议或者决定；

（三）国家工商行政管理总局规定要求提交的其他文件。

公司变更登记事项涉及修改公司章程的，应当提交由公司法定代表人签署的修改后的公司章程或者公司章程修正案。

变更登记事项依照法律、行政法规或者国务院决定规定在登记前须经批准的，还应当向公司登记机关提交有关批准文件。

第二十八条　公司变更名称的，应当自变更决议或者决定作出之日起 30 日内申请变更登记。

第二十九条　公司变更住所的，应当在迁入新住所前申请变更登记，并提交新住所使用证明。

公司变更住所跨公司登记机关辖区的，应当在迁入新住所前向迁入地公司登记机关申请变更登记；迁入地公司登记机关受理的，由原公司登记机关将公司登记档案移送迁入地公司登记机关。

第三十条　公司变更法定代表人的，应当自变更决议或者决定作出之日起 30 日内申请变更登记。

第三十一条　公司变更注册资本的，应当提交依法设立的验资机构出具的验资证明。

公司增加注册资本的，有限责任公司股东认缴新增资本的出资和股份有限公司的股东认购新股，应当分别依照《公司法》设立有限责任公司缴纳出资和设立股份有限公司缴纳股款的有关规定执行。股份有限公司以公开发行新股方式或者上市公司以非公开发行新股方式增加注册资本的，还应当提交国务院证券监督管理机构的核准文件。

公司法定公积金转增为注册资本的，验资证明应当载明留存的该项公积金不少于转增前公司注册资本的25%。

公司减少注册资本的，应当自公告之日起45日后申请变更登记，并应当提交公司在报纸上登载公司减少注册资本公告的有关证明和公司债务清偿或者债务担保情况的说明。

公司减资后的注册资本不得低于法定的最低限额。

第三十二条　公司变更实收资本的，应当提交依法设立的验资机构出具的验资证明，并应当按照公司章程载明的出资时间、出资方式缴纳出资。公司应当自足额缴纳出资或者股款之日起30日内申请变更登记。

第三十三条　公司变更经营范围的，应当自变更决议或者决定作出之日起30日内申请变更登记；变更经营范围涉及法律、行政法规或者国务院决定规定在登记前须经批准的项目的，应当自国家有关部门批准之日起30日内申请变更登记。

公司的经营范围中属于法律、行政法规或者国务院决定规定须经批准的项目被吊销、撤销许可证或者其他批准文件，或者许可证、其他批准文件有效期届满的，应当自吊销、撤销许可证、其他批准文件或者许可证、其他批准文件有效期届满之日起30日内申请变更登记或者依照本条例第六章的规定办理注销登记。

第三十四条　公司变更类型的，应当按照拟变更的公司类型的设立条件，在规定的期限内向公司登记机关申请变更登记，并提交有关文件。

第三十五条　有限责任公司股东转让股权的，应当自转让股权之日起30日内申请变更登记，并应当提交新股东的主体资格证明或者自然人身份证明。

有限责任公司的自然人股东死亡后，其合法继承人继承股东资格的，公司应当依照前款规定申请变更登记。

有限责任公司的股东或者股份有限公司的发起人改变姓名或者名称的，应当自改变姓名或者名称之日起30日内申请变更登记。

第三十六条　公司登记事项变更涉及分公司登记事项变更的，应当自公司变更登记之日起30日内申请分公司变更登记。

第三十七条　公司章程修改未涉及登记事项的，公司应当将修改后的公司章程或者公司章程修正案送原公司登记机关备案。

第三十八条　公司董事、监事、经理发生变动的，应当向原公司登记机关备案。

第三十九条　因合并、分立而存续的公司，其登记事项发生变化的，应当申请变更登记；因合并、分立而解散的公司，应当申请注销登记；因合并、分立而新设立的公司，应当申请设立登记。

公司合并、分立的，应当自公告之日起45日后申请登记，提交合并协议和合并、分立决议或者决定以及公司在报纸上登载公司合并、分立公告的有关证明和债务清偿或者债务担保情况的说明。法律、行政法规或者国务院决定规定公司合并、分立必须报经批准的，还应当提交有关批准文件。

第四十条　变更登记事项涉及《企业法人营业执照》载明事项的，公司登记机关应当换发营业执照。

第四十一条　公司依照《公司法》第二十二条规定向公司登记机关申请撤销变更登记的，应当提交下列文件：

（一）公司法定代表人签署的申请书；

（二）人民法院的裁判文书。

第六章　注销登记

第四十二条　公司解散，依法应当清算的，清算组应当自成立之日起10日内将清算组成员、清算组负责人名单向公司登记机关备案。

第四十三条　有下列情形之一的，公司清算组应当自公司清算结束之日起30日内向原公司登记机关申请注销登记：

（一）公司被依法宣告破产；

（二）公司章程规定的营业期限届满或者公司章程规定的其他解散事由出现，但公司通过修改公司章程而存续的除外；

（三）股东会、股东大会决议解散或者一人有限责任公司的股东、外商投资的公司董事会决议解散；

（四）依法被吊销营业执照、责令关闭或者被撤销；

（五）人民法院依法予以解散；

（六）法律、行政法规规定的其他解散情形。

第四十四条　公司申请注销登记，应当提交下列文件：

（一）公司清算组负责人签署的注销登记申请书；

（二）人民法院的破产裁定、解散裁判文书，公司依照《公司法》作出的决议或者决定，行政机关责令关闭或者公司被撤销的文件；

（三）股东会、股东大会、一人有限责任公司的股东、外商投资的公司董事会或者人民法院、公司批准机关备案、确认的清算报告；

（四）《企业法人营业执照》；

（五）法律、行政法规规定应当提交的其他文件。

国有独资公司申请注销登记，还应当提交国有资产监督管理机构的决定，其中，国务院确定的重要的国有独资公司，还应当提交本级人民政府的批准文件。

有分公司的公司申请注销登记，还应当提交分公司的注销登记证明。

第四十五条　经公司登记机关注销登记，公司终止。

第七章　分公司的登记

第四十六条　分公司是指公司在其住所以外设立的从事经营活动的机构。分公司不具有企业法人资格。

第四十七条　分公司的登记事项包括：名称、营业场所、负责人、经营范围。

分公司的名称应当符合国家有关规定。

分公司的经营范围不得超出公司的经营范围。

第四十八条　公司设立分公司的，应当自决定作出之日起30日内向分公司所在地的公司登记机关申请登记；法律、行政法规或者国务院决定规定必须报经有关部门批准的，应当自批准之日起30日内向公司登记机关申请登记。

设立分公司，应当向公司登记机关提交下列文件：

（一）公司法定代表人签署的设立分公司的登记申请书；

（二）公司章程以及加盖公司印章的《企业法人营业执照》复印件；

（三）营业场所使用证明；

（四）分公司负责人任职文件和身份证明；

（五）国家工商行政管理总局规定要求提交的其他文件。

法律、行政法规或者国务院决定规定设立分公司必须报经批准，或者分公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，还应当提交有关批准文件。

分公司的公司登记机关准予登记的，发给《营业执照》。公司应当自分公司登记之日起30日内，持分公司的《营业执照》到公司登记机关办理备案。

第四十九条　分公司变更登记事项的，应当向公司登记机关申请变更登记。

申请变更登记，应当提交公司法定代表人签署的变更登记申请书。变更名称、经营范围的，应当提交加盖公司印章的《企业法人营业执照》复印件，分公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，还应当提交有关批准文件。变更营业场所的，应当提交新的营业场所使用证明。变更负责人的，应当提交公司的任免文件以及其身份证明。

公司登记机关准予变更登记的，换发《营业执照》。

第五十条　分公司被公司撤销、依法责令关闭、吊销营业执照的，公司应当自决定作出之日起30日内向该分公司的公司登记机关申请注销登记。申请注销登记应当提交公司法定代表人签署的注销登记申请书和分公司的《营业执照》。公司登记机关准予注销登记后，应当收缴分公司的《营业执照》。

第八章　登记程序

第五十一条　申请公司、分公司登记，申请人可以到公司登记机关提交申请，也可以通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出申请。

通过电报、电传、传真、电子数据交换和电子邮件等方式提出申请的，应当提供申请人的联系方式以及通讯地址。

第五十二条　公司登记机关应当根据下列情况分别作出是否受理的决定：

（一）申请文件、材料齐全，符合法定形式的，或者申请人按照公司登记机关的要求提交全部补正申请文件、材料的，应当决定予以受理。

（二）申请文件、材料齐全，符合法定形式，但公司登记机关认为申请文件、材料需要核实的，应当决定予以受理，同时书面告知申请人需要核实的事项、理由以及时间。

（三）申请文件、材料存在可以当场更正的错误的，应当允许申请人当场予以更正，由申请人在更正处签名或者盖章，注明更正日期；经确认申请文件、材料齐全，符合法定形式的，应当决定予以受理。

（四）申请文件、材料不齐全或者不符合法定形式的，应当当场或者在5日内一次告知申请人需要补正的全部内容；当场告知时，应当将申请文件、材料退回申请人；属于5日内告知的，应当收取申请文件、材料并出具收到申请文件、材料的凭据，逾期不告知的，自收到申请文件、材料之日起即为受理。

（五）不属于公司登记范畴或者不属于本机关登记管辖范围的事项，应当即时决定不予受理，并告知申请人向有关行政机关申请。

公司登记机关对通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出申请的，应当自收到申请文件、材料之日起5日内作出是否受理的决定。

第五十三条　除依照本条例第五十四条第一款第（一）项作出准予登记决定的外，公司登记机关决定予以受理的，应当出具《受理通知书》；决定不予受理的，应当出具《不予受理通知书》，说明不予受理的理由，并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第五十四条　公司登记机关对决定予以受理的登记申请，应当分别情况在规定的期限内作出是否准予登记的决定：

（一）对申请人到公司登记机关提出的申请予以受理的，应当当场作出准予登记的决定。

（二）对申请人通过信函方式提交的申请予以受理的，应当自受理之日起15日内作出准予登记的决定。

（三）通过电报、电传、传真、电子数据交换和电子邮件等方式提交申请的，申请人应当自收到《受理通知书》之日起15日内，提交与电报、电传、传真、电子数据交换和电子邮件等内容一致并符合法定形式的申请文件、材料原件；申请人到公司登记机关提交申请文件、材料原件的，应当当场作出准予登记的决定；申请人通过信函方式提交申请文件、材料原件的，应当自受理之日起15日内作出准予登记的决定。

（四）公司登记机关自发出《受理通知书》之日起60日内，未收到申请文件、材料原件，或者申请文件、材料原件与公司登记机关所受理的申请文件、材料不一致的，应当作出不予登记的决定。

公司登记机关需要对申请文件、材料核实的，应当自受理之日起15日内作出是否准予登记的决定。

第五十五条　公司登记机关作出准予公司名称预先核准决定的，应当出具《企业名称预先核准通知书》；作出准予公司设立登记决定的，应当出具《准予设立登记通知书》，告知申请人自决定之日起10日内，领取营业执照；作出准予公司变更登记决定的，应当出具《准予变更登记通知书》，告知申请人自决定之日起10日内，换发营业执照；作出准予公司注销登记决定的，应当出具《准予注销登记通知书》，收缴营业执照。

公司登记机关作出不予名称预先核准、不予登记决定的，应当出具《企业名称驳回通知书》、《登记驳回通知书》，说明不予核准、登记的理由，并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第五十六条　公司办理设立登记、变更登记，应当按照规定向公司登记机关缴纳登记费。

领取《企业法人营业执照》的，设立登记费按注册资本总额的0.8‰缴纳；注册资本超过1000万元的，超过部分按0.4‰缴纳；注册资本超过1亿元的，超过部分不再缴纳。

领取《营业执照》的，设立登记费为300元。

变更登记事项的，变更登记费为100元。

第五十七条　公司登记机关应当将登记的公司登记事项记载于公司登记簿上，供社会公众查阅、复制。

第五十八条　吊销《企业法人营业执照》和《营业执照》的公告由公司登记机关发布。

第九章　年度检验

第五十九条　每年3月1日至6月30日，公司登记机关对公司进行年度检验。

第六十条　公司应当按照公司登记机关的要求，在规定的时间内接受年度检验，并提交年度检验报告书、年度资产负债表和损益表、《企业法人营业执照》副本。

设立分公司的公司在其提交的年度检验材料中，应当明确反映分公司的有关情况，并提交《营业执照》的复印件。

第六十一条　公司登记机关应当根据公司提交的年度检验材料，对与公司登记事项有关的情况进行审查。

第六十二条　公司应当向公司登记机关缴纳年度检验费。年度检验费为50元。

第十章　证照和档案管理

第六十三条　《企业法人营业执照》、《营业执照》分为正本和副本，正本和副本具有同等法律效力。

《企业法人营业执照》正本或者《营业执照》正本应当置于公司住所或者分公司营业场所的醒目位置。

公司可以根据业务需要向公司登记机关申请核发营业执照若干副本。

第六十四条　任何单位和个人不得伪造、涂改、出租、出借、转让营业执照。

营业执照遗失或者毁坏的，公司应当在公司登记机关指定的报刊上声明作废，申请补领。

公司登记机关依法作出变更登记、注销登记、撤销变更登记决定，公司拒不缴回或者无法缴回营业执照的，由公司登记机关公告营业执照作废。

第六十五条　公司登记机关对需要认定的营业执照，可以临时扣留，扣留期限不得超过10天。

第六十六条　借阅、抄录、携带、复制公司登记档案资料的，应当按照规定的权限和程序办理。

任何单位和个人不得修改、涂抹、标注、损毁公司登记档案资料。

第六十七条　营业执照正本、副本样式以及公司登记的有关重要文书格式或者表式，由国家工商行政管理总局统一制定。

第十一章　法律责任

第六十八条　虚报注册资本，取得公司登记的，由公司登记机关责令改正，处以虚报注册资本金额5%以上15%以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第六十九条　提交虚假材料或者采取其他欺诈手段隐瞒重要事实，取得公司登记的，由公司登记机关责令改正，处以5万元以上50万元以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第七十条　公司的发起人、股东虚假出资，未交付或者未按期交付作为出资的货币或者非货币财产的，由公司登记机关责令改正，处以虚假出资金额5%以上15%以下的罚款。

第七十一条　公司的发起人、股东在公司成立后，抽逃出资的，由公司登记机关责令改正，处以所抽逃出资金额5%以上15%以下的罚款。

第七十二条　公司成立后无正当理由超过6个月未开业的，或者开业后自行停业连续6个月以上的，可以由公司登记机关吊销营业执照。

第七十三条　公司登记事项发生变更时，未依照本条例规定办理有关变更登记的，由公司登记机关责令限期登记；逾期不登记的，处以1万元以上10万元以下的罚款。其中，变更经营范围涉及法律、行政法规或者国务院决定规定须经批准的项目而未取得批准，擅自从事相关经营活动，情节严重的，吊销营业执照。

公司未依照本条例规定办理有关备案的，由公司登记机关责令限期办理；逾期未办理的，处以3万元以下的罚款。

第七十四条　公司在合并、分立、减少注册资本或者进行清算时，不按照规定通知或者公告债权人的，由公司登记机关责令改正，处以1万元以上10万元以下的罚款。

公司在进行清算时，隐匿财产，对资产负债表或者财产清单作虚假记载或者在未清偿债务前分配公司财产的，由公司登记机关责令改正，对公司处以隐匿财产或者未清偿债务前分配公司财产金额5%以上10%以下的罚款；对直接负责的主管人员和其他直接责任人员处以1万元以上10万元以下的罚款。

公司在清算期间开展与清算无关的经营活动的，由公司登记机关予以警告，没收违法所得。

第七十五条　清算组不按照规定向公司登记机关报送清算报告，或者报送清算报告隐瞒重要事实或者有重大遗漏的，由公司登记机关责令改正。

清算组成员利用职权徇私舞弊、谋取非法收入或者侵占公司财产的，由公司登记机关责令退还公司财产，没收违法所得，并可以处以违法所得1倍以上5倍以下的罚款。

第七十六条　公司不按照规定接受年度检验的，由公司登记机关处以1万元以上10万元以下的罚款，并限期接受年度检验；逾期仍不接受年度检验的，吊销营业执照。年度检验中隐瞒真实情况、弄虚作假的，由公司登记机关处以1万元以上5万元以下的罚款，并限期改正；情节严重的，吊销营业执照。

第七十七条　伪造、涂改、出租、出借、转让营业执照的，由公司登记机关处以1万元以上10万元以下的罚款；情节严重的，吊销营业执照。

第七十八条　未将营业执照置于住所或者营业场所醒目位置的，由公司登记机关责令改正；拒不改正的，处以1000元以上5000元以下的罚款。

第七十九条　承担资产评估、验资或者验证的机构提供虚假材料的，由公司登记机关没收违法所得，处以违法所得1倍以上5倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因过失提供有重大遗漏的报告的，由公司登记机关责令改正，情节较重的，处以所得收入1倍以上5倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

第八十条　未依法登记为有限责任公司或者股份有限公司，而冒用有限责任公司或者股份有限公司名义的，或者未依法登记为有限责任公司或者股份有限公司的分公司，而冒用有限责任公司或者股份有限公司的分公司名义的，由公司登记机关责令改正或者予以取缔，可以并处10万元以下的罚款。

第八十一条　公司登记机关对不符合规定条件的公司登记申请予以登记，或者对符合规定条件的登记申请不予登记的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分。

第八十二条　公司登记机关的上级部门强令公司登记机关对不符合规定条件的登记申请予以登记，或者对符合规定条件的登记申请不予登记的，或者对违法登记进行包庇的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第八十三条　外国公司违反《公司法》规定，擅自在中国境内设立分支机构的，由公司登记机关责令改正或者关闭，可以并处5万元以上20万元以下的罚款。

第八十四条　利用公司名义从事危害国家安全、社会公共利益的严重违法行为的，吊销营业执照。

第八十五条　分公司有本章规定的违法行为的，适用本章规定。

第八十六条　违反本条例规定，构成犯罪的，依法追究刑事责任。

第十二章　附则

第八十七条　外商投资的公司的登记适用本条例。有关外商投资企业的法律对其登记另有规定的，适用其规定。

第八十八条　法律、行政法规或者国务院决定规定设立公司必须报经批准，或者公司经营范围中属于法律、行政法规或者国务院决定规定在登记前须经批准的项目的，由国家工商行政管理总局依照法律、行政法规或者国务院决定规定编制企业登记前置行政许可目录并公布。

第八十九条　本条例自 1994 年 7 月 1 日起施行。

Provisions (II) of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (An excerpt)

The following provisions are formulated with consideration of the judicial practice and according to the relevant laws, including Enterprise Bankruptcy Law of the People's Republic of China, the Property Law of the People's Republic of China, and the Contract Law of the People's Republic of China; and these provisions are about issues of application of laws regarding the identification of the debtors' assets in the enterprise bankruptcy cases heard by the people's courts.

Article 1. Besides the money and properties owned by the debtors, all other properties and/or property rights, including the creditor's rights, stock rights, intellectual property rights and usufruct, that are legally owned by the debtor and are capable of being evaluated in monetary form and legally transferred, shall be deemed as debtors' assets by the people's courts.

