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产品介绍 规格及标准

国内标准建材圆钢的牌号、规格、执行标准		
产品名称	主要规格	执行标准
HPB300	Φ6-Φ22	GB 1499.1-2008《钢筋混凝土用钢 第1部分：热轧光圆钢筋》

国内标准建材螺纹钢的牌号、规格、执行标准			
产品名称	牌号	规格（mm）	执行标准
抗震螺纹钢	HRB400E、HRB500E	Φ6-Φ50	GB 1499.2-2007《钢筋混凝土用钢 第2部分：热轧带肋钢筋》
普通螺纹钢	HRB400、HRB500	Φ6-Φ50	GB 1499.2-2007《钢筋混凝土用钢 第2部分：热轧带肋钢筋》
普通螺纹钢	HRB600	Φ10-Φ50	Q/320582 JYG08-2013《600MPa级热轧带肋钢筋》

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工业线材 规格及标准

冷镦钢产品牌号、执行标准

产品名称	典型牌号	规格（mm）	执行标准
冷镦用低碳钢热轧盘条	YD195	YD195	Q/320582 JYG01-2012《冷镦用低碳钢热轧盘条》
冷镦用热轧盘条	SWRCH6A、SWRCH8A、SWRCH10A、SWRCH12A、SWRCH6A、SWRCH8A、SWRCH10A、SWRCH12A、	Φ5.5-25	Q/320582 JYG03-2012《冷镦用热轧盘条》
	SWRCH35K-N、SWRCH35KA-N	Φ5.5-25	技术协议
含硼冷镦钢热轧盘条	10B21、10B22、10B28、10B33、10B38 、SCR420B、51B20	Φ5.5-25	Q/320582 JYG06-2013《含硼冷镦钢热轧盘条》
	10B21-N、20MnB4、10B21-C	Φ5.5-25	技术协议
冷镦和冷挤压用钢	ML08AL、ML20Cr、ML35、ML20MnTiB、ML40Cr	Φ5.5-25	GB/T 6478-2001《冷镦和冷挤压用钢》
合金冷镦用钢	SCM435、SCM440	Φ5.5-25	技术协议

碳素钢热轧盘条典型牌号、执行标准

产品名称	主要规格	规格（mm）	执行标准
低碳钢热轧圆盘条	Q195、Q215、Q235	Φ5.5-20	GB/T 701-2008《低碳钢热轧圆盘条》
优质碳素钢盘条	SAE1006（B）、SAE 1008（B）、SAE1010（B）、SAE1006（B）、SAE1008（B）、SAE1010（B）、SAE1018（B）、SAE1022（B）、SAE1045（B）、SAE1055（B）	Φ5.5-25	出口：ASTM A 510M-08《碳素钢盘条和粗圆钢丝一般要求（米制）的标准规范》 国内：Q/320582 JYG07-2013《优质碳素钢热轧盘条》
优质碳素钢热轧盘条	45、50、55、60、65、70、80	Φ6.5-11	GB/T4354-2008《优质碳素钢热轧盘条》》
中高碳钢热轧盘条	SWRH42A、SWRH42B、SWRH57A、SWRH57B、SWRH62A、SWRH62B、SWRH67A、SWRH67B、SWRH72A、SWRH72B、SWRH77B、SWRH82B	Φ6.5-11	GB/T4354-2008《优质碳素钢热轧盘条》》

焊接用钢盘条典型牌号、执行标准

产品名称	典型牌号	规格（mm）	执行标准
焊接用钢盘条	H08A Φ6.5	GB/T	《焊接用钢盘条》

焊接用钢盘条	SWRY11、SWRY11-B	Φ5.5、Φ6.5	技术协议
气保焊丝用热轧盘条	国内：ER50-6 出口：ER70S-6、ER70S-3	Φ5.5、Φ6.5	技术协议

预应力混凝土钢棒用热轧盘条产品牌号、执行标准

产品名称	典型牌号	规格（mm）	执行标准
预应力混凝土钢棒用热轧盘条	30MnSi、30Si2Mn	Φ6.5-14	GB/T 24587-2009《预应力混凝土钢棒用热轧盘条》

圆环链用盘条产品牌号、执行标准

产品名称	典型牌号	规格（mm）	执行标准
圆环链	20Mn2	Φ6.5-20	GB/T 3077-1999《合金结构钢》和GB/T 14981-2009《热轧圆盘条尺寸、外形、重量及允许偏差》

工业棒材　　规格及标准

优质碳素钢圆棒产品牌号、执行标准

产品名称	典型牌号	规格（mm）	执行标准
优质碳素钢圆棒	45 Φ16—Φ50	GB/T 699-1999《优质碳素结构钢》	GB/T 702-2008《热轧钢棒尺寸、外形、重量及允许偏差》

结构钢圆管坯产品牌号、执行标准

产品名称	牌号	规格（mm）	执行标准
优质碳素结构钢圆管坯	10、20、45	Φ50	YB/T 5222-2004《优质碳素结构钢圆管坯》
低合金结构钢圆管坯	Q345B	Φ50	YB/T 5221-1993（技术要求）《合金结构钢圆管坯》GB/T 1591-2008（化学成分）《低合金高强度结构钢》

合金结构钢产品典型牌号、执行标准

产品名称	典型牌号	规格（mm）	执行标准
合金结构钢	20Mn2、40Cr	Φ32	GB/T 3077-1999《合金结构钢》

热轧圆钢

类别	产品规格	代表牌号	执行标准
优质碳素结构钢	Φ75~Φ350	10-60、15Mn-50Mn	GB/T 699、技术协议
		1010-1060	ASTM A29、技术协议
		S10C-S58C	JIS G4051、技术协议
		CK10-CK60	DIN 17200、技术协议
低合金结构钢	Φ75~Φ350	Q345、Q390、Q420	GB/T 1591、技术协议
合金结构钢	Φ75~Φ350	20-50Mn2、20-50Cr、27SiMn、40MnB、38CrMoAl、12-42CrMo、20CrMnSi、[illegible]、15B36Cr	GB/T 3077、技术协议

		5120、4130、4137、4140、4145、8620	ASTM A29、技术协议
		SCr420、SCr440、SCM420、SCM440、SNCM420	JIS G4053、技术协议
		42CrMo4、16MnCrS5、20MnCr5、17CrNiMo6、33MnCrB5-2	DIN EN10083、技术协议
保证淬透性结构钢	Φ75~Φ350	20CrMnTiH、20CrMnTiHH、20CrMnTiH1-6、20CrH、20CrMoH、22CrMoH、20CrMnMoH、20CrNiMoH、	GB/T 5216、技术协议
		SAE5120H、SAE8617H、SAE8620H	ASTM A304、技术协议
		SCr420H、SCM420H、SCM822H	JIS G4052、技术协议
		JIS G4052、技术协议	DIN EN10084、技术协议
锚链钢系泊链钢	Φ75~Φ190	CM490、CM690、R3、R3S、R4	GB/T 18669 GB/T 20848
弹簧钢	Φ75~Φ350	60Si2Mn(A)、60Si2CrA、60Si2CrVA、50CrV	GB/T1222、技术协议
工具钢	Φ75~Φ350	5CrNiMo、5CrMnMo、S55C、45Cr2NiMoVSi、4Cr5MoSiV1	GB/T1299、技术协议
轴承钢	Φ75~Φ280	GCr15、GCr15SiMn	GB/T 18254、技术协议
		52100	ASTM A295、技术协议
		SUJ2	JIS G48805、技术协议
		100Cr6、100CrMnSi6-4	DIN EN ISO683-17、技术协议
管坯钢	Φ75~Φ350	10、20、35、45、20Mn.25Mn	YB/T 5222、技术协议
		Q345B、20Cr、40Cr、15CrMo、35CrMo、42CrMo、30CrMnSiA、27SiMn	YB/T 5221、技术协议
		37Mn5、25-30Mn2、33-36Mn2V、30CrMo、37CrMnMoA、L360QB、L360NCS、L450QCS	YB/T 5221、API Spec 5CT、API Spec 5L、技术协议
		20G、25MnG、16Mn、12CrMo、15CrMoG、12Cr1MoVG、1Cr5Mo、10MoWVNb、37Mn、35CrMo、34CrMo4、16MnDG、10MnD、GSA-210A1、SA-210C、T11、T12、T22、T5、T91	YB/T 5137、技术协议

连铸圆坯			
类别	产品规格	代表牌号	执行标准
优质碳素结构钢	Φ380、Φ500、Φ600、Φ700、Φ800	10-45、15-50Mn	YB/T5222、YB/T4149、技术协议
低合金结构钢圆管坯		16Mn、Q345	GB/T1591、YB/T4149、技术协议
合金结构钢		20Cr-40Cr、20CrMnTi、 15-42CrMo、20CrMnMo、35CrMoV、20-40CrNiMo、38CrMoAl、A105、4130、4140、4145	GB/T3077、YB/T4149、技术协议

低合金结构钢圆管坯		16Mn、Q345	GB/T1591、YB/T4149、技术协议
油井管坯		37Mn5、25-30Mn2、33-36Mn2V、30CrMo、37CrMnMoA、L360QB、L360NCS、L450QCS	YB/T 4149、API Spec 5CT、API Spec 5L、技术协议
高压锅炉管管坯		20G、25MnG、16Mn、12CrMo、15CrMoG、12Cr1MoVG、1Cr5Mo、10MoWVNb、37Mn、35CrMo、34CrMo4、16MnDG、10MnDG、SA-210A1、SA-210C、A106B、P91、P92	YB/T4149、技术协议
轴承钢		GCr15、GCr15SiMn、GCr18Mo	GB/T 18254、YB/T4149、技术协议

钢锭/钢坯			
类别	产品规格	代表牌号	执行标准
优质碳素结构钢	钢锭 3.5~50吨 钢坯 B≤650mm	20-45、15-50Mn	GB/T699、技术协议
低合金结构钢		16Mn、Q345	GB/T1591、技术协议
合金结构钢		20-40Cr、20CrMnTi、15-42CrMo、20CrMnMo、17-20CrNiMo、34CrNi3Mo、20-42SiMn、38CrMoAl、20CrNi3、30-34Cr2Ni2Mo、28-30CrMoNiV、40CrNiMoA、4130、4140、4145、4340	GB/T3077、JB/T6396、JB/T7022、GB/T17107、技术协议
工具钢		5CrNiMo、5CrMnMo、P20、P4410、718、S55C、9Cr2Mo、45Cr2NiMoVSi、4Cr5MoSiV1、MC3A、MC5A	GB/T1299、技术协议
高压锅炉管管坯		P91、P92	技术协议

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【Title】Administrative Compulsion Law of the People's Republic of China[现行有效]
【法规标题】中华人民共和国行政强制法 [Effective]

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类别：	行政诉讼

compulsionOrder of the President of the People's Republic of China
(No. 49)
The Administrative Compulsion Law of the People's Republic of China, as adopted at the 21st meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on June 30, 2011, is hereby promulgated and shall come into force on January 1, 2012.
Hu Jintao, President of the People's Republic of China
June 30, 2011
Administrative Compulsion Law of the People's Republic of China
(Adopted at the 21st meeting of the Standing Committee of the 11th National People's Congress on June 30, 2011)
Contents

Chapter I General Principles

中华人民共和国主席令
（第四十九号）

《中华人民共和国行政强制法》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二十一次会议于 2011 年 6 月 30 日通过，现予公布，自 2012 年 1 月 1 日起施行。
中华人民共和国主席 胡锦涛
2011 年 6 月 30 日・・・

中华人民共和国行政强制法
（2011 年 6 月 30 日第十一届全国人民代表大会常务委员会第二十一次会议通过）
目 录

第一章 总 则

Article 1 This Law is formulated in accordance with the Constitution for the purposes of regulating the setting and implementation of administrative compulsion, guaranteeing and supervising administrative organs' performance of duties according to law, maintaining public interests and social order and protecting the legitimate rights and interests of citizens, legal persons and other organizations.

第一条 为了规范行政强制的设定和实施，保障和监督行政机关依法履行职责，维护公共利益和社会秩序，保护公民、法人和其他组织的合法权益，根据宪法，制定本法。

Article 2 The term "administrative compulsion" as mentioned in this Law shall include administrative compulsory measures and administrative enforcement.
Administrative compulsory measures refer to the temporary restriction of the personal freedom of citizens or temporary control of the property of citizens, legal persons or other organizations according to law by administrative organs in the process of administration for such purposes as stopping illegal acts, preventing destruction of evidence, avoiding damage and containing expansion of danger.
Administrative enforcement refers to the performance of obligations as legally enforced by administrative organs or by the people's courts upon applications of administrative organs against citizens, legal persons or other organizations which do not perform administrative decisions.

第二条 本法所称行政强制，包括行政强制措施和行政强制执行。
行政强制措施，是指行政机关在行政管理过程中，为制止违法行为、防止证据损毁、避免危害发生、控制危险扩大等情形，依法对公民的人身自由实施暂时性限制，或者对公民、法人或者其他组织的财物实施暂时性控制的行为。
行政强制执行，是指行政机关或者行政机关申请人民法院，对不履行行政决定的公民、法人或者其他组织，依法强制履行义务的行为。

Article 3 This Law shall apply to the setting and implementation of administrative compulsion.
In case of occurrence or impending occurrence of any natural disaster, accidental disaster, public health incident, social security incident or other emergency, the emergency response measures or temporary measures taken by administrative organs shall be governed by the relevant laws and administrative regulations.
The prudential supervision measures for the financial sector and the mandatory technical monitoring measures for imported and exported goods taken by administrative organs shall be governed by the relevant laws and administrative regulations.

第三条 行政强制的设定和实施，适用本法。
发生或者即将发生自然灾害、事故灾难、公共卫生事件或者社会安全事件等突发事件，行政机关采取应急措施或者临时措施，依照有关法律、行政法规的规定执行。
行政机关采取金融业审慎监管措施、进出境货物强制性技术监控措施，依照有关法律、行政法规的规定执行。

Article 4 Administrative compulsion shall be set and implemented according to the statutory authority, extent, conditions and procedures.