Article 2. The following assets shall not be deemed as debtors' asset:

(1) the asset owned by a third party and possessed and/or used by the debtor according to a contract (including, but not limited to, warehousing contract, contract of deposit, work contract, sales agency contract, contract for borrowing, consignment contract and/or lease contract) or other legal relationships;
(2) the asset acquired by the debtor from a sale of title retention by which the debtor have not obtained the title of ownership;
(3) the asset exclusively owned by the state and not allowed to be transferred;
(4) other assets not owned by the debtor according to laws or regulations.

Article 3. The specific asset on which the debtor has established a security interest shall be deemed as debtors' asset by the people's courts.
After the security interest is eliminated or realized, the rest part of that specific asset could be subject to the payment of bankruptcy expenses, community liabilities or other creditor's rights in bankruptcy.
...

Article 43. If the bankruptcy administrator makes an objection against the claim for offsetting of debt made by the creditor on the basis of the following reasons, the people's courts shall not uphold such claim:

(1) the debt owed by the debtor to the creditor is not due when the application of bankruptcy is accepted;
(2) the debt owed by the creditor to the debtor is not due when the application of bankruptcy is accepted;
(3) the type and/or quality of the indebted objects that the parties owed to each other are different.

...

Article 46. If a shareholder of the debtor makes a claim to use the following debts to offset the debt that the debtor owed to that shareholder, the people's court shall uphold such claim even if the debtor administrator make an objection to such claim:

(1) The debt owed by the shareholder to the debtor due to the unpaid capital contribution or withdrawal of capital contribution;
(2) The debt owed by the shareholder to the debtor in the form of harm to the interests of the corporation caused by the abuse of shareholder rights or affiliated relationship.

ADMINISTRATIVE PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by Order No.16 of the President of the People's Republic of China on April 4,1989, and effective as of October 1,1990)

CHAPTER I GENERAL PROVISIONS

Article 1. This Law is drafted on the basis of the constitution with the purposes to safeguard correct and timely adjudication of administrative cases, to protect the lawful rights and interests of citizens, legal persons and other organizations, and to uphold and inspect the exercise of administrative power in accordance with law by administrative organs.

Article 2. A Citizen, A legal person or other organizations have the right to litigate a lawsuit to the people's courts in accordance with this Law once they consider that a concrete administrative action by administrative organs or personnel infringe their lawful rights and interests.

Article 3. The people's courts exercise judicial power independently with respect to administrative cases, and shall not be subject to interference by any administrative organ, public organization or individual. The people's courts shall set up administrative divisions for the handling of administrative cases.

Article 4. In conducting administrative proceedings, the people's courts shall base themselves on facts and take the law as the criterion.

Article 5. In handling administrative cases, the people's courts shall examine the legality of specific administrative acts.

Article 6. In handling administrative cases, the people's courts shall, as prescribed by law, apply the systems of collegial panel, withdrawal of judicial personnel and public trial and a system whereby the second instance is the final instance.

Article 7. Parties to an administrative suit shall have equal legal positions.

Article 8. Citizens of all nationalities shall have the right to use their native spoken and written languages in administrative proceedings. In an area where people of a minority nationality live in concentrated communities or where a number of nationalities live together, the people's courts shall conduct adjudication and issue legal documents in the language or languages commonly used by the local nationalities.

The people's courts shall provide interpretation for participants in proceedings who do not understand the language or languages commonly used by the local nationalities.

Article 9. Parties to an administrative suit shall have the right to debate.

Article 10. The people's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

CHAPTER II SCOPE OF ACCEPTING CASES

~~Article 11~~.Article 12. The people's courts shall ~~accept suits brought by citizens, legal persons or other organizations against any of the following specific administrative acts~~ accept suits brought by citizens, legal persons or other organizations against the following matters:

(1) ~~an administrative sanction, such as detention, fine, rescission of a license or permit, order to suspend production or business or confiscation of property, which one refuses to accept;~~ an administrative sanction, such as administrative detention, temporary suspension or permanent revocation of a license or permit, order of suspension of production or business, confiscation of unlawful income or illegal property, fine or warning, which one refuses to accept;

(2) ~~a compulsory administrative measure, such as restricting freedom of the person or the sealing up, seizing or freezing of property, which one refuses to accept;~~ a compulsory administrative measure or execution, such as restricting freedom of the person or the sealing up, seizing or freezing of property, which one refuses to accept;

(3) ~~infringement upon one's managerial decision-making powers, which is considered to have been perpetrated by an administrative organ;~~ an administrative organ’s refusal of or failure to respond to an application of administrative permission, or other decisions made by an administrative agency about administrative permission which one refuses to accept;

(4) ~~refusal by an administrative organ to issue a permit or license, which one considers oneself legally qualified to apply for, or its failure to respond to the application;~~ a decision made by an administrative organ as to the confirmation of the ownership of or right to use natural resources, such as land, mineral resources, water, forest, mountain, grassland, uncultivated land, inter-tidal zone or sea area, which one refuses to accept;

(5) ~~refusal by an administrative organ to perform its statutory duty of protecting one's rights of the person and of property, as one has applied for, or its failure to respond to the application;~~ a decision made by an administrative organ as to the expropriation or requisition and the compensation related to such expropriation or requisition, which one refuses to accept;

(6) ~~cases where an administrative organ is considered to have failed to issue a pension according to law;~~ refusal by an administrative organ to perform its statutory duty of protecting one's lawful rights, such as the personal or property rights, as one has applied for, or the administrative organ’s failure to respond to such application;

(7) ~~cases where an administrative organ is considered to have illegally demanded the performance of duties; and~~ infringement upon one's right of managerial decision-making, right of contracted management of rural land, and right of management of rural land, which is considered to have been perpetrated by an administrative organ;

(8) ~~cases where an administrative organ is considered to have infringed upon other rights of the person and of property.~~ cases where an administrative organ is considered to abuse its administrative power to eliminate or restrict competition;

(9) cases where an administrative organ is consider to have illegally raised funds, illegally apportioned expenses, or illegally demanded the performance of other duties;

(10) cases where an administrative organ is considered to have failed to issue a pension or have failed to provide a minimum living security treatment or social security treatment according to law;

(11) cases where an administrative organ is considered to have failed to execute in accordance with law or commitment, or have illegally changed or terminated, agreements such as governmental franchise agreement or agreement on compensation of expropriation of land or house;

(12) cases where an administrative organ is considered to have infringed upon other lawful rights, such as the lawful personal rights or property rights.

Apart from the provisions set forth in the preceding paragraphs, the people's courts shall accept other administrative suits which may be brought in accordance with the provisions of relevant laws and regulations.

~~Article 12.~~ Article 13. The people's courts shall not accept suits brought by citizens, legal persons or other organizations against any of the following matters:

(1) acts of the state in areas like national defense and foreign affairs;

(2) administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs;

(3) decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel;

(4) specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.

CHAPTER III JURISDICTION

Article 13. The basic people's courts shall have jurisdiction as courts of first instance over administrative cases.

Article 14. The intermediate people's courts shall have jurisdiction as courts of first instance over the following administrative cases:

(1) cases of confirming patent rights of invention and cases handled by the Customs;

(2) suits against specific administrative acts undertaken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and

(3) grave and complicated cases in areas under their jurisdiction.

Article 15. The higher people's courts shall have jurisdiction as courts of first instance over grave and complicated administrative cases in areas under their jurisdiction.

Article 16. The Supreme People's Court shall have jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country.

Article 17. An administrative case shall be under the jurisdiction of the people's court in the locality of the administrative organ that initially undertook the specific administrative act. A reconsidered case in which the organ conducting the reconsideration has amended the original specific administrative act may also be placed under the jurisdiction of the people's court in the locality of the administrative organ conducting the reconsideration.

Article 18. A suit against compulsory administrative measures restricting freedom of the person shall be under the jurisdiction of a people's court in the place where the defendant or the plaintiff is located.

Article 19. An administrative suit regarding a real property shall be under the jurisdiction of the people's court in the place where the real property is located.

Article 20. When two or more people's courts have jurisdiction over a suit, the plaintiff may have the option to bring the suit in one of these people's courts. If the plaintiff brings the suit in two or more people's courts that have jurisdiction over the suit, the people's court that first receives the bill of complaint shall have jurisdiction.

Article 21. If a people's court finds that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that does have jurisdiction over the case. The people's court to which the case has been transferred shall not on its own initiative transfer it to another people's court.

Article 22. If a people's court which has jurisdiction over a case is unable to exercise its jurisdiction for special reasons, a people's court at a higher level shall designate another court to exercise the jurisdiction.

If a dispute arises over jurisdiction between people's courts, it shall be resolved by the parties to the dispute through consultation. If the dispute cannot be resolved through consultation, it shall be reported to a people's court superior to the courts in dispute for the designation of jurisdiction.

Article 23. People's courts at higher levels shall have the authority to adjudicate administrative cases over which people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer administrative cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.

If a people's court deems it necessary for an administrative case of first instance under its jurisdiction to be adjudicated by a people's court at a higher level, it may report to such a people's court for decision.

CHAPTER IV PARTICIPANTS IN PROCEEDINGS

Article 24. A citizen, a legal person or any other organization that brings a suit in accordance with this Law shall be a plaintiff. If a citizen who has the right to bring a suit is deceased, his near relatives may bring the suit. If a legal person or any other organization that has the right to bring a suit terminates, the legal person or any other organization that succeeds to its rights may bring the suit.

Article 25. A citizen, a legal person or any other organization, brings a suit directly before a people's court, the administrative organ that undertook the specific administrative act shall be the defendant. For a reconsidered case, if the organ that conducted the reconsideration sustains the original specific administrative act, the administrative organ that initially undertook the act shall be the defendant; if the organ that conducted the reconsideration has amended the original specific administrative act, the administrative organ which conducted the reconsideration shall be the defendant. If two or more administrative organs have undertaken the same specific administrative act, the administrative organs that have jointly undertaken the act shall be the joint defendants.

If a specific administrative act has been undertaken by an organization authorized to undertake the act by the law or regulations, the organization shall be the defendant. If a specific administrative act has been undertaken by an organization as entrusted by an administrative organ, the entrusting organ shall be the defendant. If an administrative organ has been abolished, the administrative organ that carries on the exercise of functions and powers of the abolished organ shall be the defendant.

Article 26. A joint suit shall be constituted when one party or both parties consist of two or more persons and the administrative cases are against the same specific administrative act or against the specific administrative acts of the same nature and the people's court considers that the cases can

be handled together.

Article 27. If any other citizen, legal person or any other organization has interests in a specific administrative act under litigation, he or it may, as a third party, file a request to participate in the proceedings or may participate in them when so notified by the people's court.

Article 28. Any citizen with no capacity to take part in litigation shall have one or more legal representatives who will act on his behalf in a suit. If the legal representatives try to shift their responsibilities onto each other, the people's court may appoint one of them as the representative of the principal in litigation.

Article 29. Each party or legal representative may entrust one or two persons to represent him in litigation. A lawyer, a public organization, a near relative of the citizen bringing the suit, or a person recommended by the unit to which the citizen bringing the suit belongs or any other citizen approved by the people's court may be entrusted as an agent ad litem.

Article 30. A lawyer who serves as an agent ad litem may consult materials pertaining to the case in accordance with relevant provisions, and may also investigate among and collect evidence from the organizations and citizens concerned. If the information involves state secrets or the private affairs of individuals, he shall keep it confidential in accordance with relevant provisions of the law.

With the approval of the people's court, parties and other agents ad litem may consult the materials relating to the court proceedings of the case, except those that involve state secrets or the private affairs of individuals.

CHAPTER V EVIDENCE

Article 31. Evidence shall be classified as follows:

(1) documentary evidence;
(2) material evidence;
(3) audio-visual material;

(4) testimony of witnesses;
(5) statements of the parties;
(6) expert conclusions; and
(7) records of inquests and records made on the scene.

Any of the above-mentioned evidence must be verified by the court before it can be taken as a basis for ascertaining a fact.

Article 32. The defendant shall have the burden of proof for the specific administrative act he has undertaken and shall provide the evidence and regulatory documents in accordance with which the

act has been undertaken.

Article 33. In the course of legal proceedings, the defendant shall not by himself collect evidence from the plaintiff and witnesses.

Article 34. A people's court shall have the authority to request the parties to provide or supplement evidence.

A people's court shall have the authority to obtain evidence from the relevant administrative organs, other organizations or citizens.

Article 35. In the course of legal proceedings, when a people's court considers that an expert evaluation for a specialized problem is necessary, the expert evaluation shall be made by an expert evaluation department as specified by law. In the absence of such a department, the people's court shall designate one to conduct the expert evaluation.

Article 36. Under circumstances where there is a likelihood that evidence may be destroyed or lost or difficult to obtain later on, the participants in proceedings may apply to the people's court for the evidence to be preserved. The people's court may also on its own initiative take measures to preserve such evidence.

CHAPTER VI BRINGING SUIT AND ACCEPTING A CASE

Article 37. A citizen, a legal person or any other organization may, within the scope of cases acceptable to the people's courts, apply to an administrative organ at the next higher level or to an administrative organ as prescribed by the law or regulations for reconsideration, anyone who refuses to accept there consideration decision may bring a suit before a people's court; a citizen, a legal person or any other organization may also bring a suit directly before a people's court.

In circumstances where, in accordance with relevant provisions of laws or regulations, a citizen, a legal person or any other organization shall first apply to an administrative organ for reconsideration and then bring a suit before a people's court, if he or it refuses to accept the reconsideration decision, the provisions of the laws or regulations shall apply.

Article 38. If a citizen, a legal person or any other organization applies to an administrative organ for reconsideration, the organ shall make a decision within two months from the day of the receipt of the application, except as otherwise provided for by law or regulations.

Anyone who refuses to accept the reconsideration decision may bring a suit before a people's court within 15 days from the day of the receipt of the reconsideration decision. If the administrative organ conducting the reconsideration fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law.

Article 39. If a citizen, a legal person or any other organization brings a suit directly before a people's court, he or it shall do so within three months from the day when he or it knows that a specific administrative act has been undertaken, except as otherwise provided for by law.

Article 40. If a citizen, a legal person or any other organization fails to observe the time limit prescribed by law due to force majeure or other special reasons, he or it may apply for an extension of the time limit within ten days after the obstacle is removed; the requested extension shall be decided by a people's court.

Article 41. The following requirements shall be met when a suit is brought:

(1) The plaintiff must be a citizen, a legal person or any other organization that considers a specific administrative act to have infringed upon his or its lawful rights and interests;

(2) There must be a specific defendant or defendants;

(3) There must be a specific claim and a corresponding factual basis for the suit;

(4) The suit must fall within the scope of cases acceptable to the people's courts and the specific jurisdiction of the people's court where it is filed.

Article 42. When a people's court receives a bill of complaint, it shall, upon examination, file a case within seven days or decide to reject the complaint. If the plaintiff refuses to accept the decision, he may appeal to a people's court.

CHAPTER VII TRIAL AND JUDGMENT

Article 43. A people's court shall send a copy of the bill of complaint to the defendant within five days of filing the case. The defendant shall provide the people's court with the documents on the basis of which a specific administrative act has been undertaken and file a bill of defence within ten days of receiving the copy of the bill of complaint. The people's court shall send a copy of the bill of defence to the plaintiff within five days of receiving it. Failure by the defendant to file a bill of defence shall not prevent the case from being tried by the people's court.

Article 44. During the time of legal proceedings, execution of the specific administrative act shall not be suspended.
Execution of the specific administrative act shall be suspended under one of the following circumstances:

(1) where suspension is deemed necessary by the defendant;

(2) where suspension of execution is ordered by the people's court at the request of the plaintiff because, in the view of the people's court, execution of the specific administrative act will cause irremediable losses and suspension of the execution will not harm public interests; or

(3) where suspension of execution is required by the provisions of laws or regulations.

Article 45. Administrative cases in the people's courts shall be tried in public, except for those that involve state secrets or the private affairs of individuals or are otherwise provided for by law.

Article 46. Administrative cases in the people's courts shall be tried by a collegial panel of judges or of judges and assessors.

The number of members of a collegial panel shall be an odd number of three or more.

Article 47. If a party considers a member of the judicial personnel to have an interest in the case or to be otherwise related to it, which may affect the impartial handling of the case, the party shall have the right to demand his withdrawal.

If a member of the judicial personnel considers himself to have an interest in the case or to be otherwise related to it, he shall apply for withdrawal. The provisions of the two preceding paragraphs shall apply to court clerks, interpreters, expert witnesses and persons who conduct inquests.

The withdrawal of the president of the court as the chief judge shall be decided by the court's adjudication committee; the withdrawal of a member of the judicial personnel shall be decided by the president of the court; the withdrawal of other personnel shall be decided by the chief judge. Parties who refuse to accept the decision may apply for reconsideration.

Article 48. If the plaintiff refuses to appear in court without justified reasons after being twice legally summoned by the people's court, the court shall consider this an application for the withdrawal of the suit; if the defendant refuses to appear in court without justified reasons, the court may make a judgment by default.

Article 49. If a participant in the proceedings or any other person commits any of the following acts, the people's court may, according to the seriousness of his offence, reprimand him, order him to sign a statement of repentance or impose upon him a fine of not more than 1,000 yuan or detain him for not longer than 15 days; if a crime is constituted, his criminal responsibility shall be investigated:

(1) evading without reason, refusing to assist in or obstructing the execution of the notice of a people's court for assistance in its execution by a person who has the duty to render assistance;

(2) forging, concealing or destroying evidence;

(3) instigating, suborning or threatening others to commit perjury or hindering witnesses from giving testimony;

(4) concealing, transferring, selling or destroying the property that has been sealed up, seized or frozen;

(5) using violence, threats or other means to hinder the personnel of a people's court from performing their duties or disturbing the order of the work of a people's court; or

(6) insulting, slandering, framing, beating or retaliating against the personnel of a people's court, participants in proceedings or personnel who assist in the execution of duties;

A fine or detention must be approved by the president of a people's court. Parties who refuse to accept the punishment decision may apply for reconsideration.

Article 50. A people's court shall not apply conciliation in handling an administrative case.

Article 51. Before a people's court announces its judgment or order on an administrative case, if the plaintiff applies for the withdrawal of the suit, or if the defendant amends its specific administrative act and, as a result, the plaintiff agrees and applies for the withdrawal of the suit, the people's court shall decide whether or not to grant the approval.

Article 52. In handling administrative cases, the people's courts shall take the law, administrative rules and regulations and local regulations as the criteria. Local regulations shall be applicable to administrative cases within the corresponding administrative areas. In handling administrative cases of a national autonomous area, the people's courts shall also take the regulations on autonomy and separate regulations of the national autonomous area as the criteria.

Article 53. In handling administrative cases, the people's courts shall take, as references, regulations formulated and announced by ministries or commissions under the State Council in accordance with the law and administrative rules and regulations, decisions or orders of the State Council and regulations formulated and announced, in accordance with the law and administrative rules and regulations of the State Council, by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, of the cities where the people's governments of provinces and autonomous regions are located, and of the larger cities approved as such by the State Council.

If a people's court considers regulations formulated and announced by a local people's government to be inconsistent with regulations formulated and announced by a ministry or commission under the State Council, or if it considers regulations formulated and announced by ministries or commissions under the State Council to be inconsistent with each other, the Supreme People's Court shall refer the matter to the State Council for interpretation or ruling.