第四条 行政强制的设定和实施，应当依照法定的权限、范围、条件和程序。

Article 5 The setting and implementation of administrative compulsion shall be appropriate. If the purposes of administration may be achieved by non-compulsory means, no administrative compulsion shall be set or implemented.

第五条 行政强制的设定和实施，应当适当。采用非强制手段可以达到行政管理目的的，不得设定和实施行政强制。

Article 6 The implementation of administrative compulsion shall adhere to the combination of education and compulsion.

第六条 实施行政强制，应当坚持教育与强制相结合。

Article 7 Administrative organs and their staff members shall not seek benefits for entities or individuals by taking advantage of

第七条 行政机关及其工作人员不得利用行政强制权为单位或者个人谋取利益。

administrative compulsory powers.

Article 8 A citizen, a legal person or any other organization shall be entitled to make statements or arguments against administrative compulsion implemented by an administrative organ, be entitled to apply for administrative reconsideration or lodge an administrative lawsuit according to law, and be entitled to compensation for damage suffered from an administrative organ's illegal administrative compulsion.
A citizen, a legal person or any other organization which has suffered damage from any illegal act of or expansion of extent of enforcement by the people's court in the process of enforcement shall be entitled to compensation according to law.

第八条 公民、法人或者其他组织对行政机关实施行政强制，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；因行政机关违法实施行政强制受到损害的，有权依法要求赔偿。
公民、法人或者其他组织因人民法院在强制执行中有违法行为或者扩大强制执行范围受到损害的，有权依法要求赔偿。

Chapter II Types and Setting of Administrative Compulsion

第二章 行政强制的种类和设定

Article 9 Types of administrative compulsory measures:
(1) Restricting the personal freedom of a citizen;
(2) Seizing premises, facilities or properties;
(3) Impounding properties;
(4) Freezing deposits or remittances; and
(5) Other administrative compulsory measures.

第九条 行政强制措施的种类：
（一）限制公民人身自由；
（二）查封场所、设施或者财物；
（三）扣押财物；
（四）冻结存款、汇款；
（五）其他行政强制措施。

Article 10 Administrative compulsory measures shall be set by law.
For matters which are not included in any law and are subject to the administrative authority of the State Council, administrative compulsory measures other than those as prescribed in Article 9 (1) and (4) of this Law and those as must be set by law may be set by administrative regulation.
For matters which are not included in any law or administrative regulation and are local affairs, administrative compulsory measures as prescribed in Article 9 (2) and (3) of this Law may be set by local regulation.
No regulatory documents other than laws and regulations may set administrative compulsory measures.

第十条 行政强制措施由法律设定。
尚未制定法律，且属于国务院行政管理职权事项的，行政法规可以设定除本法第九条第一项、第四项和应当由法律规定的行政强制措施以外的其他行政强制措施。
尚未制定法律、行政法规，且属于地方性事务的，地方性法规可以设定本法第九条第二项、第三项的行政强制措施。
法律、法规以外的其他规范性文件不得设定行政强制措施。

Article 11 Where a law has provided for the objects, conditions for adoption and types of administrative compulsory measures, no administrative or local regulation shall provide beyond the extent thereof.
Where no administrative compulsory measures are set in a law, no administrative compulsory measures shall be set by administrative or local regulation. However, if a law provides that the specific administrative measures for certain matters shall be provided for by administrative regulation, the administrative regulation may set administrative compulsory measures other than those as prescribed in Article 9 (1) and (4) of this Law and those that must be set by law.

第十一条 法律对行政强制措施的对象、条件、种类作了规定的，行政法规、地方性法规不得作出扩大规定。
法律中未设定行政强制措施的，行政法规、地方性法规不得设定行政强制措施。但是，法律规定特定事项由行政法规规定具体管理措施的，行政法规可以设定除本法第九条第一项、第四项和应当由法律规定的行政强制措施以外的其他行政强制措施。

Article 12 Manners of administrative enforcement:
(1) Fines or late fees;
(2) Transfer of deposits or remittances;
(3) Auction or legal disposition of premises, facilities or properties that are seized or impounded;
(4) Removal of obstructions or restitution;
(5) Performance on behalf of the party concerned; and
(6) Other manners of enforcement.

第十二条 行政强制执行的方式：
（一）加处罚款或者滞纳金；
（二）划拨存款、汇款；
（三）拍卖或者依法处理查封、扣押的场所、设施或者财物；
（四）排除妨碍、恢复原状；
（五）代履行；
（六）其他强制执行方式。

Article 13 Administrative enforcement shall be set by law.
Where enforcement by administrative organs is not provided for by law, the administrative organ making the relevant administrative decision shall apply to the people's court for enforcement.

第十三条 行政强制执行由法律设定。
法律没有规定行政机关强制执行的，作出行政决定的行政机关应当申请人民法院强制执行。

Article 14 In drafting a law or regulation, if administrative compulsion is to be set, the drafting entity shall hear opinions in such forms as a hearing and a demonstration meeting, and explain the necessity of such administrative compulsion, the possible impacts and the solicitation and adoption of opinions to the organ making the law or regulation.

第十四条 起草法律草案、法规草案，拟设定行政强制的，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强制的必要性、可能产生的影响以及听取和采纳意见的情况。

Article 15 The organ setting administrative compulsion shall regularly review the administrative compulsion set by it, and timely amend or abolish any inappropriate administrative compulsion.
The organ implementing administrative compulsion may review the implementation of the set administrative compulsion and the necessity of existence thereof in good time, and report its opinion to the organ setting such administrative compulsion.
Citizens, legal persons and other organizations may submit opinions and suggestions on the setting and implementation of administrative compulsion to the organs setting or implementing administrative compulsion. The relevant organs shall conduct research and demonstration in earnest, and give feedback in proper manners.

第十五条 行政强制的设定机关应当定期对其设定的行政强制进行评价，并对不适当的行政强制及时予以修改或者废止。
行政强制的实施机关可以对已设定的行政强制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强制的设定机关。
公民、法人或者其他组织可以向行政强制的设定机关和实施机关就行政强制的设定和实施提出意见和建议。有关机关应当认真研究论证，并以适当方式予以反馈。

Chapter III Procedures for the Implementation of Administrative Compulsory Measures

第三章 行政强制措施实施程序

Section 1 General Provisions

第一节 一般规定

Article 16 Administrative organs shall, in performing their administrative functions, implement administrative compulsory measures in accordance with laws and regulations.
For illegal acts with obviously minor circumstances or without obvious harm to the society, administrative organs may decide not to take administrative compulsory measures.

第十六条 行政机关履行行政管理职责，依照法律、法规的规定，实施行政强制措施。
违法行为情节显著轻微或者没有明显社会危害的，可以不采取行政强制措施。

Article 17 Administrative compulsory measures shall be implemented by administrative organs prescribed by laws and regulations within their statutory authority. The power to implement administrative compulsory measures shall not be delegated.
Administrative organs which exercise relatively centralized powers of administrative punishment in accordance with the Law of the People's Republic of China on Administrative Punishment may implement administrative compulsory measures related to their powers of administrative punishment as prescribed by laws and regulations.
Administrative compulsory measures shall be implemented by the qualified law enforcement personnel of administrative organs only.