【Article 53. If a citizen, legal person or other organization considers that a regulatory document made by a department of the State Council or by a local people’s government or its department, and in accordance with which a concrete administrative action undertaken, is illegal, the citizen, legal person or organization may apply for a review of such regulatory document when bringing

suit against the relevant concrete administrative action.
The regulatory document provided in the preceding paragraph does not include regulations.】

Article 54. After hearing a case, a people's court shall make the following judgments according to the varying conditions:

(1) If the evidence for undertaking a specific administrative act is conclusive, the application of the law and regulations to the act is correct, and the legal procedure is complied with, the specific administrative act shall be sustained by judgment.

(2) If a specific administrative act has been undertaken in one of the following circumstances, the act shall be annulled or partially annulled by judgment, or the defendant may be required by judgment to undertake a specific administrative act anew:

a. inadequacy of essential evidence;
b. erroneous application of the law or regulations;
c. violation of legal procedure;
d. exceeding authority; or
e. abuse of powers.

(3) If a defendant fails to perform or delays the performance of his statutory duty, a fixed time shall be set by judgment for his performance of the duty.

(4) If an administrative sanction is obviously unfair, it may be amended by judgment.

Article 55. A defendant who has been judged by a people's court to undertake a specific administrative act anew must not, based on the same fact and reason, undertake a specific administrative act essentially identical with the original act.

Article 56. In handling administrative cases, if a people's court considers the head of an administrative organ or the person directly in charge to have violated administrative discipline, it shall transfer the relevant materials to the administrative organ or the administrative organ at the next higher level or to a supervisory or personnel department; if a people' s court considers the person to have committed a crime, it shall transfer the relevant materials to the public security and procuratorial organs.

Article 57. A people's court shall pass a judgment of first instance within three months from the day of filing the case. Extention of the time limit necessitated by special circumstances shall be approved by a higher people's court, extention of the time limit for handling a case of first instance by a higher people's court shall be approved by the Supreme People's Court.

Article 58. If a party refuses to accept a judgment of first instance by a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days of

the serving of the written judgment. If a party refuses to accept an order of first instance by a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 10 days of the serving of the written order. All judgments and orders of first instance by a people's court that have not been appealed within the prescribed time limit shall be legally effective.

Article 59. A people's court may handle an appealed case by examining the court records, if it considers the facts clearly ascertained.

Article 60. In handling an appealed case, a people's court shall make a final judgment within two months from the day of receiving the appeal. Extention of the time limit necessitated by special circumstances shall be approved by a higher people's court, extention of the time limit for handling an appealed case by a higher people's court shall be approved by the Supreme People's Court.

Article 61. A people's court shall handle an appealed case respectively according to the conditions set forth below:

(1) If the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment, the appeal shall be rejected and the original judgment sustained;

(2) If the facts are clearly ascertained but the law and regulations are incorrectly applied in the original judgment, the judgment shall be amended according to the law and regulations; or

(3) If the facts are not clearly ascertained in the original judgment or the evidence is insufficient, or a violation of the prescribed procedure may have affected the correctness of the original judgment, the original judgment shall be rescinded and the case remanded to the original people's court for retrial, or the people's court of the second instance may amend the judgment after investigating and clarifying the facts. The parties may appeal against the judgment or order rendered in a retrial of their case.

Article 62. If a party considers that a legally effective judgment or order contains some definite error, he may make complaints to the people's court which tried the case or to a people's court at a higher level, but the execution of the judgment or order shall not be suspended.

Article 63. If the president of a people's court finds a violation of provisions of the law or regulations in a legally effective judgment or order of his court and deems it necessary to have the case retried, he shall refer the matter to the adjudication committee, which shall decide whether a retrial is necessary.

If a people's court at a higher level finds a violation of provisions of the law or regulations in a legally effective judgment or order of a people's court at a lower level, it shall have the power to bring the case up for trial itself or direct the people's court at the lower level to conduct a retrial.

Article 64. If the people's procuratorate finds a violation of provisions of the law or regulations in a legally effective judgment or order of a people' s court, it shall have the right to lodge a protest in accordance with procedures of judicial supervision.

CHAPTER VIII EXECUTION

Article 65. The parties must perform the legally effective judgment or order of the people's court.

If a citizen, a legal person or any other organization refuses to perform the judgment or order, the administrative organ may apply to a people's court of first instance for compulsory execution or proceed with compulsory execution according to law.

If an administrative organ refuses to perform the judgment or order, the people's court of first instance may adopt the following measures:

(1) Informing the bank to transfer from the administrative organ's account the amount of the fine that should be returned or the damages that should be paid;

(2) Imposing a fine of 50 to 100 yuan per day on an administrative organ that fails to perform the judgment or order within the prescribed time limit, counting from the day when the time limit expires;

(3) Putting forward a judicial proposal to the administrative organ superior to the administrative organ in question or to a supervisory or personnel department; the organ or department that accepts the judicial proposal shall deal with the matter in accordance with the relevant provisions and inform the people's court of its disposition; and

(4) If an administrative organ refuses to execute a judgment or order, and the circumstances are so serious that a crime is constituted, the head of the administrative organ and the person directly in charge shall be investigated for criminal responsibility according to law.

Article 66. If a citizen, a legal person or any other organization, during the period prescribed by law, neither brings a suit nor carries out the specific administrative act, the administrative organ may apply to a people's court for compulsory execution, or proceed with compulsory execution according to law.

CHAPTER IX LIABILITY FOR COMPENSATION FOR INFRINGEMENT OF RIGHTS

Article 67. A citizen, a legal person or any other organization who suffers damage because of the infringement upon his or its lawful rights and interests by a specific administrative act of an administrative organ or the personnel of an administrative organ, shall have the right to claim compensation.

If a citizen, a legal person or any other organization makes an independent claim for damages, the

case shall first be dealt with by an administrative organ. Anyone who refuses to accept the disposition by the administrative organ may file a suit in a people's court. Conciliation may be applied in handling a suit for damages.

Article 68. If a specific administrative act undertaken by an administrative organ or the personnel of an administrative organ infringes upon the lawful rights and interests of a citizen, a legal person or any other organization and causes damage, the administrative organ or the administrative organ to which the above-mentioned personnel belongs shall be liable for compensation.

After paying the compensation, the administrative organ shall instruct those members of its personnel who have committed intentional or gross mistakes in the case to bear part or all of the damages.

Article 69. The cost of compensation shall be included as an expenditure in the government budget at various levels. The people's governments at various levels may order the administrative organs responsible for causing the compensation to bear part or all of the damages. The specific measures thereof shall be formulated by the State Council.

CHAPTER X ADMINISTRATIVE PROCEDURE INVOLVING FOREIGN INTERESTS

Article 70. This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China, except as otherwise provided for by law.

Article 71. Foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China shall have the same litigation rights and obligations as citizens and organizations of the People's Republic of China.

Should the courts of a foreign country impose restrictions on the administrative litigation rights of the citizens and organizations of the People's Republic of China, the Chinese people's courts shall follow the principle of reciprocity regarding the administrative litigation rights of the citizens and organizations of that foreign country.

Article 72. If an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those found in this Law, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

Article 73. When foreign nationals, stateless persons and foreign organizations appoint lawyers as their agents ad litem in administrative suits in the People's Republic of China, they shall appoint lawyers of a lawyers organization of the People's Republic of China.

CHAPTER XI SUPPLEMENTARY PROVISIONS

Article 74. A people's court shall charge litigation fees for handling administrative cases. The litigation fee shall be borne by the losing party, or by both parties if they are both held responsible.

The procedure for the charging of litigation fees shall be specified separately.

Article 75. This Law shall come into force as of October 1, 1990.

【Article 76. If a people's court adjudicated that an administrative action is illegal or invalid, it may also order the defendant to undertake remedial measures; when such administrative action has caused damages to the plaintiff, the court shall order the defendant to bear the liability of paying for damages according to law.】

【Article 78. If a defendant has failed to execute in accordance with law or commitment, or have illegally changed or terminated the agreement provided in section (11) of paragraph (1), Article 12, a people's court shall order the defendant to bear the liability such as executing the agreement, undertaking remedial measures or paying for damages it caused.
If the defendant has lawfully changed or terminated such agreement, but failed to offer compensation according to law, the people's court shall order the defendant to offer such compensation to the plaintiff.】

中华人民共和国主席令
（第１６号）

《中华人民共和国行政诉讼法》已由中华人民共和国第七届全国人民代表大会第二次会议于１９８９年４月４日通过，现予公布，自１９９０年１０月１日起施行。

中华人民共和国主席　杨尚昆
１９８９年４月４日

中华人民共和国行政诉讼法

（１９８９年４月４日第七届
全国人民代表大会第二次会议通过）

第一章总则

第一条为保证人民法院正确、及时审理行政案件，保护公民、法人和其他组织的合法权益，维护和监督行政机关依法行使行政职权，根据宪法制定本法。

第二条公民、法人或者其他组织认为行政机关和行政机关工作人员的具体行政行为侵犯其合法权益，有权依照本法向人民法院提起诉讼。

第三条人民法院依法对行政案件独立行使审判权，不受行政机关、社会团体和个人的干涉。

人民法院设行政审判庭，审理行政案件。

第四条人民法院审理行政案件，以事实为根据，以法律为准绳。

第五条人民法院审理行政案件，对具体行政行为是否合法进行审查。

第六条人民法院审理行政案件，依法实行合议、回避、公开审判和两审终审制度。

第七条当事人在行政诉讼中的法律地位平等。

第八条各民族公民都有用本民族语言、文字进行行政诉讼的权利。

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

第九条当事人在行政诉讼中有权进行辩论。

第十条人民检察院有权对行政诉讼实行法律监督。

第二章受案范围

第十一条人民法院受理公民、法人和其他组织对下列具体行政行为不服提起的诉讼：

（一）对拘留、罚款、吊销许可证和执照、责令停产停业、没收财物等行政处罚不服的；

（二）对限制人身自由或者对财产的查封、扣押、冻结等行政强制措施不服的；

（三）认为行政机关侵犯法律规定的经营自主权的；

（四）认为符合法定条件申请行政机关颁发许可证和执照，行政机关拒绝颁发或者不予答

复的；

（五）申请行政机关履行保护人身权、财产权的法定职责，行政机关拒绝履行或者不予答复的；

（六）认为行政机关没有依法发给抚恤金的；

（七）认为行政机关违法要求履行义务的；

（八）认为行政机关侵犯其他人身权、财产权的。

除前款规定外，人民法院受理法律、法规规定可以提起诉讼的其他行政案件。

第十二条人民法院不受理公民、法人或者其他组织对下列事项提起的诉讼：

（一）国防、外交等国家行为；

（二）行政法规、规章或者行政机关制定、发布的具有普遍约束力的决定、命令；

（三）行政机关对行政机关工作人员的奖惩、任免等决定；

（四）法律规定由行政机关最终裁决的具体行政行为。

第三章管辖

第十三条基层人民法院管辖第一审行政案件。

第十四条中级人民法院管辖下列第一审行政案件：

（一）确认发明专利权的案件、海关处理的案件；

（二）对国务院各部门或者省、自治区、直辖市人民政府所作的具体行政行为提起诉讼的案件；

（三）本辖区内重大、复杂的案件。

第十五条高级人民法院管辖本辖区内重大、复杂的第一审行政案件。

第十六条最高人民法院管辖全国范围内重大、复杂的第一审行政案件。

第十七条行政案件由最初作出具体行政行为的行政机关所在地人民法院管辖。经复议的案件，复议机关改变原具体行政行为的，也可以由复议机关所在地人民法院管辖。

第十八条对限制人身自由的行政强制措施不服提起的诉讼，由被告所在地或者原告所在地人民法院管辖。

第十九条因不动产提起的行政诉讼，由不动产所在地人民法院管辖。

第二十条两个以上人民法院都有管辖权的案件，原告可以选择其中一个人民法院提起诉讼。原告向两个以上有管辖权的人民法院提起诉讼的，由最先收到起诉状的人民法院管辖。

第二十一条人民法院发现受理的案件不属于自己管辖时，应当移送有管辖权的人民法院。受移送的人民法院不得自行移送。

第二十二条有管辖权的人民法院由于特殊原因不能行使管辖权的，由上级人民法院指定管辖。

人民法院对管辖权发生争议，由争议双方协商解决。协商不成的，报它们的共同上级人民法院指定管辖。

第二十三条上级人民法院有权审判下级人民法院管辖的第一审行政案件，也可以把自己管辖的第一审行政案件移交下级人民法院审判。

下级人民法院对其管辖的第一审行政案件，认为需要由上级人民法院审判的，可以报请上级人民法院决定。

第四章诉讼参加人

第二十四条依照本法提起诉讼的公民、法人或者其他组织是原告。

有权提起诉讼的公民死亡，其近亲属可以提起诉讼。

有权提起诉讼的法人或者其他组织终止，承受其权利的法人或者其他组织可以提起诉讼。

第二十五条公民、法人或者其他组织直接向人民法院提起诉讼的，作出具体行政行为的行政机关是被告。

经复议的案件，复议机关决定维持原具体行政行为的，作出原具体行政行为的行政机关是被告；复议机关改变原具体行政行为的，复议机关是被告。

两个以上行政机关作出同一具体行政行为的，共同作出具体行政行为的行政机关是共同被告。

由法律、法规授权的组织所作的具体行政行为，该组织是被告。由行政机关委托的组织所作的具体行政行为，委托的行政机关是被告。

行政机关被撤销的，继续行使其职权的行政机关是被告。

第二十六条当事人一方或者双方为二人以上，因同一具体行政行为发生的行政案件，或者因同样的具体行政行为发生的行政案件、人民法院认为可以合并审理的，为共同诉讼。

第二十七条同提起诉讼的具体行政行为有利害关系的其他公民、法人或者其他组织，可以作为第三人申请参加诉讼，或者由人民法院通知参加诉讼。

第二十八条没有诉讼行为能力的公民，由其法定代理人代为诉讼。法定代理人互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

第二十九条当事人、法定代理人，可以委托一至二人代为诉讼。

律师、社会团体、提起诉讼的公民的近亲属或者所在单位推荐的人，以及经人民法院许可的其他公民，可以受委托为诉讼代理人。

第三十条代理诉讼的律师，可以依照规定查阅本案有关材料，可以向有关组织和公民调查，收集证据。对涉及国家秘密和个人隐私的材料，应当依照法律规定保密。

经人民法院许可，当事人和其他诉讼代理人可以查阅本案庭审材料，但涉及国家秘密和个人隐私的除外。

第五章证据

第三十一条证据有以下几种：

（一）书证；

（二）物证；

（三）视听资料；

（四）证人证言；

（五）当事人的陈述；

（六）鉴定结论；

（七）勘验笔录、现场笔录。

以上证据经法庭审查属实，才能作为定案的根据。

第三十二条被告对作出的具体行政行为负有举证责任，应当提供作出该具体行政行为的证据和所依据的规范性文件。

第三十三条在诉讼过程中，被告不得自行向原告和证人收集证据。

第三十四条人民法院有权要求当事人提供或者补充证据。

人民法院有权向有关行政机关以及其他组织、公民调取证据。

第三十五条在诉讼过程中，人民法院认为对专门性问题需要鉴定的，应当交由法定鉴定部门鉴定；没有法定鉴定部门的，由人民法院指定的鉴定部门鉴定。

第三十六条在证据可能灭失或者以后难以取得的情况下，诉讼参加人可以向人民法院申请保全证据，人民法院也可以主动采取保全措施。

第六章起诉和受理

第三十七条对属于人民法院受案范围的行政案件，公民、法人或者其他组织可以先向上一级行政机关或者法律、法规规定的行政机关申请复议，对复议不服的，再向人民法院提起诉讼；也可以直接向人民法院提起诉讼。

法律、法规规定应当先向行政机关申请复议，对复议不服再向人民法院提起诉讼的，依照

法律、法规的规定。

第三十八条公民、法人或者其他组织向行政机关申请复议的，复议机关应当在收到申请书之日起两个月内作出决定。法律、法规另有规定的除外。

申请人不服复议决定的，可以在收到复议决定书之日起十五日内向人民法院提起诉讼。复议机关逾期不作决定的，申请人可以在复议期满之日起十五日内向人民法院提起诉讼。法律另有规定的除外。

第三十九条公民、法人或者其他组织直接向人民法院提起诉讼的，应当在知道作出具体行政行为之日起三个月内提出。法律另有规定的除外。

第四十条公民、法人或者其他组织因不可抗力或者其他特殊情况耽误法定期限的，在障碍消除后的十日内，可以申请延长期限，由人民法院决定。

第四十一条提起诉讼应当符合下列条件：

（一）原告是认为具体行政行为侵犯其合法权益的公民、法人或者其他组织；

（二）有明确的被告；

（三）有具体的诉讼请求和事实根据；

（四）属于人民法院受案范围和受诉人民法院管辖。

第四十二条人民法院接到起诉状，经审查，应当在七日内立案或者作出裁定不予受理。原告对裁定不服的，可以提起上诉。

第七章审理和判决

第四十三条人民法院应当在立案之日起五日内，将起诉状副本发送被告。被告应当在收到起诉状副本之日起十日内向人民法院提交作出具体行政行为的有关材料，并提出答辩状。人民法院应当在收到答辩状之日起五日内，将答辩状副本发送原告。

被告不提出答辩状的，不影响人民法院审理。

第四十四条诉讼期间，不停止具体行政行为的执行。但有下列情形之一的，停止具体行政行为的执行：

（一）被告认为需要停止执行的；

（二）原告申请停止执行，人民法院认为该具体行政行为的执行会造成难以弥补的损失，并且停止执行不损害社会公共利益，裁定停止执行的；

（三）法律、法规规定停止执行的。

第四十五条人民法院公开审理行政案件，但涉及国家秘密、个人隐私和法律另有规定的除外。

第四十六条人民法院审理行政案件，由审判员组成合议庭，或者由审判员、陪审员组成合议庭。合议庭的成员，应当是三人以上的单数。

第四十七条当事人认为审判人员与本案有利害关系或者有其他关系可能影响公正审判，有权申请审判人员回避。

审判人员认为自己与本案有利害关系或者有其他关系，应当申请回避。

前两款规定，适用于书记员、翻译人员、鉴定人、勘验人。

院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。当事人对决定不服的，可以申请复议。

第四十八条经人民法院两次合法传唤，原告无正当理由拒不到庭的，视为申请撤诉；被告无正当理由拒不到庭的，可以缺席判决。

第四十九条诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重，予以训诫、责令具结悔过或者处一千元以下的罚款、十五日以下的拘留；构成犯罪的，依法追究刑事责任：

（一）有义务协助执行的人，对人民法院的协助执行通知书，无故推拖、拒绝或者妨碍执

行的；

（二）伪造、隐藏、毁灭证据的；

（三）指使、贿买、胁迫他人作伪证或者威胁、阻止证人作证的；

（四）隐藏、转移、变卖、毁损已被查封、扣押、冻结的财产的；

（五）以暴力、威胁或者其他方法阻碍人民法院工作人员执行职务或者扰乱人民法院工作秩序的；

（六）对人民法院工作人员、诉讼参与人、协助执行人侮辱、诽谤、诬陷、殴打或者打击报复的。

罚款、拘留须经人民法院院长批准。当事人不服的，可以申请复议。

第五十条人民法院审理行政案件，不适用调解。

第五十一条人民法院对行政案件宣告判决或者裁定前，原告申请撤诉的，或者被告改变其所作的具体行政行为，原告同意并申请撤诉的，是否准许，由人民法院裁定。

第五十二条人民法院审理行政案件，以法律和行政法规、地方性法规为依据。地方性法规适用于本行政区域内发生的行政案件。

人民法院审理民族自治地方的行政案件，并以该民族自治地方的自治条例和单行条例为依据。

第五十三条人民法院审理行政案件，参照国务院部、委根据法律和国务院的行政法规、决定、命令制定、发布的规章以及省、自治区、直辖市和省、自治区的人民政府所在地的市和经国务院批准的较大的市的人民政府根据法律和国务院的行政法规制定、发布的规章。