第十七条 行政强制措施由法律、法规规定的行政机关在法定职权范围内实施。行政强制措施权不得委托。
依据《中华人民共和国行政处罚法》的规定行使相对集中行政处罚权的行政机关，可以实施法律、法规规定的与行政处罚权有关的行政强制措施。
行政强制措施应当由行政机关具备资格的行政执法人员实施，其他人员不得实施。

Article 18 In implementing administrative compulsory measures, an administrative organ shall comply with the following provisions:
(1) Before implementation, a report on implementation shall be submitted to the person in charge of the administrative organ and an approval of implementation shall be obtained.
(2) An administrative compulsory measure shall be implemented by two or more law enforcement personnel of the administrative organ.
(3) Law enforcement identity certificates shall be produced.
(4) The party concerned shall be notified to be present.
(5) The party concerned shall be notified on the spot of the reasons and basis for taking the administrative compulsory measure and the rights of and remedies available to the party concerned according to law.
(6) The statements and arguments of the party concerned shall be heard.
(7) On-site transcripts shall be made.
(8) The on-site transcripts shall be singed or sealed by the party concerned and the law enforcement personnel of the administrative organ, and if the party concerned refuses to do so, it shall be noted in the transcripts.
(9) If the party concerned is not present, witnesses shall be invited to be present, and the witnesses and the law enforcement personnel of the administrative organ shall sign or seal the on-site transcripts.
(10) Other procedures as prescribed by laws and regulations.

第十八条 行政机关实施行政强制措施应当遵守下列规定：
（一）实施前须向行政机关负责人报告并经批准；
（二）由两名以上行政执法人员实施；
（三）出示执法身份证件；
（四）通知当事人到场；
（五）当场告知当事人采取行政强制措施的理由、依据以及当事人依法享有的权利、救济途径；
（六）听取当事人的陈述和申辩；
（七）制作现场笔录；
（八）现场笔录由当事人和行政执法人员签名或者盖章，当事人拒绝的，在笔录中予以注明；
（九）当事人不到场的，邀请见证人到场，由见证人和行政执法人员在现场笔录上签名或者盖章；
（十）法律、法规规定的其他程序。

Article 19 If any administrative compulsory measure is implemented on the spot as needed in case of emergency, the law enforcement personnel of an administrative organ shall report it to the person in charge of the administrative organ and go through the approval formalities within 24 hours. If the person in charge of the administrative organ deems it improper to take the administrative compulsory measure, the measure shall be lifted immediately.

第十九条 情况紧急，需要当场实施行政强制措施的，行政执法人员应当在二十四小时内向行政机关负责人报告，并补办批准手续。行政机关负责人认为不应当采取行政强制措施的，应当立即解除。

Article 20 In implementing administrative compulsory measures which restrict the personal freedom of citizens according to law, in addition to the procedures in Article 18 of this Law, an administrative organ shall

第二十条 依照法律规定实施限制公民人身自由的行政强制措施，除应当履行本法第十八条规定的程序外，还应当遵守

comply with the following provisions:
(1) The law enforcement personnel of the administrative organ shall notify the family of the party concerned of the administrative organ implementing the administrative compulsory measure and the location and term thereof, on the spot or immediately after implementing the administrative compulsory measure.
(2) If the administrative compulsory measure is implemented on the spot in case of emergency, the law enforcement personnel of the administrative organ shall report it to the person in charge of the administrative organ and go through the approval formalities immediately after returning to the administrative organ.
(3) Other procedures as prescribed by law.
Administrative compulsory measures which restrict personal freedom shall not be implemented beyond the statutory term. If the purposes of implementing such an administrative compulsory measure have been achieved or the conditions for implementing it have disappeared, the administrative compulsory measure shall be lifted immediately.

下列规定：
（一）当场告知或者实施行政强制措施后立即通知当事人家属实施行政强制措施的行政机关、地点和期限；
（二）在紧急情况下当场实施行政强制措施的，在返回行政机关后，立即向行政机关负责人报告并补办批准手续；
（三）法律规定的其他程序。
实施限制人身自由的行政强制措施不得超过法定期限。实施行政强制措施的目的已经达到或者条件已经消失，应当立即解除。

Article 21 If an illegal act may constitute a crime and shall be transferred to the judicial organ, the administrative organ shall transfer the seized, impounded or frozen properties along with it, and inform the party concerned in writing.

第二十一条 违法行为涉嫌犯罪应当移送司法机关的，行政机关应当将查封、扣押、冻结的财物一并移送，并书面告知当事人。

Section 2 Seizure and Impoundment

第二节 查封、扣押

Article 22 Seizure and impoundment shall be implemented by administrative organs as prescribed by laws and regulations, and no other administrative organs or organizations may implement them.

第二十二条 查封、扣押应当由法律、法规规定的行政机关实施，其他任何行政机关或者组织不得实施。

Article 23 Seizure and impoundment shall be limited to the case-related premises, facilities or properties, and no premises, facilities or properties irrelevant to the illegal acts shall be seized or impounded. The daily necessities of citizens and their dependents shall not be seized or impounded.
Premises, facilities or properties of the party concerned, which have been seized by any other state organ according to law, shall not be seized repeatedly.

第二十三条 查封、扣押限于涉案的场所、设施或者财物，不得查封、扣押与违法行为无关的场所、设施或者财物；不得查封、扣押公民个人及其所扶养家属的生活必需品。
当事人的场所、设施或者财物已被其他国家机关依法查封的，不得重复查封。

Article 24 Where an administrative organ decides to implement seizure or impoundment, it shall go through the procedures in Article 18 of this Law, and make and delivery on the spot a written decision on seizure or impoundment and a list of seizure or impoundment.
The written decision on seizure or impoundment shall specify:
(1) Name and address of the party concerned;
(2) Reasons and basis for and term of seizure or impoundment;
(3) Names and amounts, among others, of the seized or impounded

第二十四条 行政机关决定实施查封、扣押的，应当履行本法第十八条规定的程序，制作并当场交付查封、扣押决定书和清单。
查封、扣押决定书应当载明下列事项：
（一）当事人的姓名或者名称、地址；
（二）查封、扣押的理由、依据和期限；

premises, facilities or properties;
(4) Ways and time limit for applying for administrative reconsideration or lodging an administrative lawsuit; and
(5) Name and seal of the administrative organ and date.
The list of seizure or impoundment shall be made in duplicate, as respectively held by the party concerned and the administrative organ.

（三）查封、扣押场所、设施或者财物的名称、数量等；
（四）申请行政复议或者提起行政诉讼的途径和期限；
（五）行政机关的名称、印章和日期。
查封、扣押清单一式二份，由当事人和行政机关分别保存。

Article 25 The term of seizure or impoundment shall not exceed 30 days. If the situation is complicated, the term may be extended with the approval of the person in charge of the administrative organ, but the extension shall not exceed 30 days, unless it is otherwise provided for by a law or administrative regulation.
The party concerned shall be timely notified in writing of a decision on extension of the term of seizure or impoundment as well as the reasons for the extension.
If any item needs to be tested, inspected, quarantined or technically appraised, the period of seizure or impoundment shall not include the period of testing, inspection, quarantine or technical appraisal. The period of testing, inspection, quarantine or technical appraisal shall be specified and be notified to the party concerned in writing. The fees for testing, inspection, quarantine or technical appraisal shall be borne by administrative organs.

第二十五条 查封、扣押的期限不得超过三十日；情况复杂的，经行政机关负责人批准，可以延长，但是延长期限不得超过三十日。法律、行政法规另有规定的除外。
延长查封、扣押的决定应当及时书面告知当事人，并说明理由。
对物品需要进行检测、检验、检疫或者技术鉴定的，查封、扣押的期间不包括检测、检验、检疫或者技术鉴定的期间。检测、检验、检疫或者技术鉴定的期间应当明确，并书面告知当事人。检测、检验、检疫或者技术鉴定的费用由行政机关承担。

Article 26 An administrative organ shall properly keep, and shall not use or damage, the seized or impounded premises, facilities or properties; and if any loss is caused, shall bear the compensatory liability.
An administrative organ may authorize a third party to keep the seized premises, facilities or properties, and the third party shall not damage or transfer or dispose them without authorization. For any loss caused by the third party, the administrative organ shall be entitled to reimbursement by the third party after making advance compensation for the loss.
The keeping fees incurred for seizure or impoundment shall be borne by administrative organs.

第二十六条 对查封、扣押的场所、设施或者财物，行政机关应当妥善保管，不得使用或者损毁；造成损失的，应当承担赔偿责任。
对查封的场所、设施或者财物，行政机关可以委托第三人保管，第三人不得损毁或者擅自转移、处置。因第三人的原因造成的损失，行政机关先行赔付后，有权向第三人追偿。
因查封、扣押发生的保管费用由行政机关承担。

Article 27 After taking a seizure or impoundment measure, an administrative organ shall timely ascertain the facts and make a handling decision within the time limit as prescribed in Article 25 of this Law. If there are clear facts of violation of law, the administrative organ shall confiscate illegal properties as required by law; destroy those as prescribed by laws and administrative regulations; or make a decision on lifting the seizure or impoundment as it should be.

第二十七条 行政机关采取查封、扣押措施后，应当及时查清事实，在本法第二十五条规定的期限内作出处理决定。对违法事实清楚，依法应当没收的非法财物予以没收；法律、行政法规规定应当销毁的，依法销毁；应当解除查封、扣押的，作出解除查封、扣押的决定。

Article 28 Under any of the following circumstances, an administrative organ shall timely make a decision on lifting a seizure or impoundment:

第二十八条 有下列情形之一的，行政机关应当及时作出解除查封、扣押决定：

(1) The party concerned has not committed any illegal act;
(2) The seized or impounded premises, facilities or properties are irrelevant to the illegal act;
(3) The administrative organ has already made a handling decision on the illegal act, and a seizure or impoundment is no longer necessary;
(4) The term of seizure or impoundment has expired; or
(5) The measure of seizure or impoundment is otherwise no longer necessary.
Where a seizure or impoundment is lifted, the relevant properties shall be returned immediately. If the fresh goods or other perishable properties have been auctioned or sold, the proceeds from the auction or sale shall be refunded. If the selling price is obviously lower than the market price, causing any loss to the party concerned, compensation shall be made for the loss.

（一）当事人没有违法行为；
（二）查封、扣押的场所、设施或者财物与违法行为无关；
（三）行政机关对违法行为已经作出处理决定，不再需要查封、扣押；
（四）查封、扣押期限已经届满；
（五）其他不再需要采取查封、扣押措施的情形。
解除查封、扣押应当立即退还财物；已将鲜活物品或者其他不易保管的财物拍卖或者变卖的，退还拍卖或者变卖所得款项。变卖价格明显低于市场价格，给当事人造成损失的，应当给予补偿。

Section 3 Freezing

第三节 冻结

Article 29 The freezing of deposits or remittances shall be implemented by administrative organs as prescribed by law, and shall not be delegated to other administrative organs or organizations. No other administrative organs or organizations may freeze deposits or remittances.
The amount of deposits or remittances frozen shall be equivalent to the amount involved in the illegal acts. Deposits or remittances that have been frozen by any other state organ according to law shall not be frozen repeatedly.

第二十九条 冻结存款、汇款应当由法律规定的行政机关实施，不得委托给其他行政机关或者组织；其他任何行政机关或者组织不得冻结存款、汇款。
冻结存款、汇款的数额应当与违法行为涉及的金额相当；已被其他国家机关依法冻结的，不得重复冻结。

Article 30 Where an administrative organ decides to freeze deposits or remittances according to law, it shall go through the procedures in Article 18 (1), (2), (3) and (7) of this Law, and deliver a notice of freezing to the relevant financial institution.
The financial institution shall freeze the deposits or remittances immediately after receiving the notice of freezing issued by the administrative organ according to law, and shall not disclose any information to the party concerned before the freezing.
Where an administrative organ or organization other than those as prescribed by law requests a financial institution to freeze any deposit or remittance of the party concerned, the financial institution shall reject it.

第三十条 行政机关依照法律规定决定实施冻结存款、汇款的，应当履行本法第十八条第一项、第二项、第三项、第七项规定的程序，并向金融机构交付冻结通知书。
金融机构接到行政机关依法作出的冻结通知书后，应当立即予以冻结，不得拖延，不得在冻结前向当事人泄露信息。
法律规定以外的行政机关或者组织要求冻结当事人存款、汇款的，金融机构应当拒绝。

Article 31 To freeze deposits or remittances according to law, an administrative organ making the decision shall, within 3 days, deliver to the party concerned a written decision on freezing, which shall specify:
(1) Name and address of the party concerned;
(2) Reasons and basis for the freezing and the term thereof;
(3) Account number and amount frozen;
(4) Ways and time limit for applying for administrative reconsideration or lodging an administrative lawsuit; and

第三十一条 依照法律规定冻结存款、汇款的，作出决定的行政机关应当在三日内向当事人交付冻结决定书。冻结决定书应当载明下列事项：
（一）当事人的姓名或者名称、地址；
（二）冻结的理由、依据和期限；
（三）冻结的账号和数额；
（四）申请行政复议或者提起行政诉讼

(5) Name and seal of the administrative organ and date.

的途径和期限；
（五）行政机关的名称、印章和日期。

Article 32 Within 30 days from the date of freezing deposits or remittances, an administrative organ shall make a handling decision or a decision on lifting the freezing measure. If the situation is complicated, the time limit may be extended with the approval of the person in charge of the administrative organ, but the extension shall not exceed 30 days, unless it is otherwise provided for by a law.
The party concerned shall be timely notified in writing of a decision on extension of freezing as well as the reasons for the extension.