人民法院认为地方人民政府制定、发布的规章与国务院部、委制定、发布的规章不一致的，以及国务院部、委制定、发布的规章之间不一致的，由最高人民法院送请国务院作出解释或者裁决。

第五十四条人民法院经过审理，根据不同情况，分别作出以下判决：

（一）具体行政行为证据确凿，适用法律、法规正确，符合法定程序的，判决维持。

（二）具体行政行为有下列情形之一的，判决撤销或者部分撤销，并可以判决被告重新作出具体行政行为：

1．主要证据不足的；

2．适用法律、法规错误的；

3．违反法定程序的；

4．超越职权的；

5．滥用职权的。

（三）被告不履行或者拖延履行法定职责的，判决其在一定期限内履行。

（四）行政处罚显失公正的，可以判决变更。

第五十五条人民法院判决被告重新作出具体行政行为的，被告不得以同一的事实和理由作出与原具体行政行为基本相同的具体行政行为。

第五十六条人民法院在审理行政案件中，认为行政机关的主管人员、直接责任人员违反政纪的，应当将有关材料移送该行政机关或者其上一级行政机关或者监察、人事机关；认为有犯罪行为的，应当将有关材料移送公安、检察机关。

第五十七条人民法院应当在立案之日起三个月内作出第一审判决。有特殊情况需要延长的，由高级人民法院批准，高级人民法院审理第一审案件需要延长的，由最高人民法院批准。

第五十八条当事人不服人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。当事人不服人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。逾期不提起上诉的，人民法院的第一审判决或者裁定发生法律效力。

第五十九条人民法院对上诉案件，认为事实清楚的，可以实行书面审理。

第六十条人民法院审理上诉案件，应当在收到上诉状之日起两个月内作出终审判决。有特殊情况需要延长的，由高级人民法院批准，高级人民法院审理上诉案件需要延长的，由最高人民法院批准。

第六十一条人民法院审理上诉案件，按照下列情形，分别处理：

（一）原判决认定事实清楚，适用法律、法规正确的，判决驳回上诉，维持原判；

（二）原判决认定事实清楚，但适用法律、法规错误的，依法改判；

（三）原判决认定事实不清，证据不足，或者由于违反法定程序可能影响案件正确判决的，裁定撤销原判，发回原审人民法院重审，也可以查清事实后改判。当事人对重审案件的判决、裁定，可以上诉。

第六十二条当事人对已经发生法律效力的判决、裁定，认为确有错误的，可以向原审人民法院或者上一级人民法院提出申诉，但判决、裁定不停止执行。

第六十三条人民法院院长对本院已经发生法律效力的判决、裁定，发现违反法律、法规规定认为需要再审的，应当提交审判委员会决定是否再审。

上级人民法院对下级人民法院已经发生法律效力的判决、裁定，发现违反法律、法规规定的，有权提审或者指令下级人民法院再审。

第六十四条人民检察院对人民法院已经发生法律效力的判决、裁定，发现违反法律、法规规定的，有权按照审判监督程序提出抗诉。

第八章执行

第六十五条当事人必须履行人民法院发生法律效力的判决、裁定。

公民、法人或者其他组织拒绝履行判决、裁定的，行政机关可以向第一审人民法院申请强制执行，或者依法强制执行。

行政机关拒绝履行判决、裁定的，第一审人民法院可以采取以下措施：

（一）对应当归还的罚款或者应当给付的赔偿金，通知银行从该行政机关的账户内划拨；

（二）在规定期限内不履行的，从期满之日起，对该行政机关按日处五十元至一百元的罚款；

（三）向该行政机关的上一级行政机关或者监察、人事机关提出司法建议。接受司法建议的机关，根据有关规定进行处理，并将处理情况告知人民法院；

（四）拒不履行判决、裁定，情节严重构成犯罪的，依法追究主管人员和直接责任人员的刑事责任。

第六十六条公民、法人或者其他组织对具体行政行为在法定期限内不提起诉讼又不履行的，行政机关可以申请人民法院强制执行，或者依法强制执行。

第九章侵权赔偿责任

第六十七条公民、法人或者其他组织的合法权益受到行政机关或者行政机关工作人员作出的具体行政行为侵犯造成损害的，有权请求赔偿。

公民、法人或者其他组织单独就损害赔偿提出请求，应当先由行政机关解决。对行政机关的处理不服，可以向人民法院提起诉讼。

赔偿诉讼可以适用调解。

第六十八条行政机关或者行政机关工作人员作出的具体行政行为侵犯公民、法人或者其他组织的合法权益造成损害的，由该行政机关或者该行政机关工作人员所在的行政机关负责赔偿。

行政机关赔偿损失后，应当责令有故意或者重大过失的行政机关工作人员承担部分或者全部赔偿费用。

第六十九条赔偿费用，从各级财政列支。各级人民政府可以责令有责任的行政机关支付部

分或者全部赔偿费用。具体办法由国务院规定。

第十章涉外行政诉讼

第七十条外国人、无国籍人、外国组织在中华人民共和国进行行政诉讼，适用本法。法律另有规定的除外。

第七十一条外国人、无国籍人、外国组织在中华人民共和国进行行政诉讼，同中华人民共和国公民、组织有同等的诉讼权利和义务。

外国法院对中华人民共和国公民、组织的行政诉讼权利加以限制的，人民法院对该国公民、组织的行政诉讼权利，实行对等原则。

第七十二条中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定。中华人民共和国声明保留的条款除外。

第七十三条外国人、无国籍人、外国组织在中华人民共和国进行行政诉讼，委托律师代理诉讼的，应当委托中华人民共和国律师机构的律师。

第十一章附则

第七十四条人民法院审理行政案件，应当收取诉讼费用。诉讼费用由败诉方承担，双方都有责任的由双方分担。收取诉讼费用的具体办法另行规定。

第七十五条本法自一九九〇年十月一日起施行。

Bilateral Investment Treaty					
No.	Continent	Country	Signed on	Effective from	Remarks
1	Europe	SWEDEN 瑞典	29-Mar-82	29-Mar-82	
	Europe	瑞典议定书	27-Sep-04	27-Sep-04	Effective upon signature
2	Europe	GERMANY 德国	7-Oct-83	18-Mar-85	
	Europe	GERMANY 德国	1-Dec-03	11-Nov-05	Re-signed
3	Europe	FRANCE 法国	30-May-84	19-Mar-85	Re-signed on November 26, 2007, replacing the former agreement
	Europe	FRANCE 法国	26-Nov-07	20-Aug-10	Re-signed
4	Europe	Belgian-Luxembourg 比利时与卢森堡	4-Jun-84	5-Oct-86	
	Europe	Belgian-Luxembourg 比利时与卢森堡	6-Jun-05	1-Dec-09	Re-signed
5	Europe	FINLAND 芬兰	4-Sep-84	26-Jan-86	
	Europe	FINLAND 芬兰	15-Nov-04	15-Nov-06	Re-signed
6	Europe	NORWAY 挪威	21-Nov-84	10-Jul-85	
7	Europe	ITALY 意大利	28-Jan-85	28-Aug-87	
8	Europe	DENMARK 丹麦	29-Apr-85	29-Apr-85	
9	Europe	THE NETHERLANDS 荷兰	17-Jun-85	1-Feb-87	
	Europe	THE NETHERLANDS 荷兰	26-Nov-01	1-Aug-04	Re-signed
10	Europe	AUSTRIA	12-Sep-85	11-Oct-86	

10	Europe	奥地利	12-Sep-85	11-Oct-86	
11	Europe	U.K. 英国	15-May-86	15-May-86	
12	Europe	SWITZERLAND 瑞士	12-Nov-86	18-Mar-87	
	Europe	SWISS 瑞士	27-Jan-09	13-Apr-10	Re-signed
13	Europe	POLAND 波兰	7-Jun-88	8-Jan-89	
14	Europe	BULGARIA 保加利亚	27-Jun-89	21-Aug-94	
	Europe	Additional Protocol 保加利亚附加议定书	26-Jun-07	10-Nov-07	
15	Europe	RUSSIA 俄罗斯	9-Nov-06	1-May-09	
16	Europe	HUNGARY 匈牙利	29-May-91	1-Apr-93	
17	Europe	捷克和斯洛伐克	4-Dec-91	1-Dec-92	
	Europe	Slovak 斯洛伐克	7-Dec-05	25-May-07	Additional protocol
18	Europe	PORTUGAL 葡萄牙	3-Feb-92	1-Dec-92	
	Europe	PORTUGAL 葡萄牙	9-Dec-05	26-Jul-08	Re-signed
19	Europe	SPAIN 西班牙	6-Feb-92	1-May-93	
	Europe	SPAIN 西班牙	24-Nov-05	1-Jul-08	Re-signed
20	Europe	GREECE 希腊	25-Jun-92	21-Dec-93	
21	Europe	UKRAINE 乌克兰	31-Oct-92	29-May-93	
22	Europe	MOLDOVA	6-Nov-92	1-Mar-95	

22	Europe	摩尔多瓦	6-Nov-92	1-Mar-95	
23	Europe	BELARUS 白俄罗斯	11-Jan-93	14-Jan-95	
24	Europe	ALBANIA 阿尔巴尼亚	13-Feb-93	1-Sep-95	
25	Europe	CROATIA 克罗地亚	7-Jun-93	1-Jul-94	
26	Europe	ESTONIA 爱沙尼亚	2-Sep-93	1-Jun-94	
27	Europe	SLOVENIA 斯洛文尼亚	13-Sep-93	1-Jan-95	
28	Europe	LITHUANIA 立陶宛	8-Nov-93	1-Jun-94	
29	Europe	ICELAND 冰岛	31-Mar-94	1-Mar-97	
30	Europe	ROMANIA (New) 罗马尼亚（新）	Julyl 12, 1994	1-Sep-95	
	Europe	ROMANIA(Additional Protocol) 罗马尼亚附加议定书	16-Apr-07	1-Sep-08	
31	Europe	YUGOSLAVIA 南斯拉夫	18-Dec-95	12-Sep-96	Taken over by the Republic of Serbia
32	Europe	MACEDONIA 马其顿	9-Jun-97	1-Nov-97	
33	Asia	THAILAND 泰国	12-Mar-85	13-Dec-85	
34	Asia	SINGAPORE 新加坡	21-Nov-85	7-Feb-86	
35	Asia	KUWAIT 科威特	23-Nov-85	24-Dec-86	
36	Asia	SRILANKA 斯里兰卡	13-Mar-86	25-Mar-87	
37	Asia	JAPAN 日本	27-Aug-88	14-May-89	

38	Asia	MALAYSIA 马来西亚	21-Nov-88	31-Mar-90	
39	Asia	PAKISTAN 巴基斯坦	12-Feb-89	30-Sep-90	
40	Asia	TURKEY 土耳其	13-Nov-90	19-Aug-94	
41	Asia	MONGOLIA 蒙古	25-Aug-91	1-Nov-93	
42	Asia	乌兹别克斯坦	13-Mar-92	12-Apr-94	Re-signed on April 19, 2011, replacing the former agreement.
42	Asia	Uzbekistan 乌兹别克斯坦	19-Apr-11	1-Sep-11	Re-signed
43	Asia	KYRGYZSTAN 吉尔吉斯	14-May-92	8-Sep-95	
44	Asia	ARMENIA 亚美尼亚	4-Jul-92	18-Mar-95	
45	Asia	THE PHILIPPINES 菲律宾	20-Jul-92	8-Sep-95	
46	Asia	KAZAKHSTAN 哈萨克斯坦	10-Aug-92	13-Aug-94	
47	Asia	KOREA 韩国*	30-Sep-92	4-Dec-92	
	Asia	KOREA 韩国*	7-Sep-07	1-Dec-07	Re-signed
48	Asia	土库曼斯坦	21-Nov-92	6-Jun-94	
49	Asia	VIET NAM 越南	2-Dec-92	1-Sep-93	
50	Asia	LAOS 老挝	31-Jan-93	1-Jun-93	
51	Asia	Tajikistan 塔吉克斯坦	9-Mar-93	20-Jan-94	
52	Asia	GEORGIA 格鲁吉亚	3-Jun-93	1-Mar-95	

53	Asia	UNITED ARAB EMIRATES 阿联酋	1-Jul-93	28-Sep-94	
54	Asia	AZERBAIJAN 阿塞拜疆	8-Mar-94	1-Apr-95	
55	Asia	INDONESIA 印度尼西亚	18-Nov-94	1-Apr-95	
56	Asia	OMAN 阿曼	18-Mar-95	1-Aug-95	
57	Asia	ISRAEL 以色列	10-Apr-95	13-Jan-09	
58	Asia	SAUDI ARABIA 沙特阿拉伯	29-Feb-96	1-May-97	
59	Asia	Lebanese 黎巴嫩	13-Jun-96	10-Jul-97	
60	Asia	Cambodia 柬埔寨	19-Jul-96	1-Feb-00	
61	Asia	Syria 叙利亚	9-Dec-96	1-Nov-01	
62	Asia	Yemen 也门	16-Feb-98	10-Apr-02	
63	Asia	KATAR 卡塔尔	9-Apr-99	1-Apr-00	
64	Asia	BAHRAIN 巴林	17-Jun-99	27-Apr-00	
65	Asia	IRAN 伊朗	22-Jun-00	1-Jul-05	
66	Asia	Myanmar 缅甸	12-Dec-01	21-May-02	
67	Asia	Korea 朝鲜	22-Mar-05	1-Oct-05	
68	Asia	INDIA 印度	21-Nov-06	1-Aug-07	
69	Oceania	AUSTRALIA	11-Jul-88	11-Jul-88	

69	Oceania	澳大利亚	11-Jul-88	11-Jul-88	
70	Oceania	NEW ZEALAND 新西兰	22-Nov-88	25-Mar-89	
71	Oceania	Papua New Guinea 巴布亚新几内亚	12-Apr-91	12-Feb-93	
72	Africa	Ghana 加纳	12-Oct-89	22-Nov-90	
73	Africa	EGYPT 埃及	21-Apr-94	1-Apr-96	
74	Africa	MOROCCO 摩洛哥	27-Mar-95	27-Nov-99	
75	Africa	MAURITIUS 毛里求斯	4-May-96	8-Jun-97	
76	Africa	Zimbabwe 津巴布韦	21-May-96	1-Mar-98	
77	Africa	ALGERIA 阿尔及利亚	17-Oct-96	28-Jan-03	
78	Africa	Gabon 加蓬	May 9,, 1997	16-Feb-09	
79	Africa	Nigeria 尼日利亚	12-May-97		Abolished
	Africa	Nigeria 尼日利亚	27-Aug-01	18-Feb-10	Re-signed
80	Africa	SUDAN 苏丹	30-May-97	1-Jul-98	
81	Africa	SOUTH AFRICA 南非	30-Dec-97	1-Apr-98	
82	Africa	Cape Verde 佛得角	21-Apr-98	1-Oct-01	
83	Africa	Ethiopia 埃塞俄比亚	11-May-98	1-May-01	
84	Africa	TUNIS 突尼斯	21-Jun-04	1-Jul-06	
85	Africa	equatorial Guinea	20-Oct-05	15-Nov-06	

85	Africa	赤道几内亚	20-Oct-05	15-Nov-06	
86	Africa	Madagascar 马达加斯加	21-Nov-05	1-Jul-07	
87	America	Bolivia 波利维亚	8-May-92	1-Sep-96	
88	America	Argentine 阿根廷	5-Nov-92	1-Aug-94	
89	America	Uruguay 乌拉圭	12-Dec-93	1-Dec-97	
90	America	Ecuador 厄瓜多尔	21-Mar-94	1-Jul-97	
91	America	Chile 智利	23-Mar-94	1-Aug-95	
92	America	Peru 秘鲁	9-Jun-94	1-Feb-95	
93	America	Jamaica 牙买加	26-Oct-94	1-Apr-96	
94	America	CUBA 古巴	24-Apr-95	1-Aug-96	
	America	CUBA 古巴	20-Apr-07	1-Dec-08	Revised
95	America	BARBADOS 巴巴多斯	20-Jul-98	1-Oct-99	
96	America	TRINIDAD AND TOBAGO 特立尼达多巴哥	22-Jul-02	7-Dec-04	
97	America	Guyana 圭亚那	27-Mar-03	26-Oct-04	
98	Europe	MALTA 马耳他	22-Feb-09	1-Apr-09	
99	Europe	CYPRUS 塞浦路斯	17-Jan-01	29-Apr-02	
100	Asia	Japan and Korea 日韩	12-May-13	17-May-14	

101	Africa	Mali 马里	12-Feb-09	16-Jul-09	

China's Free Trade Agreements			
NO.	**Country/Region**	**Signed on**	**Effective from**
1	ASEAN	4/11/2002	1/07/2003
2	Pakistan	21/02/2009	10/10/2009
3	Chile	18/11/2005	1/10/2006
4	New Zealand	7/04/2008	1/10/2008
5	Singapore	23/10/2008	1/01/2009
6	Peru	28/04/2009	1/03/2010
7	Hong Kong	29/06/2003	29/06/2003
8	Macau	17/10/2003	17/10/2003
9	Costa Rica	8/04/2010	1/08/2011
10	Iceland	15/04/2013	1/07/2014
11	Switzerland	6/07/2013	1/07/2014

Interim Regulation on the Board of Supervisors of State-owned Enterprises

Article 1 For purpose of improving the supervisory mechanism of state-owned enterprises and strengthening supervision over state-owned enterprises (SOE), this regulation is formulated.

Article 2 Board of supervisors of major large-sized SOEs (hereinafter "the board of supervisors") are dispatched by and responsible to the State Council, and are in charge of supervising maintenance and appreciation in state-owned asset value of the major large-sized SOEs.

Regarding candidate name list of major large-sized SOEs to which the State Council dispatches a board of supervisors, the organ in charge of dealing with affairs of board of supervisors (the "organ") may propose and submit one to the State Council for decision.

Article 3 The board of supervisors shall focus on supervision of financial record, and conduct supervision over the financial activities of the enterprises and the business management acts of persons-in-charge of the enterprises so as to ensure no encroachment on the state-owned assets and the relevant rights and interests attached to the assets under the relevant laws, Regulation, as well as the relevant provisions of the Ministry of Finance.

The relationship between the board of supervisors and the enterprises shall be that between the supervisor and the supervised. The board of supervisors shall not involve in nor interfere with the business decision-making and business management activities of the enterprises.

Article 4 The organ in charge of dealing with affairs of board of supervisors (the "organ") is responsible for dealing with affairs of the board of supervisors, communicating between the board of supervisors, relevant departments of State Council and local governments and handling any matters assigned by the State Council.