第三十二条 自冻结存款、汇款之日起三十日内，行政机关应当作出处理决定或者作出解除冻结决定；情况复杂的，经行政机关负责人批准，可以延长，但是延长期限不得超过三十日。法律另有规定的除外。
延长冻结的决定应当及时书面告知当事人，并说明理由。

Article 33 Under any of the following circumstances, an administrative organ shall timely make a decision on lifting the freezing measure:
(1) The party concerned has not committed any illegal act;
(2) The frozen deposits or remittances are irrelevant to the illegal act;
(3) The administrative organ has already made a decision on handling the illegal act, and freezing is no longer necessary;
(4) The term of freezing has expired; or
(5) The freezing measure is otherwise no longer necessary.
Where an administrative organ makes a decision on lifting the freezing measure, it shall timely notify the relevant financial institution and the party concerned. The financial institution shall lift the freezing measure immediately after receiving the notice.
Where an administrative organ fails to make a handling decision or a decision on lifting the freezing measure within the prescribed time limit, the relevant financial institution shall lift the freezing measure from the date of expiry of the term of freezing.

第三十三条 有下列情形之一的，行政机关应当及时作出解除冻结决定：
（一）当事人没有违法行为；
（二）冻结的存款、汇款与违法行为无关；
（三）行政机关对违法行为已经作出处理决定，不再需要冻结；
（四）冻结期限已经届满；
（五）其他不再需要采取冻结措施的情形。
行政机关作出解除冻结决定的，应当及时通知金融机构和当事人。金融机构接到通知后，应当立即解除冻结。
行政机关逾期未作出处理决定或者解除冻结决定的，金融机构应当自冻结期满之日起解除冻结。

Chapter IV Procedures for Enforcement by Administrative Organs

第四章 行政机关强制执行程序

Section 1 General Provisions

第一节 一般规定

Article 34 Where, after an administrative organ makes an administrative decision according to law, the party concerned fails to perform obligations within the time limit as determined by the administrative organ, the administrative organ with the administrative enforcement power shall conduct enforcement according to the provisions of this Chapter.

第三十四条 行政机关依法作出行政决定后，当事人在行政机关决定的期限内不履行义务的，具有行政强制执行权的行政机关依照本章规定强制执行。

Article 35 An administrative organ shall prompt the party concerned to perform obligations before making a decision on enforcement. The prompting shall be made in writing, and specify:
(1) The time limit for performing obligations;
(2) Manners of performance of obligations;
(3) Specific amount and payment methods if any pecuniary payment is involved; and

第三十五条 行政机关作出强制执行决定前，应当事先催告当事人履行义务。催告应当以书面形式作出，并载明下列事项：
（一）履行义务的期限；
（二）履行义务的方式；
（三）涉及金钱给付的，应当有明确的

(4) The right of the party concerned to make statements and arguments according to law.

金额和给付方式；
（四）当事人依法享有的陈述权和申辩权。

Article 36 The party concerned shall be entitled to make statements and arguments after receiving a letter of prompting. An administrative organ shall fully hear the opinions of the party concerned, and record and review the facts, reasons and evidence provided by the party concerned. If any fact, reason or evidence provided by the party concerned is tenable, the administrative organ shall adopt it.

第三十六条 当事人收到催告书后有权进行陈述和申辩。行政机关应当充分听取当事人的意见，对当事人提出的事实、理由和证据，应当进行记录、复核。当事人提出的事实、理由或者证据成立的，行政机关应当采纳。

Article 37 Where, after being prompted, the party concerned still fails to perform an administrative decision within the prescribed time limit without any justifiable reason, the administrative organ may make a decision on enforcement.
A decision on enforcement shall be made in writing, and specify:
(1) Name and address of the party concerned;
(2) Reasons and basis for enforcement;
(3) Manners and time of enforcement;
(4) Ways and time limit for applying for administrative reconsideration or lodging an administrative lawsuit; and
(5) Name and seal of the administrative organ and date.
During the period of prompting, if there is evidence on any sign of transfer or concealment of properties, the administrative organ may make a decision on immediate enforcement.

第三十七条 经催告，当事人逾期仍不履行行政决定，且无正当理由的，行政机关可以作出强制执行决定。
强制执行决定应当以书面形式作出，并载明下列事项：
（一）当事人的姓名或者名称、地址；
（二）强制执行的理由和依据；
（三）强制执行的方式和时间；
（四）申请行政复议或者提起行政诉讼的途径和期限；
（五）行政机关的名称、印章和日期。
在催告期间，对有证据证明有转移或者隐匿财物迹象的，行政机关可以作出立即强制执行决定。

Article 38 A letter of prompting or a written decision on administrative enforcement shall be directly served on the party concerned. If the party concerned refuses to accept it or it cannot be directly served on the party concerned, it shall be served according to the relevant provisions of the Civil Procedure Law of the People's Republic of China.

第三十八条 催告书、行政强制执行决定书应当直接送达当事人。当事人拒绝接收或者无法直接送达当事人的，应当依照《中华人民共和国民事诉讼法》的有关规定送达。

Article 39 Under any of the following circumstances, enforcement shall be suspended:
(1) The party concerned has real difficulty in performing, or temporarily has no ability to perform, the administrative decision;
(2) A third party claims right to the subject matter of enforcement with a justifiable reason;
(3) The enforcement may cause any irreparable loss, and a suspension of enforcement does not damage the public interests; or
(4) The administrative organ otherwise deems a suspension of enforcement necessary.
After the situation causing the suspension of enforcement disappears, the administrative organ shall resume enforcement. Where the party concerned really has no ability to perform the decision and the enforcement is not resumed 3 years after being suspended, if no obvious

第三十九条 有下列情形之一的，中止执行：
（一）当事人履行行政决定确有困难或者暂无履行能力的；
（二）第三人对执行标的主张权利，确有理由的；
（三）执行可能造成难以弥补的损失，且中止执行不损害公共利益的；
（四）行政机关认为需要中止执行的其他情形。
中止执行的情形消失后，行政机关应当恢复执行。对没有明显社会危害，当事人确无能力履行，中止执行满三年未恢复执行的，行政机关不再执行。

harm is caused to the society, the administrative organ shall no longer conduct the enforcement.

Article 40 Under any of the following circumstances, enforcement shall be terminated:
(1) A citizen dies, leaving no inheritance available for enforcement and no successor to his or her obligations;
(2) A legal person or any other organization is terminated, leaving no property available for enforcement and no successor to its obligations;
(3) The subject matter of enforcement is extinguished;
(4) The administrative decision on which the enforcement is based has been revoked; or
(5) The administrative organ otherwise deems a termination of enforcement necessary.

第四十条 有下列情形之一的，终结执行：
（一）公民死亡，无遗产可供执行，又无义务承受人的；
（二）法人或者其他组织终止，无财产可供执行，又无义务承受人的；
（三）执行标的灭失的；
（四）据以执行的行政决定被撤销的；
（五）行政机关认为需要终结执行的其他情形。

Article 41 Where, in the process of enforcement or after completion of enforcement, the administrative decision on which the enforcement is based has been cancelled or modified or the enforcement is found to be wrong, restoration shall be made or properties shall be returned; and if restoration or return of properties is not possible, compensation shall be made according to law.

第四十一条 在执行中或者执行完毕后，据以执行的行政决定被撤销、变更，或者执行错误的，应当恢复原状或者退还财物；不能恢复原状或者退还财物的，依法给予赔偿。

Article 42 In conducting administrative enforcement, an administrative organ may reach an enforcement agreement with the party considered, provided that no harm is caused to the public interests and the legitimate rights and interests of others. The enforcement agreement may be performed by stages; and if the party considered has taken remedial measures, the imposed fine or late fee may be reduced or waived.
An enforcement agreement shall be performed. If the party concerned fails to perform the enforcement agreement, the administrative organ shall resume enforcement.

第四十二条 实施行政强制执行，行政机关可以在不损害公共利益和他人合法权益的情况下，与当事人达成执行协议。执行协议可以约定分阶段履行；当事人采取补救措施的，可以减免加处的罚款或者滞纳金。
执行协议应当履行。当事人不履行执行协议的，行政机关应当恢复强制执行。

Article 43 Administrative organs shall not conduct administrative enforcement at night or on a statutory public holiday, except for emergency.
Administrative organs shall not force the parties concerned to perform the relevant administrative decisions by such means as cutting off the supply of water, electricity, heating or gas for the living of residents.

第四十三条 行政机关不得在夜间或者法定节假日实施行政强制执行。但是，情况紧急的除外。
行政机关不得对居民生活采取停止供水、供电、供热、供燃气等方式迫使当事人履行相关行政决定。

Article 44 For an illegal building, structure or facility, among others, which needs to be dismantled by force, an administrative organ shall make an announcement to set a time limit for the party concerned to dismantle it. If the party concerned fails to apply for administrative reconsideration or lodge an administrative lawsuit within the statutory time limit, and does not dismantle it, the administrative organ may forcibly dismantle it according to law.

第四十四条 对违法的建筑物、构筑物、设施等需要强制拆除的，应当由行政机关予以公告，限期当事人自行拆除。当事人在法定期限内不申请行政复议或者提起行政诉讼，又不拆除的，行政机关可以依法强制拆除。

Section 2 Enforcement of Pecuniary Payment Obligations

第二节 金钱给付义务的执行

Article 45 Where an administrative organ makes an administrative decision on an obligation of pecuniary payment according to law, and the party concerned fails to perform it within the prescribed time limit, the administrative organ may impose a fine or late fee according to law. The party concerned shall be notified of the standards for the imposed fine or late fee.
The amount of the imposed fine or late fee shall not exceed the amount of the pecuniary payment obligation.

第四十五条 行政机关依法作出金钱给付义务的行政决定，当事人逾期不履行的，行政机关可以依法加处罚款或者滞纳金。加处罚款或者滞纳金的标准应当告知当事人。
加处罚款或者滞纳金的数额不得超出金钱给付义务的数额。

Article 46 Where, 30 days after an administrative organ imposes a fine or late fee according to the provisions of Article 45 of this Law, the party concerned still fails to perform the relevant decision after being prompted, the administrative organ with the administrative enforcement power may conduct enforcement.
If, before conducting enforcement, the administrative organ needs to take the measure of seizure, impoundment or freezing, it shall be governed by the provisions of Chapter III of this Law.
An administrative organ without the administrative enforcement power shall apply to the people's court for enforcement. However, if the party concerned fails to apply for administrative reconsideration or lodge an administrative lawsuit within the statutory time limit, and still does not perform the relevant decision after being prompted, the administrative organ which has taken the measure of seizure or impoundment in the process of administration may auction the seized or impounded properties according to law for offsetting the fine.

第四十六条 行政机关依照本法第四十五条规定实施加处罚款或者滞纳金超过三十日，经催告当事人仍不履行的，具有行政强制执行权的行政机关可以强制执行。
行政机关实施强制执行前，需要采取查封、扣押、冻结措施的，依照本法第三章规定办理。
没有行政强制执行权的行政机关应当申请人民法院强制执行。但是，当事人在法定期限内不申请行政复议或者提起行政诉讼，经催告仍不履行的，在实施行政管理过程中已经采取查封、扣押措施的行政机关，可以将查封、扣押的财物依法拍卖抵缴罚款。

Article 47 The transfer of deposits or remittances shall be decided by administrative organs as prescribed by law, and the related financial institutions shall be notified in writing. A financial institution shall transfer the deposits or remittances immediately after receiving a decision on transfer of deposits or remittances made by an administrative organ according to law.
Where any administrative organ or organization other than those as prescribed by law requests a transfer of deposits or remittances of the party concerned, the relevant financial institution shall reject it.

第四十七条 划拨存款、汇款应当由法律规定的行政机关决定，并书面通知金融机构。金融机构接到行政机关依法作出划拨存款、汇款的决定后，应当立即划拨。
法律规定以外的行政机关或者组织要求划拨当事人存款、汇款的，金融机构应当拒绝。

Article 48 For properties that need to be auctioned according to law, an administrative organ shall authorize an auction institution to auction such properties according to the Auction Law of the People's Republic of China.

第四十八条 依法拍卖财物，由行政机关委托拍卖机构依照《中华人民共和国拍卖法》的规定办理。

Article 49 The transferred deposits or remittances and the proceeds from auction or legal disposition shall be turned over to the state treasury or transferred into the designated financial accounts. No administrative

第四十九条 划拨的存款、汇款以及拍卖和依法处理所得的款项应当上缴国库或者划入财政专户。任何行政机关或者个

organ or individual may withhold them in any way, privately divide them, or privately divide them in disguise.

人不得以任何形式截留、私分或者变相私分。

Section 3 Performance on Behalf of the Party Concerned

第三节 代履行

Article 50 Where an administrative organ makes an administrative decision to require the party concerned to perform an obligation such as removal of obstruction or restitution, if the party concerned fails to perform it within the prescribed time limit, still fails to do so after being prompted and the consequences of it have endangered or will endanger the traffic safety, have caused or will cause environmental pollution or have damaged or will damage natural resources, the administrative organ may perform the obligation on behalf of the party concerned or authorize a third party which is not a party of interest to perform the obligation on behalf of the party concerned.

第五十条 行政机关依法作出要求当事人履行排除妨碍、恢复原状等义务的行政决定，当事人逾期不履行，经催告仍不履行，其后果已经或者将危害交通安全、造成环境污染或者破坏自然资源的，行政机关可以代履行，或者委托没有利害关系的第三人代履行。

Article 51 In the performance on behalf of the party concerned, the following provisions shall be complied with:
(1) A written decision shall be served before performance on behalf of the party concerned, which shall state the name and address of the party concerned, the reasons and basis for, the manner and time of, and the subject matter and expense budget of the performance on behalf of the party, and the party which performs on behalf of the party concerned.
(2) The party concerned shall be prompted to perform 3 days before performance on behalf of the party concerned, and if the party concerned performs, performance on behalf of the party concerned shall cease.
(3) During performance on behalf of the party concerned, the administrative organ making the relevant decision shall send personnel to conduct supervision on the spot.
(4) After the completion of performance on behalf of the party concerned, the personnel of the administrative organ conducting supervision on the spot, the party which performs on behalf of the party concerned and the party concerned or witnesses shall affix their signatures or seals to the enforcement documents.
The fees for performance on behalf of the party concerned shall be reasonably determined on the basis of cost, and be borne by the party concerned, unless it is otherwise provided for by law.
Performance on behalf of the party concerned shall not be conducted by violence, compulsion or any other illegal means.