Article 5 The board of supervisors shall perform the following functions:

(1) to check the enterprises' implementation of the relevant laws, Regulation, and rules;

(2) to check the financial record of the enterprises, consult their financial and accounting materials as well as materials relating to its other business operations respectively, verify truthfulness and legality of the financial statements;

(3) to check the financial performance, profit distribution, state-owned asset value maintenance and appreciation, capital flow of the enterprises; and

(4) to check business management activities of persons-in-charge of the enterprises, to evaluate the business management performances, and to put forward proposals of award, punishment, appointment and dismissal.

Article 6 The board of supervisors shall usually carry out regular inspections of the enterprises one to two times a year, and may carry out some ad hoc inspections of the enterprises in case of actual needs.

Article 7 The board of supervisors may carry out supervision and inspection by way of:

(1) listening to reports by the persons-in-charge of the enterprises about the relevant status of financial affairs, assets, and business management, to hold meetings in enterprises in regard to the relevant matters under supervision and inspection;

(2) consulting the financial reports, accounting vouchers, accounting books and other financial and accounting materials as well as other materials relevant to the business management activities of the enterprises;

(3) checking the financial affairs and status of assets of the enterprises, inquiring the personnel thereof about the relevant information and listening to their opinions, and demanding the persons-in-charge of the enterprises to make explanations where necessary; and

(4) inquiring the departments of public finance, industry and commerce, tax, audit, customs, etc. about the financial status and business management of the enterprises.

The Chairman of the board of supervisors may, in light of the needs of supervision and inspection, attend, as a nonvoting delegate or, authorize other members to attend as non-voting delegates, the relevant meetings.

Article 8 The relevant departments of the State Council and the relevant departments of the local people's governments should support and cooperate with the board of supervisors and provide the board of supervisors with relevant information and data.

Article 9 The board of supervisors shall present inspection reports promptly upon conclusion of each inspection of the enterprises.

The inspection reports shall have such contents as evaluations of the financial affairs, the operations and management of the enterprises, evaluations of the operational and managerial performance of the enterprises' responsible persons and proposals on rewards, penalties, appointments or dismissals, proposals on solutions to the problems

in the enterprises and other items which the State Council may require them to report on or the board of supervisors may deem necessary to report on.

The board of supervisors shall not disclose to the enterprises the contents of inspection reports as described in the preceding paragraph.

Article 10 The inspection reports shall, upon discussion by members of the board of supervisors, be signed by the chairmen of the board of supervisors and submitted to the State Council through the organ; the inspection reports, upon written reply from the State Council, shall be copied to the State Economic and Trade Commission, the Ministry of Finance and other relevant departments.

Where any supervisor has fundamental different opinions over an inspection report, explanations as such shall be offered in the inspection report.

Article 11 The board of supervisors shall present, without delay, special reports to the organ or may report directly to the State Council, if, in the course of supervision and inspection, the board of supervisors discover that the operational activities of the enterprises may possibly endanger the safety of State-owned assets, result in the loss of State-owned assets, infringe upon the rights and interests of the owners of State-owned assets and other emergencies which the board of supervisors consider should be reported promptly.

The organ shall strengthen contact with the State Economic and Trade Commission, the Ministry of Finance and other relevant departments and exchange relevant information with them.

Article 12 The enterprises shall submit their financial and accounting reports to the board of supervisors regularly and truthfully, and promptly report on their major

operational and management activities, and shall not refuse to report on, conceal or falsify any facts.

Article 13 Where necessary, the board of supervisors may, based on the needs for supervision and inspection of the enterprises and upon consent from the organ, engage certified public accountant firms to conduct audits of the enterprises.

The board of supervisors may, based on the supervision and inspection of the enterprises, recommend that the State Council request the State auditor to conduct audits of the enterprises according to law.

Article 14 The board of supervisors consists one Chairman and a number of supervisors.

The supervisors are classified into full-time supervisors and part-time supervisors. Those selected from the relevant departments and entities are full-time supervisors, the delegates dispatched from the relevant departments of the State Council or entities and personnel representatives are part-time supervisors.

The board of supervisors may hire staff where necessary.

Article 15 The chairman of board of supervisors shall be selected in accordance with the prescribed procedures and appointed by the State Council. The chairman of board of supervisors shall be held by the personnel with the vice-ministerial rank and serve as full-time supervisors, who are normally aged below 60.

Full-time supervisors shall be appointed by the organ. The full-time supervisors shall be held by State personnel with the rank of department (bureau) director-general or division chief, who are normally aged below 55.

The representatives of the enterprises' employees in the board of supervisors shall be chosen by the congresses of the enterprises' employees through democratic elections and reported to the organ for approval. The persons responsible for the enterprises shall not serve as representatives of the enterprises' employees in the board of supervisors.

Article 16 The term of office of a member of a board of supervisors shall be three years, and the chairman of a board of supervisors, full-time supervisors and dispatched supervisors shall not serve consecutive terms in the board of supervisors of the same enterprise.

The chairman of a board of supervisors, full-time supervisors and dispatched supervisors may hold the corresponding posts in the board of supervisors in one to three enterprises.

Article 17 The chairman of a board of supervisors shall have an excellent grasp of policies, adhere to the principles, be uncorrupted, honest, self-disciplined and well acquainted with business.

The chairman of a board of supervisors shall perform the following roles:

(1) to convene and chair the meetings of the board of supervisors;

(2) to be responsible for the day-to-day work of the board of supervisors;

(3) to examine, approve and sign the reports and other important documents of the board of supervisors; and

(4) to perform other roles which should be performed by the chairman of a board of supervisors.

Article 18 A supervisor of the board of supervisors shall satisfy the following conditions:

(1) being familiar with and able to practice the relevant laws, Regulation, and rules;

(2) having professional knowledge of finance, accounting, auditing or economic and being familiar with the business management of the enterprises;

(3) adhering to the principle, being uncorrupt, honest, self-disciplined and loyal, and

(4) being able to make comprehensive analyses and judgments, having strong writing ability and being able to work independently.

Article 19 The Chairman, full-time supervisors, dispatched supervisors and expert supervisors of the board of supervisors shall be governed by the principle of avoidance of conflict of interest. None of them may assume a position in the board of supervisors of the enterprises, in which he ever managed, worked or his close relative takes up a position of senior management.

Article 20 The expenditure needed by the board of supervisors in fulfilling their work of supervision and inspection shall be borne by the State budget and be disbursed uniformly by the organ.

Article 21 Members of the board of supervisors shall not accept any gifts from the enterprises, shall not participate in such activities as banquets, entertainment, tours and visits arranged, organized or paid for by the enterprises and shall not seek any private benefits from the enterprises for themselves, their relatives and friends or other persons.

The chairmen, full-time supervisors and dispatched supervisors of the board of

supervisors shall not accept any remuneration or fringe benefits from the enterprises and shall not be reimbursed for any expenses by the enterprises.

Article 22 The members of the board of supervisors shall keep the inspection reports confidential. None of them may divulge any business secret of the enterprises.

Article 23 The members of the board of supervisors who have made outstanding achievements in carrying out supervision and inspection and important contributions to safeguarding the State interests shall be awarded.

Article 24 Any member of a board of supervisors who has committed one of the following acts shall be given administrative or disciplinary sanctions according to law right up to removal from his post as a supervisor; where a crime is constituted, criminal liability shall be investigated according to law:

(1) concealing of or refusing to make reports on serious violations of law or discipline by an enterprise or committing grave negligence of duty thereof;

(2) colluding with the enterprises in fabricating false inspection reports; or

(3) committing an act violating the provisions of Article 21 or 22 of this Regulation.

Article 25 Where an enterprise has committed one of the following acts, the directly responsible person in charge or other persons directly responsible shall be given disciplinary sanctions according to law right up to removal from their posts; where a crime is constituted, criminal liability shall be investigated according to law:

(1) rejecting or obstructing the lawful performance of roles by the board of supervisors;

(2) rejecting or delaying, without reason, the submission of information about the financial status, operations and management to the board of supervisors;

(3) concealing, altering or falsifying reports of important information and relevant data; or

(4) committing any other acts that obstruct the supervision and inspection by the board of supervisors.

Article 26 When an enterprise discovers that any member of a board of supervisors has violated the provisions of Article 21 or 22 of the Regulation, it shall have the right to report the matter to the organ or may also report directly to the State Council.

Article 27 For State-owned enterprises to which the State Council does not dispatch boards of supervisors, the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government may decide to dispatch boards of supervisors with reference to the provisions of the Regulation.

Article 28 The boards of supervisors dispatched to the key State-owned financial institutions by the State Council shall be governed by “the Interim Regulation on the Boards of Supervisors in Key State-owned Financial Institutions.”

Article 29 The Regulation shall come into effect as of the promulgation date. “The Regulation on Supervision and Management of Property of the State-owned Enterprise” issued by the State Council on July 24, 1994 shall be abolished simultaneously.

http://www.sasac.gov.cn/gzjg/jsh/200408130018.htm

国有企业监事会暂行条例

（2000 年 3 月 15 日发布施行）

第一条 为了健全国有企业监督机制，加强对国有企业的监督，制定本条例。

第二条 国有重点大型企业监事会（以下简称监事会）由国务院派出，对国务院负责，代表国家对国有重点大型企业（以下简称企业）的国有资产保值增值状况实施监督。

国务院派出监事会的企业名单，由国有企业监事会管理机构（以下简称监事会管理机构）提出建议，报国务院决定。

第三条 监事会以财务监督为核心，根据有关法律、行政法规和财政部的有关规定，对企业的财务活动及企业负责人的经营管理行为进行监督，确保国有资产及其权益不受侵犯。

监事会与企业是监督与被监督的关系，监事会不参与、不干预企业的经营决策和经营管理活动。

第四条 监事会管理机构负责监事会的日常管理工作，协调监事会与国务院有关部门和有关地方的联系，承办国务院交办的事项。

第五条 监事会履行下列职责：

（一）检查企业贯彻执行有关法律、行政法规和规章制度的情况；

（二）检查企业财务，查阅企业的财务会计资料及与企业经营管理活动有关的其他资料，验证企业财务会计报告的真实性、合法性；

□□（三）检查企业的经营效益、利润分配、国有资产保值增值、资产运营等情况；

□□（四）检查企业负责人的经营行为，并对其经营管理业绩进行评价，提出奖惩、任免建议。

□□第六条□监事会一般每年对企业定期检查 1 至 2 次，并可以根据实际需要不定期地对企业进行专项检查。

□□第七条□监事会开展监督检查，可以采取下列方式：

□□（一）听取企业负责人有关财务、资产状况和经营管理情况的汇报，在企业召开与监督检查事项有关的会议；

□□（二）查阅企业的财务会计报告、会计凭证、会计账簿等财务会计资料以及与经营管理活动有关的其他资料；

□□（三）核查企业的财务、资产状况，向职工了解情况、听取意见，必要时要求企业负责人作出说明；

□□（四）向财政、工商、税务、审计、海关等有关部门和银行调查了解企业的财务状况和经营管理情况。

□□监事会主席根据监督检查的需要，可以列席或者委派监事会其他成员列席企业有关会议。

□□第八条□国务院有关部门和地方人民政府有关部门应当支持、配合监事会的工作，向监事会提供有关情况和资料。

□□第九条□监事会每次对企业进行检查结束后，应当及时作出检查报告。

□□检查报告的内容包括：企业财务以及经营管理情况评价；企业负责人的经营管理业绩评价以及奖惩、任免建议；企业存在问题的处理建议；国务院要求报告或

者监事会认为需要报告的其他事项。

□□监事会不得向企业透露前款所列检查报告内容。

□□第十条□检查报告经监事会成员讨论，由监事会主席签署，经监事会管理机构报国务院；检查报告经国务院批复后，抄送国家经济贸易委员会、财政部等有关部门。

□□监事对检查报告有原则性不同意见的，应当在检查报告中说明。

□□第十一条□监事会在监督检查中发现企业经营行为有可能危及国有资产安全、造成国有资产流失或者侵害国有资产所有者权益以及监事会认为应当立即报告的其他紧急情况，应当及时向监事会管理机构提出专项报告，也可以直接向国务院报告。

□□监事会管理机构应当加强同国家经济贸易委员会、财政部等有关部门的联系，相互通报有关情况。

□□第十二条□企业应当定期、如实向监事会报送财务会计报告，并及时报告重大经营管理活动情况，不得拒绝、隐匿、伪报。

□□第十三条□监事会根据对企业实施监督检查的需要，必要时，经监事会管理机构同意，可以聘请注册会计师事务所对企业进行审计。

□□监事会根据对企业进行监督检查的情况，可以建议国务院责成国家审计机关依法对企业进行审计。

□□第十四条□监事会由主席一人、监事若干人组成。监事会成员不少于 3 人。

□□监事分为专职监事和兼职监事：从有关部门和单位选任的监事，为专职；监事会中国务院有关部门、单位派出代表和企业职工代表担任的监事，为兼职。

□□监事会可以聘请必要的工作人员。

□□第十五条□监事会主席人选按照规定程序确定，由国务院任命。监事会主席由副部级国家工作人员担任，为专职，年龄一般在 60 周岁以下。

□□专职监事由监事会管理机构任命。专职监事由司（局）、处级国家工作人员担任，年龄一般在 55 周岁以下。

□□监事会中的企业职工代表由企业职工代表大会民主选举产生，报监事会管理机构批准。企业负责人不得担任监事会中的企业职工代表。

□□第十六条□监事会成员每届任期 3 年，其中监事会主席和专职监事、派出监事不得在同一企业连任。

□□监事会主席和专职监事、派出监事可以担任 1 至 3 家企业监事会的相应职务。

□□第十七条□监事会主席应当具有较高的政策水平，坚持原则，廉洁自持，熟悉经济工作。

□□监事会主席履行下列职责：

□□（一）召集、主持监事会会议；

□□（二）负责监事会的日常工作；

□□（三）审定、签署监事会的报告和其他重要文件；

□□（四）应当由监事会主席履行的其他职责。

□□第十八条□监事应当具备下列条件：

□□（一）熟悉并能够贯彻执行国家有关法律、行政法规和规章制度；

□□（二）具有财务、会计、审计或者宏观经济等方面的专业知识，比较熟悉企业经营管理工作；

□□（三）坚持原则，廉洁自持，忠于职守；

□□（四）具有较强的综合分析、判断和文字撰写能力，并具备独立工作能力。

□□第十九条□监事会主席和专职监事、派出监事实行回避原则，不得在其曾经管辖的行业、曾经工作过的企业或者其近亲属担任高级管理职务的企业的监事会中任职。

□□第二十条□监事会开展监督检查工作所需费用由国家财政拨付，由监事会管理机构统一列支。

□□第二十一条□监事会成员不得接受企业的任何馈赠，不得参加由企业安排、组织或者支付费用的宴请、娱乐、旅游、出访等活动，不得在企业中为自己、亲友或者其他人谋取私利。

□□监事会主席和专职监事、派出监事不得接受企业的任何报酬、福利待遇，不得在企业报销任何费用。

□□第二十二条□监事会成员必须对检查报告内容保密，并不得泄露企业的商业秘密。

□□第二十三条□监事会成员在监督检查中成绩突出，为维护国家利益做出重要贡献的，给予奖励。

□□第二十四条□监事会成员有下列行为之一的，依法给予行政处分或者纪律处分，直至撤销监事职务；构成犯罪的，依法追究刑事责任：

□□（一）对企业的重大违法违纪问题隐匿不报或者严重失职的；

□□（二）与企业串通编造虚假检查报告的；

□□（三）有违反本条例第二十一条、第二十二条所列行为的。

□□第二十五条□企业有下列行为之一的，对直接负责的主管人员和其他直接责任人员，依法给予纪律处分，直至撤销职务；构成犯罪的，依法追究刑事责任：

□□（一）拒绝、阻碍监事会依法履行职责的；

□□（二）拒绝、无故拖延向监事会提供财务状况和经营管理情况等有关资料的；

□□（三）隐匿、篡改、伪报重要情况和有关资料的；

□□（四）有阻碍监事会监督检查的其他行为的。

□□第二十六条□企业发现监事会成员有违反本条例第二十一条、第二十二条所列行为时，有权向监事会管理机构报告，也可以直接向国务院报告。

□□第二十七条□对国务院不派出监事会的国有企业，由省、自治区、直辖市人民政府参照本条例的规定，决定派出监事会。

□□第二十八条□国务院向国有重点金融机构派出的监事会，依照《国有重点金融机构监事会暂行条例》执行。

□□第二十九条□本条例自发布之日起施行。1994 年 7 月 24 日国务院发布的《国有企业财产监督管理条例》同时废止。

Administrative Permission Law of the People's Republic of China (Order of the President No.7)

Order of the President of the People's Republic of China

No. 7

The Administrative Permission Law of the People's Republic of China, adopted at the 4th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on August 27, 2003, is hereby promulgated and shall go into effect as of July 1, 2004.

Hu Jintao

President of the People's Republic of China

August 27, 2003

Administrative Permission Law of the People's Republic of China

(Adopted at the 4th Meeting of the Standing Committee of the Tenth National People's Congress on August 27, 2003)

Contents

Chapter I

General Provisions

Article 1 This Law is enacted in accordance with the Constitution to standardize the institution of the procedure for, and the granting of, administrative permission, to protect the legitimate rights and interests of citizens, legal persons and other organizations, to safeguard public interests and maintain public order, and to ensure and supervise the effective exercise of administration by administrative departments.

Article 2 For purposes of this Law, administrative permission means approval given to citizens, legal persons and other organizations for engaging in special activities by administrative departments on the basis, and upon examination according to law, of their applications.

Article 3 This Law is applicable to the institution of the procedure for, and the granting of, administrative permission.

This Law is not applicable to the examination and approval by the relevant administrative departments of such matters as personnel, financial and foreign-related affairs of other departments or of the institutions directly under the administration of the said departments.

Article 4 The procedure for administrative permission shall be instituted and administrative permission shall be granted in

accordance with the statutory limits of power, scope, requirements and procedures.

Article 5 The procedure for administrative permission shall be instituted and administrative permission shall be granted in adherence to the principles of openness, fairness and impartiality.

Provisions on administrative permission shall be promulgated; and no provisions that are not promulgated shall be made the basis for the granting of administrative permission. The granting and outcome of administrative permission shall be publicized except where State secrets, business secrets and individual privacy are involved.

The applicants who meet the statutory requirements and standards shall have the equal right to obtain administrative permission according to law, and administrative departments shall not discriminate against any of them.

Article 6 Administrative permission shall be granted in adherence to the principle of meeting the convenience of people with greater efficiency and fine service.

Article 7 With regard to the granting of administrative permission by administrative departments, citizens, legal persons and other organizations shall have the right to make their statements and argue their cases; they shall have the right, in accordance with law, to apply for administrative reconsideration or bring an administrative suit; and they shall have the right to demand compensation according to law if their legitimate rights and interests are damaged due to the unlawful granting of administrative permission by administrative departments.

Article 8 Administrative permission obtained according to law by citizens, legal persons or other organizations shall be protected by law. No administrative departments shall, without authorization, change the administrative permission already in effect.

Where the laws, regulations or rules, on the basis of which administrative permission is granted, have been revised or abolished, or major charges have occurred in the objective circumstances, on the basis of which administrative permission is approved, administrative departments may, for the need of public interests and in accordance with law, alter or revoke the administrative permission already in effect. Where, as a consequence, losses are caused to the property of citizens, legal persons or other organizations, administrative departments shall make them compensations according to law.

Article 9 Administrative permission obtained according to law shall not be transferred except where laws and regulations provide that it may be transferred according to statutory requirements and procedures.

Article 10 People's governments at or above the county level shall establish a sound system to supervise the granting of administrative permission by administrative departments and exercise strict supervision over and inspection of the granting of

such permission by the said departments.

Administrative departments shall carry out effective supervision over the activities engaged in by citizens, legal persons and other organizations, to which administrative permission is granted.

Chapter II

Institution of the Procedure for Administrative Permission

Article 11 The procedure for administrative permission shall be instituted in adherence to the laws governing economic and social development and for the benefit of bringing into full play the enthusiasm and initiative of citizens, legal persons and other organizations, safeguarding public interests, maintaining public order and promoting the harmonious development of the economy, society and the ecological environment.

Article 12 The procedure for administrative permission may be instituted for the following matters:

(1) matters relating to the special activities that directly involve State security, macro-economic control and protection of the ecological environment and that have a direct bearing on human health and the safety of people's lives and property, which are subject to approval in accordance with the statutory requirements;

(2) matters relating to the development and utilization of limited natural resources, the allocation of public resources as well as access to the market of the special trades that have a direct bearing on public interests, etc., to which special rights need to be granted;

(3) matters relating to the professions and trades that provide services to the public and that have a direct bearing on public interests, the qualifications and competence to be possessed by which, such as the special credibility, conditions and skills, need to be affirmed;

(4) matters relating to the important equipment, facilities, products and articles that have a direct bearing on public security, human health, and the safety of people's lives and property, which need to be verified by means of inspection, test, quarantine, etc. and in accordance with technical standards and specifications;

(5) matters relating to the establishment of an enterprise or other organization, the capacity of which as a subject needs to be affirmed; and

(6) other matters for which the procedure for administrative permission may be instituted, as provided for by laws and

administrative regulations.

Article 13 For the matters specified in Article 12 of this Law which can be regulated by the following means, institution of the procedure for administrative permission may be exempted:

(1) matters on which citizens, legal persons and other organizations can make decisions themselves;

(2) matters which can effectively be regulated by the competitive mechanism of the market;

(3) matters which the organizations of trades or intermediary bodies can manage through self-discipline; and

(4) matters which administrative departments can solve by other administrative means such as supervision afterwards.

Article 14 With respect to the matters specified in Article 12 of this Law, the procedure for administrative permission may be instituted by law. Where such a law is not enacted, it may be instituted by administrative regulations.

When necessary, the State Council may institute the procedure for administrative permission by means of promulgating decisions. After implementation of such decisions, the State Council shall, except for matters to which provisional administrative permission is granted, without delay request the National People's Congress or its Standing Committee to enact laws, or formulate administrative regulations itself.

Article 15 Where laws or administrative regulations on the matters specified in Article 12 of this Law are not formulated, the procedure for administrative permission for them may be instituted by local regulations; where neither laws and administrative regulations nor local regulations are formulated, and where it is really necessary for administrative permission to be granted directly for the need of administration, the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government may institute provisional procedure for administrative permission in the form of rules. Where it is necessary to continue granting such provisional administrative permission at the expiration of a whole year, the said governments shall request the people's congresses or their standing committees at the corresponding levels to formulate local regulations.

No procedure for administrative permission in respect of the qualifications and competence of citizens, legal persons and other organizations, which are to be affirmed by the State in a unified manner, may be instituted in the form of local regulations or rules of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government; nor shall the procedure for administrative permission in respect of the setting up and registration of enterprises and other organizations or administrative permission prior to their setting up and registration be instituted by the said governments in the said form. The procedure for administrative permission instituted by them shall not restrict the individuals or

enterprises of other regions from engaging in production and business operation and providing services in the local areas, and shall not restrict the commodities of other regions from entering the local markets.

Article 16 Within the scope of the matters for which the procedure for administrative permission is instituted by law, specific provisions on the granting of such permission may be formulated in administrative regulations.

Within the scope of the matters for which the procedure for administrative permission is instituted by law or administrative regulations, specific provisions on the granting of such permission may be formulated in local regulations.

Within the scope of the matters for which the procedure for administrative permission is instituted by superordinate laws, specific provisions on the granting of such permission may be formulated in rules.

Additional procedure for administrative permission shall not be instituted in the specific provisions formulated in the regulations and rules for the granting of administrative permission for which the procedure is instituted by superordinate laws; and other requirements in violation of the superordinate laws shall not be added in the specific provisions on the requirements of administrative permission.

Article 17 With the exception of what is provided for in Articles 14 and 15 of this Law, no procedure for administrative permission shall be instituted in any other standardizing documents.

Article 18 When the procedure for administrative permission is instituted, provisions on the departments, requirements, procedures and time limit for the granting of such permission shall be formulated.

Article 19 Where, when drafting laws or regulations or when drafting rules of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, the drafting unit plans to institute the procedure for administrative permission, it shall solicit opinions by holding hearings or evaluation meetings or by other means, and shall explain to the formulating departments about the necessity for instituting the same, the impact it may possibly make on the economy and society as well as the opinions it has solicited and adopted.

Article 20 The department that institutes the procedure for administrative permission shall regularly make appraisal of the procedure instituted; and where it believes that matters can be solved by the means specified in Article 13 of this Law, it shall, without delay, revise or nullify the provisions on the institution of the same.

The department granting administrative permission may, when it thinks fit, make an appraisal of the granting of the administrative permission for which the procedure is already instituted and of the necessity of its existence, and report their comments and suggestions to the department that institutes the procedure for administrative permission.

Citizens, legal persons and other organizations may put forth their comments and suggestions regarding the institution of the procedure for, and the granting of, administrative permission to the departments that institute the procedure and grant the permission.

Article 21 Where the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, in light of the economic and social development in their respective administrative regions, believe that the economic matters for which the procedure for administrative permission is instituted in their administrative regulations can be solved by the means specified in Article 13 of this Law, they may, upon approval by the State Council, cease granting such permission within their own administrative regions.

Chapter III

Department Granting Administrative Permission

Article 22 Administrative permission shall be granted by an administrative department with the power of granting such permission within the limits of its statutory functions and powers.

Article 23 An organization with the functions of administering public affairs conferred by laws and regulations shall grant administrative permission in its own name and within the limits of the statutory powers. The provisions on administrative departments in this Law shall be applicable to such an empowered organization.

Article 24 An administrative department may, within the limits of its statutory functions and powers and in accordance with the provisions of laws, regulations and rules, entrust another administrative department with the granting of administrative permission. The entrusting department shall publicize the entrusted administrative department and the matters subject to the entrusted granting of administrative permission.

The entrusting administrative department shall be in charge of supervision over the granting of administrative permission by the entrusted administrative department, and shall bear legal responsibility for the consequences of such granting.

The entrusted administrative department shall, within the limits of the entrustment and in the name of the entrusting administrative department, grant administrative permission; it shall not entrust another organization or individual with the granting of administrative permission.

Article 25 Upon approval by the State Council, the people's government of a province, autonomous region or municipality directly under the Central Government may, on the principles of simplification, uniformity and efficiency, decide to let one administrative department exercise the power of administrative permission which is exercised by relevant administrative

departments.

Article 26 Where matters of administrative permission need to be handled by more than one institution within an administrative department, the said department shall decide on one of the institutions for accepting applications for administrative permission and for serving the decisions on such permission itself.

Where administrative permission is granted separately by more than two departments of a local people's government according to law, the government may decide on one of the departments for accepting applications for administrative permission and for handling them itself after the relevant departments are informed of the matter and after they respectively put forth their opinions, or have the relevant departments to handle them jointly or in a concentrated way.

Article 27 In granting administrative permission, the administrative department shall not make the applicants such unjustifiable requests as to purchase goods it designates and to accept paid service.

In handling matters of administrative permission, the staff members of administrative departments shall not ask the applicants for money or things of value, accept or receive the same, or seek other benefits.

Article 28 The inspection, test and quarantine of the equipment, facilities, products and goods that have a direct bearing on public security, human health and the safety of people's lives and property shall, except where laws and administrative regulations provide that they be conducted be administrative departments, gradually be carried out by professional and technical organizations that meet the statutory requirements. The professional and technical organizations and their staff members concerned shall bear legal responsibility for the conclusions they draw from inspection, test and quarantine.

Chapter IV

Procedures for Granting Administrative Permission

Section 1

Application and Acceptance

Article 29 Where citizens, legal persons and other organizations intend to engage in special activities for which they need to obtain administrative permission according to law, they shall submit their applications to administrative departments. Where forms need to be filled out for application, the administrative departments shall provide the applicants with such forms of application for administrative permission. The form of application shall not contain such particulars as are not directly related to the matters involved in the application for administrative permission.

An applicant may entrust his agent with the application for administrative permission, except where, in accordance with law, he is required to submit his application for administrative permission at the office place of an administrative department.

Application for administrative permission may be submitted in the form of letter, telegram, telex, fax, electronic data exchange, or e-mail.

Article 30 Administrative departments shall make public at their office places the matters, basis, requirements, quantity, procedure and time limit, as provided for by laws, regulations and rules, regarding relevant administrative permission, as well as the catalogue of all the materials required to be submitted and application forms for demonstration.

Where an applicant requests the administrative department to make explanation and interpretation for what it publicizes, the department shall do so accordingly and provide accurate and reliable information to the applicant.

Article 31 An applicant for administrative permission shall submit to the administrative department truthful relevant materials and provide true information, and shall be responsible for the truthfulness of the matters of substance in the application materials. The administrative department shall not ask the applicant to submit technical data and other materials that have no relation to the matters for which administrative permission is applied for.

Article 32 With regard to the application submitted by an applicant for administrative permission, the administrative department shall handle it differently in light of the following circumstances:

(1) where, in accordance with law, no administrative permission is necessary for the matters for which such permission is applied for, it shall directly inform the applicant that such an application is not to be accepted;

(2) where, in accordance with law, the matters for which administrative permission is applied for do not fall within the scope of its functions and powers, it shall directly make the decision not to accept such an application and inform the applicant of the relevant administrative department to which the application should be submitted;

(3) where there are errors in the application materials which can be corrected on the spot, it shall allow the applicant to make the correction on the spot;

(4) where the application materials are not complete or not in conformity with the statutory form, it shall, on the spot or within five days, inform the applicant, all at once, of what needs to be supplemented or corrected; and if it fails to do so at the expiration of the time limit, the application shall be deemed to be accepted as of the date it receives the application materials; and

(5) where the matters for which administrative permission is applied for fall within the scope of its functions and powers,

the application materials are complete and in conformity with the statutory form, or the applicant submits the materials of application which are fully supplemented or corrected as it requires, it shall accept the application for administrative permission.

When the administrative department accepts or refuses to accept an application for administrative permission, it shall produce a written certificate with the special seal of the department affixed and the date clearly marked.

Article 33 Administrative departments shall establish and improve the relevant systems, introduce electronic administration, and publicize at their websites the matters which are subject to administrative permission, in order to make it convenient for the applicants to apply for administrative permission by such means as data cable; and they shall share information about administrative permission among themselves and thus increase their administrative efficiency.

Section 2

Examination and Decision

Article 34 An administrative department shall examine the materials of application submitted by an applicant.

Where the application materials submitted by an applicant are complete and in conformity with the statutory form, on which the administrative department can make decision on the spot, it shall, on the spot, make the decision on administrative permission in writing.

Where, according to the statutory requirements and procedures, the matters of substance in the application materials need to be verified, the administrative department shall assign two or more of its staff members to conduct such verification.

Article 35 Where, according to law, an application for administrative permission needs to be examined by an administrative department at a lower level before it is submitted to an administrative department at a higher level for decision, the administrative department at a lower level shall, within the statutory time limit, submit its preliminary opinions based on the examination and the complete materials of application directly to the administrative department at a higher level. The administrative department at a higher level shall not ask the applicant to provide application materials again.

Article 36 Where in examining an application for administrative permission an administrative department finds a matter for administrative permission has a direct bearing on the vital interests of another person, it shall inform the interested person of the fact. The applicant and the interested person shall have the right to make their statements and argue their cases. The administrative department shall listen to the opinions of the applicant and the interested person.

Article 37 After examining an application for administrative permission, the administrative department shall, except where

it can make a decision on such permission on the spot, make such a decision within the statutory time limit in adherence to the specified procedures.

Article 38 Where the application of an applicant is in conformity with the statutory requirements and standards, the administrative department shall, according to law, make a decision in writing on approving administrative permission.

Where, according to law, an administrative department makes a decision in writing on refusing to approve administrative permission, it shall state its reasons, and inform the applicant that he has the right, in accordance with law, to apply for administrative reconsideration or to bring an administrative suit.

Article 39 Where the administrative department makes the decision on approving administrative permission, for which a certificate of administrative permission is required to be issued, it shall issue to the applicant one of the following certificates of administrative permission affixed with the seal of the department:

(1) a permit, license or other certificate of permission;

(2) a qualification certificate, competence certificate or other certificate of quality;

(3) approval documents or certifying documents of the administrative department; and

(4) other certificates of administrative permission stipulated by laws and regulations.

Where the administrative department conducts inspection, test or quarantine, it may paste labels on, or affix the seal of inspection, test or quarantine to, the equipment, facilities, products or goods which pass the inspection, test or quarantine.

Article 40 The administrative department shall make known to the public the decisions it makes on approving administrative permission, and the public shall have the right to consult them.

Article 41 Where no regional restrictions are imposed on the use of administrative permission instituted by laws and administrative regulations, such permission obtained by applicants is effective throughout the country.

Section 3

Time Limit

Article 42 An administrative department shall, except where it can make a decision on administrative permission on the spot, make such a decision within 20 days from the date it accepts an application for administrative permission. Where it cannot do so within 20 days, it may have an extension of 10 days upon approval by the leading member of the department, and

shall inform the applicant of the reasons for extension. However, where laws and regulations provide otherwise, the provisions there shall prevail.

Where, according to the provisions in Article 26 of this Law, applications for administrative permission are handled in a unified manner, jointly, or in a concentrated way, the time for such handling shall not exceed 45 days; and where such handling cannot be wound up within 45 days, an extension of 15 days may be allowed upon approval by the leading member of the people's government at the corresponding level, and the applicant shall be informed of the reasons for extension.

Article 43 Where, according to law, an application for administrative permission needs to be examined by an administrative department at a lower level before it is submitted to an administrative department at a higher level for decision, the administrative department at a lower level shall wind up the examination within 20 days from the date it accepts the application. However, where laws and regulations provide otherwise, the provisions there shall prevail.

Article 44 After the administrative department makes the decision on approving administrative permission, it shall, within 10 days from the date the decision is made, issue a certificate of administrative permission to or serve it on the applicant, or paste labels or affix the seal of inspection, test or quarantine.

Article 45 Where, according to law, a decision on administrative permission to be made by an administrative department requires hearing, public bidding, auction, inspection, test, quarantine, authentication or expert evaluation, the time thus needed shall not be reckoned in the time limit specified by this Section. The administrative department shall inform the applicant in writing of the time needed.

Section 4

Hearing

Article 46 The administrative department shall make known to the general public, and hold hearings on, the matters for the granting of administrative permission which, according to the provisions of laws, regulations or rules, need hearing, or other matters of vital importance involving public interests for the granting of administrative permission which the administrative department believes need hearing.

Article 47 Where administrative permission directly involves the vital interests between an applicant and another person, the administrative department shall, before making the decision on administrative permission, inform the applicant and the interested person that they have the right to request hearing; and where the applicant and the interested person, within five days from the date they are informed of such right, submit their application for hearing, the administrative department shall

make arrangements for the hearing within 20 days.

The applicant and the interested person shall not bear the expenses for the hearing arranged by the administrative department.

Article 48 A hearing shall be conducted in accordance with the following procedures:

(1) The administrative department shall, seven days before holding the hearing, inform the applicant and the interested person of the time and the venue the hearing is to be held, and when necessary, make the time and venue known to the public;

(2) The hearing shall be held openly;

(3) The administrative department shall appoint a person, other than its staff member who examines the application for administrative permission, to chair the hearing, and where the applicant or the interested person believes that the chairperson has a direct interest in the matter for administrative permission, he shall have the right to apply for the chairperson's withdrawal;

(4) During hearing, the staff member who examines the application for administrative permission shall provide the evidence and reasons for his opinions, and the applicant and the interested person may provide their evidence, and argue their cases and cross-examine the evidence provided by the said staff member; and

(5) A record of the hearing shall be made in writing and be signed by, or affixed with the seals of, the participants at the hearing after they confirm that there are no mistakes in it.

The administrative department shall, on the basis of the record of the hearing, make its decision on administrative permission.

Section 5

Alteration and Extension

Article 49 Where a person granted the permission asks to alter the matters for which administrative permission is obtained, he shall submit an application to the administrative department that makes the decision on administrative permission; and where the application is in conformity with statutory requirements and standards, the administrative department shall go through the formalities for alteration according to law.

Article 50 Where a person granted the permission needs an extension of the term of validity of the administrative

permission obtained according to law, he shall, 30 days before the expiration of the said term of validity, make an application to the administrative department that makes the decision on administrative permission. However, where laws, regulations and rules provide otherwise, the provisions there shall prevail.

The administrative department shall, on the basis of the application of the person granted the permission, make its decision on whether to approve the extension before the expiration of the term of validity of the administrative permission; and where no such decision is made at the expiration of the time limit, the extension shall be regarded as being approved.

Section 6

Special Provisions

Article 51 Where there are provisions in this Section on the procedures for the granting of administrative permission, they shall be applied; and where there are no such provisions in this Section, the relevant provisions in this Chapter shall be applied.

Article 52 The provisions in relevant laws and administrative regulations shall be applicable to the procedures for the granting of administrative permission by the State Council.

Article 53 For the granting of administrative permission to the matters specified in Subparagraph 2 of Article 12 of this Law, the administrative department shall make its decision through the forms of fair competition such as public bidding and auction. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

The specific procedures for the administrative department to make its decision on administrative permission through such forms as public bidding and auction shall be enacted in accordance with the provisions of relevant laws and administrative regulations.

After the administrative department decides on the winner of a bid or the vendee in accordance with the procedures for public bidding or auction, it shall make the decision on approving administrative permission, and shall issue the certificate of administrative permission to the winner or vendee according to law.

Where the administrative department, in violation of the provisions of this Article, does not adopt public bidding or auction or goes against the procedures for public bidding or auction, thus infringing on the legitimate rights and interests of an applicant, the applicant may, in accordance with law, apply for administrative reconsideration or bring an administrative suit.

Article 54 For the granting of administrative permission to the matters specified in Subparagraph 3 of Article 12 of this Law, which involves endowing citizens with special qualifications and for which national examinations should be conducted

according to law, the administrative department shall make its decision on administrative permission on the basis of the results of examinations and other statutory requirements; and for the granting of special qualifications and competence of legal persons or other organizations, it shall make its decision on the basis of the result of the appraisal regarding the composition of the professional personnel, the technological qualifications, operational achievements and managerial level of the applicants. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

Examinations taken by citizens for special qualifications shall be arranged by administrative departments or organizations of trades according to law, and shall be conducted openly. The administrative departments or the organizations of trades shall, in advance, publicize the qualifications and measures for registration and the subjects and outlines for examination. However, no compulsory pre-examination training for qualification examination shall be arranged and no teaching materials or supplementary materials shall be designated.

Article 55 For the granting of administrative permission to the matters specified in Subparagraph 4 of Article 12 of this Law, which are subject to inspection, test or quarantine according to technical standards and specifications, as is required by law, the administrative department shall, based on the results of the inspection, test or quarantine, make its decision on such permission.

To conduct inspection, test or quarantine, the administrative department shall, within five days from the date it accepts an application, assign two or more of its staff members to do the job in accordance with the technical standards and specifications. Where the administrative department can, dispensing with further technical analysis of the results of inspection, test or quarantine, determine whether the equipment, facilities, products or goods are in conformity with the technical standards and specifications, it shall make its decision on administrative permission on the spot.

Where the administrative department, based on the results of inspection, test or quarantine, decides not to approve administrative permission, it shall state clearly in writing the technical standards and specifications on the basis of which it makes such a decision.

Article 56 For the granting of administrative permission to the matters specified in Subparagraph 5 of Article 12 of this Law, for which the application materials submitted by the applicant are complete and in conformity with the statutory forms, the administrative department shall make an entry of the matters in a register on the spot. Where matters of substance of the application materials need to be verified, the administrative department shall conduct the verification in accordance with the provisions in Subparagraph 3 of Article 34 of this Law.

Article 57 Where the number of matters to which administrative permission can be granted is restricted and the applications submitted by two or more applicants are in conformity with the statutory requirements and standards, the

administrative department shall make its decision on approving administrative permission in sequence of time at which it accepts such applications for administrative permission. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

Chapter V

Fees for Administrative Permission

Article 58 Administrative departments shall not collect any fees for the granting of administrative permission or for their supervision over and inspection of the matters to which administrative permission has been granted. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

Administrative departments shall not collect fees for the forms of application for administrative permission.

The funds needed by administrative departments for the granting of administrative permission shall be incorporated into their own budgets, which shall be guaranteed by the governments at the corresponding levels, and verified and allocated in accordance with the budgets approved.

Article 59 Where administrative departments collect fees for the granting of administrative permission in accordance with laws and administrative regulations, they shall do so in conformity with the publicized statutory items and rates; and all the fees they collect shall be turned over to the State Treasury, and no departments or individuals shall, in any form, withhold or misappropriate them, or divide them in private or do so in disguised form. No finance departments shall, in any form, return to the administrative departments the fees collected by them for the granting of administrative permission, or do so in disguised form.

Chapter VI

Supervision and Inspection

Article 60 The administrative department at a higher level shall exercise rigid supervision over and inspection of the granting of administrative permission by the administrative department at a lower level, in order to put to right, in good time, violations of laws committed in the granting of administrative permission.

Article 61 The administrative department shall establish a sound supervisory system and perform its supervisory duties through checking the materials reflecting the activities conducted by the persons granted the permission in respect of the matters to which administrative permission has been granted.

After exercising, in accordance with law, supervision over and inspection of the activities conducted by the persons granted the permission in respect of the matters to which administrative permission has been granted, the administrative department shall record the supervision and inspection exercised as well as the problems handled, and the record shall be placed on file after the supervisors and inspectors sign it. The public shall have the right to consult the records of supervision and inspection kept by the administrative department.

The administrative department shall create conditions to interconnect with the persons granted the permission and the computer file systems of the relevant administrative departments, in order to check the activities conducted by the persons granted the permission in respect of the matters to which administrative permission has been granted.

Article 62 The administrative department may, according to law, inspect, examine or test the samples of the products manufactured or dealt in by the persons granted the permission and conduct on-the-spot inspection of the places where the products are manufactured or dealt in. When conducting inspection, the administrative department may, according to law, consult the relevant materials or request the persons granted the permission to submit such materials; and the said persons shall provide relevant information and materials truthfully.

The administrative department shall, in accordance with the provisions of laws and administrative regulations, conduct regular inspection of the important equipment and facilities that have a direct bearing on public security, human health and the safety of people's lives and property. With respect to those that pass the inspection, it shall issue appropriate documents certifying the fact.

Article 63 When exercising supervision and inspection, the administrative department shall not hinder the normal production and operation of the persons granted the permission, nor ask the said persons for money or things of value, or receive or accept the same, or seek other benefits.

Article 64 Where a person granted the permission, in violation of law and in an area beyond the jurisdiction of the administrative department that makes the decision on administrative permission, engages in activities in respect of the matters to which administrative permission has been granted, the administrative department in the area where such violation takes place shall, according to law, send a copy of the facts of violation committed by the person granted the permission and the results of its handling of the violation to the administrative department that makes the decision on administrative permission.

Article 65 Individuals and organizations that find activities conducted, in violation of law, in respect of the matters to which administrative permission has been granted shall have the right to report such activities to administrative departments, which shall, without delay, check the facts and handle the violation.

Article 66 Where a person granted the permission fails to perform his obligations of developing and utilizing natural

resources according to law or his obligations of utilizing public resources according to law, the administrative department shall instruct him to set it right within a time limit; and if he fails to do so within the specified time limit, the administrative department shall deal with the case in accordance with the provisions of relevant laws and administrative regulations.

Article 67 The person granted the permission that has obtained administrative permission for access to the market of a special trade which has a direct bearing on public interests shall, in compliance with the service standard prescribed and the rates fixed by the State as well as the requirements prescribed by the administrative department according to law, provide to users safe, convenient and steady service at reasonable rates, and shall perform his obligation of providing universal service; and without approval by the administrative department that makes the decision on administrative permission, the said person shall not suspend business or close down.

Where a person granted the permission fails to perform the obligations specified in the preceding paragraph, the administrative department shall instruct him to set it right within a time limit or, according to law, take effective measures to see that he performs the obligations.

Article 68 With respect to the important equipment and facilities that have a direct bearing on public security, human health and the safety of people's lives and property, the administrative department shall see that the units that make the design of, manufacture, install or use such equipment and facilities to establish an appropriate self-inspection system.

Where, in conducting supervision and inspection, the administrative department discovers that in the important equipment and facilities that have a direct bearing on public security, human health and the safety of people's lives and property there exist hidden dangers threatening safety, it shall instruct the units to cease manufacturing, installing and using the same, and shall instruct the units that make the design of, manufacture, install or use the same to rectify immediately.

Article 69 In any of the following cases, the administrative department that makes the decision on administrative permission or its immediate superior may, based on the request of the interested person or on its own functions and powers, revoke such permission:

(1) where the decision on approving administrative permission is made by staff members of the administrative department who abuse their powers or neglect their duties;

(2) where the decision on approving administrative permission is made beyond the statutory functions and powers;

(3) where the decision on approving administrative permission is made in contravention of the statutory procedures;

(4) where approval of administrative permission is given to an applicant that is not qualified for application or does not

meet the statutory requirements; and

(5) other cases where administrative permission may be revoked according to law.

The administrative permission obtained by a person by such illegitimate means as deception and bribery shall be revoked.

Where revocation of administrative permission in accordance with the provisions of the preceding two paragraphs may cause great damages to public interests, such permission shall not be revoked.

Where revocation of administrative permission in accordance with the provisions in the first paragraph of this Article causes damages to the legitimate rights and interests of the person granted the permission, compensation shall be made by the administrative department according to law. Where administrative permission is revoked in accordance with the provisions in the second paragraph of this Article, the benefits obtained by the person granted the permission through such permission shall not be protected.

Article 70 In any of the following cases, the administrative department shall, in accordance with law, go through the formalities for cancelling the relevant administrative permission:

(1) where the term of validity for administrative permission is not extended at the expiration of the term;

(2) where the citizen to whom administrative permission for special qualifications is granted dies or loses the disposing capacity;

(3) where the status of a legal person or other organization is terminated according to law;

(4) where, in accordance with law, administrative permission is revoked or withdrawn, or the certificate of such permission is revoked;

(5) where matters for which administrative permission has been obtained cannot be undertaken due to force majeure; and

(6) other cases where administrative permission should be revoked as provided for by laws and regulations.

Chapter VII

Legal Responsibility

Article 71 Any procedure for administrative permission instituted by a department in violation of the provisions in Article 17 of this Law, the relevant department shall instruct the department that institutes such procedure to rectify, or have the

procedure terminated according to law.

Article 72 Where an administrative department or its staff member, in violation of the provisions of this Law, does one of the following, its/his immediate superior or the supervisory department shall instruct it/him to rectify; and if the circumstances are serious, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law:

(1) failing to accept an application for administrative permission that is in conformity with the statutory requirements;

(2) failing to publicize at the office place the materials which should be publicized according to law;

(3) in the process of accepting, examining and deciding on administrative permission, failing to perform the statutory obligation of informing the applicant and the interested person of the right to request hearing;

(4) in the case where the application materials submitted by the applicant are not complete or not in conformity with the statutory form, failing to inform the applicant, all at once, of what needs to be supplemented or corrected;

(5) failing to state its/his reasons, according to law, for refusing to accept an application for administrative permission or for refusing to approve such permission; and

(6) failing to hold hearings as is required by law.

Article 73 Where the staff member of an administrative department, when handling matters of administrative permission or exercising supervision and inspection, asks another person for money or things of value, or receives or accepts the same, or seeks other benefits, which constitutes a crime, he shall be investigated for criminal responsibility according to law; and if the case is not serious enough to constitute a crime, he shall be given administrative sanctions according to law.

Article 74 Where, in granting administrative permission, an administrative department does one of the following, it shall be instructed by its immediate superior or the supervisory department to rectify, and the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law:

(1) giving approval of administrative permission to an applicant that does not meet the statutory requirements, or making a decision on approving administrative permission beyond its statutory functions and powers;

(2) refusing to give approval of administrative permission to an applicant that meets the statutory requirements, or failing to

make a decision on approving administrative permission within the statutory time limit; and

(3) failing to make a decision, through public bidding, auction or examination, on approving administrative permission on the basis of the outcome of public bidding and auction or the examination results, as is required by law, or refusing to make the decision on such basis.

Article 75 Where, when granting administrative permission, an administrative department collects fees without authorization or in contravention of the statutory items and rates, its immediate superior or the supervisory department shall instruct it to return the fees illegally collected; and the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law.

Where the fees collected according to law for granting administrative permission are withheld, misappropriated, divided in private or done so in disguised form, such fees shall be recovered; the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 76 Where an administrative department grants administrative permission in violation of law and thus causes damages to the rights and interests of the person concerned, it shall make compensation in accordance with the provisions of the Law on State Compensation.

Article 77 Where an administrative department does not perform its duties of supervision according to law or fails to perform such duties effectively, thus serious consequences ensue, its immediate superior or the supervisory department shall instruct it to rectify, and the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 78 Where, when applying for administrative permission, an applicant conceals relevant information or provides false application materials, the administrative department shall refuse to accept the application or to approve such permission, and shall give a disciplinary warning to the applicant; and if the matters for which administrative permission is applied for are ones that have a direct bearing on public security, human health and the safety of people's lives and property, the applicant shall not apply for administrative permission for the same matters again within one year.

Article 79 Where a person obtains administrative permission by such illegitimate means as deception and bribery, the administrative department shall impose administrative penalties on him; if the matters for which administrative permission is obtained are ones that have a direct bearing on public security, human health and the safety of people's lives and property, the applicant shall not apply for administrative permission for the same matters again within three years, and if a crime is

constituted, the said person shall be investigated for criminal responsibility according to law.

Article 80 Where a person granted the permission does one of the following, the administrative department shall impose administrative penalties on him according to law; and if a crime is constituted, he shall be investigated for criminal responsibility according to law:

(1) altering, selling, leasing out or lending the certificate of administrative permission, or illegally transferring such permission in other forms;

(2) engaging in activities beyond the limits of administrative permission;

(3) concealing relevant information from, providing false materials to, or refusing to provide truthful materials reflecting its activities to, the administrative department in charge of supervision and inspection; and

(4) committing other illegal acts specified in laws, regulations and rules.

Article 81 Where a citizen, legal person or other organization, without obtaining administrative permission, engages in activities for which administrative permission should be obtained according to law, the administrative department shall, in accordance with law, adopt measures to stop such activities, and impose administrative penalties on the citizen, legal person or other organization according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.

Chapter VIII

Supplementary Provisions

Article 82 The time limit for the granting of administrative permission by an administrative department specified in this Law is counted by the working days, excluding the statutory festivals and holidays.

Article 83 This Law shall go into effect as of July 1, 2004.

The provisions on administrative permission formulated prior to implementation of this Law shall be checked up on by the formulating departments in accordance with the provisions of this Law; and beginning from the date this Law goes into effect, implementation of those provisions that are not in conformity with the provisions of this Law shall cease.

中华人民共和国行政许可法

（２００３年８月２７日第十届全国人民代表大会常务委员会第四次会议通过）

目　录

第七章 法律责任

第八章 附则

第一章 总则

第一条 为了规范行政许可的设定和实施，保护公民、法人和其他组织的合法权益，维护公共利益和社会秩序，保障和监督行政机关有效实施行政管理，根据宪法，制定本法。

第二条 本法所称行政许可，是指行政机关根据公民、法人或者其他组织的申请，经依法审查，准予其从事特定活动的行为。

第三条 行政许可的设定和实施，适用本法。

有关行政机关对其他机关或者对其直接管理的事业单位的人事、财务、外事等事项的审批，不适用本法。

第四条 设定和实施行政许可，应当依照法定的权限、范围、条件和程序。

第五条 设定和实施行政许可，应当遵循公开、公平、公正的原则。

有关行政许可的规定应当公布；未经公布的，不得作为实施行政许可的依据。行政许可的实施和结果，除涉及国家秘密、商业秘密或者个人隐私的外，应当公开。

符合法定条件、标准的，申请人有依法取得行政许可的平等权利，行政机关不得歧视。

第六条 实施行政许可，应当遵循便民的原则，提高办事效率，提供优质服务。

第七条 公民、法人或者其他组织对行政机关实施行政许可，享有陈述权、申辩权；有权依法申请行政复议或者提起行政诉讼；其合法权益因行政机关违法实施行政许可受到损害的，有权依法要求赔偿。

第八条 公民、法人或者其他组织依法取得的行政许可受法律保护，行政机关不得擅自改变已经生效的行政许可。

行政许可所依据的法律、法规、规章修改或者废止，或者准予行政许可所依据的客观情况发生重大变化的，为了公共利益的需要，行政机关可以依法变更或者撤回已经生效的行政许可。由此给公民、法人或者其他组织造成财产损失的，行政机关应当依法给予补偿。

第九条 依法取得的行政许可，除法律、法规规定依照法定条件和程序可以转让的外，不得转让。

第十条 县级以上人民政府应当建立健全对行政机关实施行政许可的监督制度，加强对行政机关实施行政许可的监督检查。

行政机关应当对公民、法人或者其他组织从事行政许可事项的活动实施有效监督。

第二章 行政许可的设定

第十一条 设定行政许可，应当遵循经济和社会发展规律，有利于发挥公民、法人或者其他组织的积极性、主动性，维护公共利益和社会秩序，促进经济、社会和生态环境协调发展。

第十二条 下列事项可以设定行政许可：

（一）直接涉及国家安全、公共安全、经济宏观调控、生态环境保护以及直接关系人身健康、生命财产安全等特定活动，需要按照法定条件予以批准的事项；

（二）有限自然资源开发利用、公共资源配置以及直接关系公共利益的特定行业的市场准入等，需要赋予特定权利的事项；

（三）提供公众服务并且直接关系公共利益的职业、行业，需要确定具备特殊信誉、特殊条件或者特殊技能等资格、资质的事项；

（四）直接关系公共安全、人身健康、生命财产安全的重要设备、设施、产品、物品，需要按照技术标准、技术规范，通过检验、检测、检疫等方式进行审定的事项；

（五）企业或者其他组织的设立等，需要确定主体资格的事项；

（六）法律、行政法规规定可以设定行政许可的其他事项。

第十三条 本法第十二条所列事项，通过下列方式能够予以规范的，可以不设行政许可：

（一）公民、法人或者其他组织能够自主决定的；

（二）市场竞争机制能够有效调节的；

（三）行业组织或者中介机构能够自律管理的；

（四）行政机关采用事后监督等其他行政管理方式能够解决的。

第十四条 本法第十二条所列事项，法律可以设定行政许可。尚未制定法律的，行政法规可以设定行政许可。

必要时，国务院可以采用发布决定的方式设定行政许可。实施后，除临时性行政许可事项外，国务院应当及时提请全国人民代表大会及其常务委员会制定法律，或者自行制定行政法规。

第十五条 本法第十二条所列事项，尚未制定法律、行政法规的，地方性法规可以设定行政许可；尚未制定法律、行政法规和地方性法规的，因行政管理的需要，确需立即实施行政许可的，省、自治区、直辖市人民政府规章可以设定临时性的行政许可。临时性的行政许可实施满一年需要继续实施的，应当提请本级人民代表大会及其常务委员会制定地方性法规。

地方性法规和省、自治区、直辖市人民政府规章，不得设定应当由国家统一确定的公民、法人或者其他组织的资格、资质的行政许可；不得设定企业或者其他组织的设立登记及其前置性行政许可。其设定的行政许可，不得限制其他地区的个人或者企业到本地区从事生产经营和提供服务，不得限制其他地区的商品进入本地区市场。

第十六条 行政法规可以在法律设定的行政许可事项范围内，对实施该行政许可作出具体规定。

地方性法规可以在法律、行政法规设定的行政许可事项范围内，对实施该行政许可作出具体规定。

规章可以在上位法设定的行政许可事项范围内，对实施该行政许可作出具体规定。

法规、规章对实施上位法设定的行政许可作出的具体规定，不得增设行政许可；对行政许可条件作出的具体规定，不得增设违反上位法的其他条件。

第十七条 除本法第十四条、第十五条规定的外，其他规范性文件一律不得设定行政许可。

第十八条 设定行政许可，应当规定行政许可的实施机关、条件、程序、期限。

第十九条 起草法律草案、法规草案和省、自治区、直辖市人民政府规章草案，拟设定行政许可的，起草单位应当采取听证会、论证会等形式听取意见，并向制定机关说明设定该行政许可的必要性、对经济和社会可能产生的影响以及听取和采纳意见的情况。

第二十条 行政许可的设定机关应当定期对其设定的行政许可进行评价；对已设定的行政许可，认为通过本法第十三条所列方式能够解决的，应当对设定该行政许可的规定及时予以修改或者废止。

行政许可的实施机关可以对已设定的行政许可的实施情况及存在的必要性适时进行评价，并将意见报告该行政许可的设定机关。

公民、法人或者其他组织可以向行政许可的设定机关和实施机关就行政许可的设定和实施提出意见和建议。

第二十一条 省、自治区、直辖市人民政府对行政法规设定的有关经济事务的行政许可，根据本行政区域经济和社会发展情况，认为通过本法第十三条所列方式能够解决的，报国务院批准后，可以在本行政区域内停止实施该行政许可。

第三章 行政许可的实施机关

第二十二条 行政许可由具有行政许可权的行政机关在其法定职权范围内实施。

第二十三条 法律、法规授权的具有管理公共事务职能的组织，在法定授权范围内，以自己的名义实施行政许可。被授权的组织适用本法有关行政机关的规定。

第二十四条 行政机关在其法定职权范围内，依照法律、法规、规章的规定，可以委托其他行政机关实施行政许可。委托机关应当将受委托行政机关和受委托实施行政许可的内容予以公告。

委托行政机关对受委托行政机关实施行政许可的行为应当负责监督，并对该行为的后果承担法律责任。

受委托行政机关在委托范围内，以委托行政机关名义实施行政许可；不得再委托其他组织或者个人实施行政许可。

第二十五条 经国务院批准，省、自治区、直辖市人民政府根据精简、统一、效能的原则，可以决定一个行政机关行使有关行政机关的行政许可权。

第二十六条 行政许可需要行政机关内设的多个机构办理的，该行政机关应当确定一个机构统一受理行政许可申请，统一送达行政许可决定。

行政许可依法由地方人民政府两个以上部门分别实施的，本级人民政府可以确定一个部门受理行政许可申请并转告有关部门分别提出意见后统一办理，或者组织有关部门联合办理、集中办理。

第二十七条 行政机关实施行政许可，不得向申请人提出购买指定商品、接受有偿服务等不正当要求。

行政机关工作人员办理行政许可，不得索取或者收受申请人的财物，不得谋取其他利益。

第二十八条 对直接关系公共安全、人身健康、生命财产安全的设备、设施、产品、物品的检验、检测、检疫，除法律、行政法规规定由行政机关实施的外，应当逐步由符合法定条件的专业技术组织实施。专业技术组织及其有关人员对所实施的检验、检测、检疫结论承担法律责任。

第四章 行政许可的实施程序

第一节 申请与受理

第二十九条 公民、法人或者其他组织从事特定活动，依法需要取得行政许可的，应当向行政机关提出申请。申请书需要采用格式文本的，行政机关应当向申请人提供行政许可申请书格式文本。申请书格式文本中不得包含与申请行政许可事项没有直接关系的内容。

申请人可以委托代理人提出行政许可申请。但是，依法应当由申请人到行政机关办公场所提出行政许可申请的除外。

行政许可申请可以通过信函、电报、电传、传真、电子数据交换和电子邮件等方式提出。

第三十条 行政机关应当将法律、法规、规章规定的有关行政许可的事项、依据、条件、数量、程序、期限以及需要提交的全部材料的目录和申请书示范文本等在办公场所公示。

申请人要求行政机关对公示内容予以说明、解释的，行政机关应当说明、解释，提供准确、可靠的信息。

第三十一条 申请人申请行政许可，应当如实向行政机关提交有关材料和反映真实情况，并对其申请材料实质内容的真实性负责。行政机关不得要求申请人提交与其申请的行政许可事项无关的技术资料和其他材料。

第三十二条 行政机关对申请人提出的行政许可申请，应当根据下列情况分别作出处理：

（一）申请事项依法不需要取得行政许可的，应当即时告知申请人不受理；

（二）申请事项依法不属于本行政机关职权范围的，应当即时作出不予受理的决定，并告知申请人向有关行政机关申请；

（三）申请材料存在可以当场更正的错误的，应当允许申请人当场更正；

（四）申请材料不齐全或者不符合法定形式的，应当当场或者在五日内一次告知申请人需要补正的全部内容，逾期不告知的，自收到申请材料之日起即为受理；

（五）申请事项属于本行政机关职权范围，申请材料齐全、符合法定形式，或者申请人按照本行政机关的要求提交全部补正申请材料的，应当受理行政许可申请。

行政机关受理或者不予受理行政许可申请，应当出具加盖本行政机关专用印章和注明日期的书面凭证。

第三十三条 行政机关应当建立和完善有关制度，推行电子政务，在行政机关的网站上公布行政许可事项，方便申请人采取数据电文等方式提出行政许可申请；应当与其他行政机关共享有关行政许可信息，提高办事效率。

第二节 审查与决定

第三十四条 行政机关应当对申请人提交的申请材料进行审查。

申请人提交的申请材料齐全、符合法定形式，行政机关能够当场作出决定的，应当当场作出书面的行政许可决定。

根据法定条件和程序，需要对申请材料的实质内容进行核实的，行政机关应当指派两名以上工作人员进行核查。

第三十五条 依法应当先经下级行政机关审查后报上级行政机关决定的行政许可，下级行政机关应当在法定期限内将初步审查意见和全部申请材料直接报送上级行政机关。上级行政机关不得要求申请人重复提供申请材料。

第三十六条 行政机关对行政许可申请进行审查时，发现行政许可事项直接关系他人重大利益的，应当告知该利害关系人。申请人、利害关系人有权进行陈述和申辩。行政机关应当听取申请人、利害关系人的意见。

第三十七条 行政机关对行政许可申请进行审查后，除当场作出行政许可决定的外，应当在法定期限内按照规定程序作出行政许可决定。

第三十八条 申请人的申请符合法定条件、标准的，行政机关应当依法作出准予行政许可的书面决定。

行政机关依法作出不予行政许可的书面决定的，应当说明理由，并告知申请人享有依法申请行政复议或者提起行政诉讼的权利。

第三十九条 行政机关作出准予行政许可的决定，需要颁发行政许可证件的，应当向申请人颁发加盖本行政机关印章的下列行政许可证件：

（一）许可证、执照或者其他许可证书；

（二）资格证、资质证或者其他合格证书；

（三）行政机关的批准文件或者证明文件；

（四）法律、法规规定的其他行政许可证件。

行政机关实施检验、检测、检疫的，可以在检验、检测、检疫合格的设备、设施、产品、物品上加贴标签或者加盖检验、检测、检疫印章。

第四十条 行政机关作出的准予行政许可决定，应当予以公开，公众有权查阅。

第四十一条 法律、行政法规设定的行政许可，其适用范围没有地域限制的，申请人取得的行政许可在全国范围内有效。

第三节 期限

第四十二条 除可以当场作出行政许可决定的外，行政机关应当自受理行政许可申请之日起二十日内作出行政许可决定。二十日内不能作出决定的，经本行政机关负责人批准，可以延长十日，并应当将延长期限的理由告知申请人。但是，法律、法规另有规定的，依照其规定。

依照本法第二十六条的规定，行政许可采取统一办理或者联合办理、集中办理的，办理的时间不得超过四十五日；四十五日内不能办结的，经本级人民政府负责人批准，可以延长十五日，并应当将延长期限的理由告知申请人。

第四十三条 依法应当先经下级行政机关审查后报上级行政机关决定的行政许可，下级行政机关应当自其受理行政许可申请之日起二十日内审查完毕。但是，法律、法规另有规定的，依照其规定。

第四十四条 行政机关作出准予行政许可的决定，应当自作出决定之日起十日内向申请人颁发、送达行政许可证件，或者加贴标签、加盖检验、检测、检疫印章。

第四十五条 行政机关作出行政许可决定，依法需要听证、招标、拍卖、检验、检测、检疫、鉴定和专家评审的，所需时间不计算在本节规定的期限内。行政机关应当将所需时间书面告知申请人。

第四节 听证

第四十六条 法律、法规、规章规定实施行政许可应当听证的事项，或者行政机关认为需要听证的其他涉及公共利益的重大行政许可事项，行政机关应当向社会公告，并举行听证。

第四十七条 行政许可直接涉及申请人与他人之间重大利益关系的，行政机关在作出行政许可决定前，应当告知申请人、利害关系人享有要求听证的权利；申请人、利害关系人在被告知听证权利之日起五日内提出听证申请的，行政机关应当在二十日内组织听证。

申请人、利害关系人不承担行政机关组织听证的费用。

第四十八条 听证按照下列程序进行：

（一）行政机关应当于举行听证的七日前将举行听证的时间、地点通知申请人、利害关系人，必要时予以公告；

（二）听证应当公开举行；

（三）行政机关应当指定审查该行政许可申请的工作人员以外的人员为听证主持人，申请人、利害关系人认为主持人与该行政许可事项有直接利害关系的，有权申请回避；

（四）举行听证时，审查该行政许可申请的工作人员应当提供审查意见的证据、理由，申请人、利害关系人可以提出证据，并进行申辩和质证；

（五）听证应当制作笔录，听证笔录应当交听证参加人确认无误后签字或者盖章。

行政机关应当根据听证笔录，作出行政许可决定。

第五节 变更与延续

第四十九条 被许可人要求变更行政许可事项的，应当向作出行政许可决定的行政机关提出申请；符合法定条件、标准的，行政机关应当依法办理变更手续。

第五十条 被许可人需要延续依法取得的行政许可的有效期的，应当在该行政许可有效期届满三十日前向作出行政许可决定的行政机关提出申请。但是，法律、法规、规章另有规定的，依照其规定。

行政机关应当根据被许可人的申请，在该行政许可有效期届满前作出是否准予延续的决定；逾期未作决定的，视为准予延续。

第六节 特别规定

第五十一条 实施行政许可的程序，本节有规定的，适用本节规定；本节没有规定的，适用本章其他有关规定。

第五十二条 国务院实施行政许可的程序，适用有关法律、行政法规的规定。

第五十三条 实施本法第十二条第二项所列事项的行政许可的，行政机关应当通过招标、拍卖等公平竞争的方式作出决定。但是，法律、行政法规另有规定的，依照其规定。

行政机关通过招标、拍卖等方式作出行政许可决定的具体程序，依照有关法律、行政法规的规定。

行政机关按照招标、拍卖程序确定中标人、买受人后，应当作出准予行政许可的决定，并依法向中标人、买受人颁发行政许可证件。

行政机关违反本条规定，不采用招标、拍卖方式，或者违反招标、拍卖程序，损害申请人合法权益的，申请人可以依法申请行政复议或者提起行政诉讼。

第五十四条 实施本法第十二条第三项所列事项的行政许可，赋予公民特定资格，依法应当举行国家考试的，行政机关根据考试成绩和其他法定条件作出行政许可决定；赋予法人或者其他组织特定的资格、资质的，行政机关根据申请人

的专业人员构成、技术条件、经营业绩和管理水平等的考核结果作出行政许可决定。但是，法律、行政法规另有规定的，依照其规定。

公民特定资格的考试依法由行政机关或者行业组织实施，公开举行。行政机关或者行业组织应当事先公布资格考试的报名条件、报考办法、考试科目以及考试大纲。但是，不得组织强制性的资格考试的考前培训，不得指定教材或者其他助考材料。

第五十五条 实施本法第十二条第四项所列事项的行政许可的，应当按照技术标准、技术规范依法进行检验、检测、检疫，行政机关根据检验、检测、检疫的结果作出行政许可决定。

行政机关实施检验、检测、检疫，应当自受理申请之日起五日内指派两名以上工作人员按照技术标准、技术规范进行检验、检测、检疫。不需要对检验、检测、检疫结果作进一步技术分析即可认定设备、设施、产品、物品是否符合技术标准、技术规范的，行政机关应当当场作出行政许可决定。

行政机关根据检验、检测、检疫结果，作出不予行政许可决定的，应当书面说明不予行政许可所依据的技术标准、技术规范。

第五十六条 实施本法第十二条第五项所列事项的行政许可，申请人提交的申请材料齐全、符合法定形式的，行政机关应当当场予以登记。需要对申请材料的实质内容进行核实的，行政机关依照本法第三十四条第三款的规定办理。

第五十七条 有数量限制的行政许可，两个或者两个以上申请人的申请均符合法定条件、标准的，行政机关应当根据受理行政许可申请的先后顺序作出准予行政许可的决定。但是，法律、行政法规另有规定的，依照其规定。

第五章 行政许可的费用

第五十八条 行政机关实施行政许可和对行政许可事项进行监督检查，不得收取任何费用。但是，法律、行政法规另有规定的，依照其规定。

行政机关提供行政许可申请书格式文本，不得收费。

行政机关实施行政许可所需经费应当列入本行政机关的预算，由本级财政予以保障，按照批准的预算予以核拨。

第五十九条 行政机关实施行政许可，依照法律、行政法规收取费用的，应当按照公布的法定项目和标准收费；所收取的费用必须全部上缴国库，任何机关或者个人不得以任何形式截留、挪用、私分或者变相私分。财政部门不得以任何形式向行政机关返还或者变相返还实施行政许可所收取的费用。

第六章 监督检查

第六十条 上级行政机关应当加强对下级行政机关实施行政许可的监督检查，及时纠正行政许可实施中的违法行为。

第六十一条 行政机关应当建立健全监督制度，通过核查反映被许可人从事行政许可事项活动情况的有关材料，履行监督责任。

行政机关依法对被许可人从事行政许可事项的活动进行监督检查时，应当将监督检查的情况和处理结果予以记录，由监督检查人员签字后归档。公众有权查阅行政机关监督检查记录。

行政机关应当创造条件，实现与被许可人、其他有关行政机关的计算机档案系统互联，核查被许可人从事行政许可事项活动情况。

第六十二条 行政机关可以对被许可人生产经营的产品依法进行抽样检查、检验、检测，对其生产经营场所依法进行实地检查。检查时，行政机关可以依法查阅或者要求被许可人报送有关材料；被许可人应当如实提供有关情况和材料。

行政机关根据法律、行政法规的规定，对直接关系公共安全、人身健康、生命财产安全的重要设备、设施进行定期检验。对检验合格的，行政机关应当发给相应的证明文件。

第六十三条 行政机关实施监督检查，不得妨碍被许可人正常的生产经营活动，不得索取或者收受被许可人的财物，不得谋取其他利益。

第六十四条 被许可人在作出行政许可决定的行政机关管辖区域外违法从事行政许可事项活动的，违法行为发生地的行政机关应当依法将被许可人的违法事实、处理结果抄告作出行政许可决定的行政机关。

第六十五条 个人和组织发现违法从事行政许可事项的活动，有权向行政机关举报，行政机关应当及时核实、处理。

第六十六条 被许可人未依法履行开发利用自然资源义务或者未依法履行利用公共资源义务的，行政机关应当责令限期改正；被许可人在规定期限内不改正的，行政机关应当依照有关法律、行政法规的规定予以处理。

第六十七条 取得直接关系公共利益的特定行业的市场准入行政许可的被许可人，应当按照国家规定的服务标准、资费标准和行政机关依法规定的条件，向用户提供安全、方便、稳定和价格合理的服务，并履行普遍服务的义务；未经作出行政许可决定的行政机关批准，不得擅自停业、歇业。

被许可人不履行前款规定的义务的，行政机关应当责令限期改正，或者依法采取有效措施督促其履行义务。

第六十八条 对直接关系公共安全、人身健康、生命财产安全的重要设备、设施，行政机关应当督促设计、建造、安装和使用单位建立相应的自检制度。

行政机关在监督检查时，发现直接关系公共安全、人身健康、生命财产安全的重要设备、设施存在安全隐患的，应当责令停止建造、安装和使用，并责令设计、建造、安装和使用单位立即改正。

第六十九条 有下列情形之一的，作出行政许可决定的行政机关或者其上级行政机关，根据利害关系人的请求或者依据职权，可以撤销行政许可：

（一）行政机关工作人员滥用职权、玩忽职守作出准予行政许可决定的；

（二）超越法定职权作出准予行政许可决定的；

（三）违反法定程序作出准予行政许可决定的；

（四）对不具备申请资格或者不符合法定条件的申请人准予行政许可的；

（五）依法可以撤销行政许可的其他情形。

被许可人以欺骗、贿赂等不正当手段取得行政许可的，应当予以撤销。

依照前两款的规定撤销行政许可，可能对公共利益造成重大损害的，不予撤销。

依照本条第一款的规定撤销行政许可，被许可人的合法权益受到损害的，行政机关应当依法给予赔偿。依照本条第二款的规定撤销行政许可的，被许可人基于行政许可取得的利益不受保护。

第七十条 有下列情形之一的，行政机关应当依法办理有关行政许可的注销手续：

（一）行政许可有效期届满未延续的；

（二）赋予公民特定资格的行政许可，该公民死亡或者丧失行为能力的；

（三）法人或者其他组织依法终止的；

（四）行政许可依法被撤销、撤回，或者行政许可证件依法被吊销的；

（五）因不可抗力导致行政许可事项无法实施的；

（六）法律、法规规定的应当注销行政许可的其他情形。

第七章 法律责任

第七十一条 违反本法第十七条规定设定的行政许可，有关机关应当责令设定该行政许可的机关改正，或者依法予以撤销。

第七十二条 行政机关及其工作人员违反本法的规定，有下列情形之一的，由其上级行政机关或者监察机关责令改正；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分：

（一）对符合法定条件的行政许可申请不予受理的；

（二）不在办公场所公示依法应当公示的材料的；

（三）在受理、审查、决定行政许可过程中，未向申请人、利害关系人履行法定告知义务的；

（四）申请人提交的申请材料不齐全、不符合法定形式，不一次告知申请人必须补正的全部内容的；

（五）未依法说明不受理行政许可申请或者不予行政许可的理由的；

（六）依法应当举行听证而不举行听证的。

第七十三条 行政机关工作人员办理行政许可、实施监督检查，索取或者收受他人财物或者谋取其他利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

第七十四条 行政机关实施行政许可，有下列情形之一的，由其上级行政机关或者监察机关责令改正，对直接负责的主管人员和其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任：

（一）对不符合法定条件的申请人准予行政许可或者超越法定职权作出准予行政许可决定的；

（二）对符合法定条件的申请人不予行政许可或者不在法定期限内作出准予行政许可决定的；

（三）依法应当根据招标、拍卖结果或者考试成绩择优作出准予行政许可决定，未经招标、拍卖或者考试，或者不根据招标、拍卖结果或者考试成绩择优作出准予行政许可决定的。

第七十五条 行政机关实施行政许可，擅自收费或者不按照法定项目和标准收费的，由其上级行政机关或者监察机关责令退还非法收取的费用；对直接负责的主管人员和其他直接责任人员依法给予行政处分。

截留、挪用、私分或者变相私分实施行政许可依法收取的费用的，予以追缴；对直接负责的主管人员和其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任。

第七十六条 行政机关违法实施行政许可，给当事人的合法权益造成损害的，应当依照国家赔偿法的规定给予赔偿。

第七十七条 行政机关不依法履行监督职责或者监督不力，造成严重后果的，由其上级行政机关或者监察机关责令改正，对直接负责的主管人员和其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任。

第七十八条 行政许可申请人隐瞒有关情况或者提供虚假材料申请行政许可的，行政机关不予受理或者不予行政许可，并给予警告；行政许可申请属于直接关系公共安全、人身健康、生命财产安全事项的，申请人在一年内不得再次申请该行政许可。

第七十九条 被许可人以欺骗、贿赂等不正当手段取得行政许可的，行政机关应当依法给予行政处罚；取得的行政许可属于直接关系公共安全、人身健康、生命财产安全事项的，申请人在三年内不得再次申请该行政许可；构成犯罪的，依法追究刑事责任。

第八十条 被许可人有下列行为之一的，行政机关应当依法给予行政处罚；构成犯罪的，依法追究刑事责任：

（一）涂改、倒卖、出租、出借行政许可证件，或者以其他形式非法转让行政许可的；

（二）超越行政许可范围进行活动的；

（三）向负责监督检查的行政机关隐瞒有关情况、提供虚假材料或者拒绝提供反映其活动情况的真实材料的；

（四）法律、法规、规章规定的其他违法行为。

第八十一条 公民、法人或者其他组织未经行政许可，擅自从事依法应当取得行政许可的活动的，行政机关应当依法采取措施予以制止，并依法给予行政处罚；构成犯罪的，依法追究刑事责任。

第八章 附则

第八十二条 本法规定的行政机关实施行政许可的期限以工作日计算，不含法定节假日。

第八十三条 本法自２００４年７月１日起施行。

本法施行前有关行政许可的规定，制定机关应当依照本法规定予以清理；不符合本法规定的，自本法施行之日起停止执行。（完）