第五十一条 代履行应当遵守下列规定：
（一）代履行前送达决定书，代履行决定书应当载明当事人的姓名或者名称、地址，代履行的理由和依据、方式和时间、标的、费用预算以及代履行人；
（二）代履行三日前，催告当事人履行，当事人履行的，停止代履行；
（三）代履行时，作出决定的行政机关应当派员到场监督；
（四）代履行完毕，行政机关到场监督的工作人员、代履行人和当事人或者见证人应当在执行文书上签名或者盖章。
代履行的费用按照成本合理确定，由当事人承担。但是，法律另有规定的除外。
代履行不得采用暴力、胁迫以及其他非法方式。

Article 52 Where it is necessary to immediately remove the objects littered, obstructions or pollutants on a road or in a watercourse, navigation route or public place, and the party concerned is unable to do so, the relevant administrative organ may decide to immediately initiate performance on behalf of the party concerned. If the party concerned is not on the spot, the administrative organ shall notify the party concerned

第五十二条 需要立即清除道路、河道、航道或者公共场所的遗洒物、障碍物或者污染物，当事人不能清除的，行政机关可以决定立即实施代履行；当事人不在场的，行政机关应当在事后立即通知当事人，并依法作出处理。

immediately after the performance, and handle it according to law.

Chapter V Application to the People's Court for Enforcement

第五章 申请人民法院强制执行

Article 53 If the party concerned fails to apply for administrative reconsideration or lodge an administrative lawsuit within the statutory time limit, and does not perform an administrative decision, the relevant administrative organ without the administrative enforcement power may, within 3 months after the expiry of the time limit, apply to the people's court for enforcement according to the provisions of this Chapter.

第五十三条 当事人在法定期限内不申请行政复议或者提起行政诉讼，又不履行行政决定的，没有行政强制执行权的行政机关可以自期限届满之日起三个月内，依照本章规定申请人民法院强制执行。

Article 54 An administrative organ shall, before applying to the people's court for enforcement, prompt the party concerned to perform obligations. If the party concerned still fails to perform obligations 10 days after the letter of prompting is served, the administrative organ may apply for enforcement to the local people's court having jurisdiction. If the object of enforcement is immovable, the administrative organ shall apply for enforcement to the people's court having jurisdiction at the place where the immovable property is located.

第五十四条 行政机关申请人民法院强制执行前，应当催告当事人履行义务。催告书送达十日后当事人仍未履行义务的，行政机关可以向所在地有管辖权的人民法院申请强制执行；执行对象是不动产的，向不动产所在地有管辖权的人民法院申请强制执行。

Article 55 An administrative organ which applies to the people's court for enforcement shall provide the following materials:
(1) A written application for enforcement;
(2) A written administrative decision, and the facts, reasons and basis for making the decision;
(3) Opinions of the party concerned and information on prompting by the administrative organ;
(4) Information on the subject matter of enforcement upon application; and
(5) Other materials as prescribed by laws and administrative regulations.
The written application for enforcement shall be signed by the person in charge of the administrative organ, bear the seal of the administrative organ, and be dated.

第五十五条 行政机关向人民法院申请强制执行，应当提供下列材料：
（一）强制执行申请书；
（二）行政决定书及作出决定的事实、理由和依据；
（三）当事人的意见及行政机关催告情况；
（四）申请强制执行标的情况；
（五）法律、行政法规规定的其他材料。
强制执行申请书应当由行政机关负责人签名，加盖行政机关的印章，并注明日期。

Article 56 The people's court shall accept an application of an administrative organ for enforcement within 5 days after receiving it.
If the administrative organ raises any objection to the ruling of the people's court on rejecting its application for enforcement, it may apply to the people's court at the next higher level for reconsideration within 15 days, and the latter shall, within 15 days after receiving the application for reconsideration, make a ruling on whether to accept the application for enforcement.

第五十六条 人民法院接到行政机关强制执行的申请，应当在五日内受理。
行政机关对人民法院不予受理的裁定有异议的，可以在十五日内向上一级人民法院申请复议，上一级人民法院应当自收到复议申请之日起十五日内作出是否受理的裁定。

Article 57 The people's court shall conduct documentary examination of the application of an administrative organ for enforcement, and if the application meets the provisions of Article 55 of this Law and the

第五十七条 人民法院对行政机关强制执行的申请进行书面审查，对符合本法第五十五条规定，且行政决定具备法定执

administrative decision has the statutory enforceability, the people's court shall make a ruling on enforcement within 7 days after acceptance, except under the circumstances as prescribed in Article 58 of this Law.

行效力的，除本法第五十八条规定的情形外，人民法院应当自受理之日起七日内作出执行裁定。

Article 58 If the people's court finds any of the following circumstances, it may hear the opinions of the party against whom enforcement is sought and the administrative organ before making a ruling.
(1) Apparent lack of basis in fact;
(2) Apparent lack of basis in law or regulation; or
(3) Other obvious violation of law, damaging the legitimate rights and interests of the party against whom enforcement is sought.
The people's court shall, within 30 days after acceptance, make a ruling on whether to conduct enforcement. If it rules against enforcement, it shall give reasons for such a ruling, and serve the non-enforcement ruling on the administrative organ within 5 days.
If the administrative organ raises any objection to the ruling of the people's court on non-enforcement, it may, within 15 days after receiving the ruling, apply to the people's court at the next higher level for reconsideration, and the latter shall, within 30 days after receiving the application for reconsideration, make a ruling on whether to conduct enforcement.

第五十八条 人民法院发现有下列情形之一的，在作出裁定前可以听取被执行人和行政机关的意见：
（一）明显缺乏事实根据的；
（二）明显缺乏法律、法规依据的；
（三）其他明显违法并损害被执行人合法权益的。
人民法院应当自受理之日起三十日内作出是否执行的裁定。裁定不予执行的，应当说明理由，并在五日内将不予执行的裁定送达行政机关。
行政机关对人民法院不予执行的裁定有异议的，可以自收到裁定之日起十五日内向上一级人民法院申请复议，上一级人民法院应当自收到复议申请之日起三十日内作出是否执行的裁定。

Article 59 In case of emergency, to guarantee public security, an administrative organ may apply to the people's court for immediate enforcement. The people' court shall, with the approval of the president of the people's court, conduct enforcement within 5 days from the date on which the enforcement ruling is made.

第五十九条 因情况紧急，为保障公共安全，行政机关可以申请人民法院立即执行。经人民法院院长批准，人民法院应当自作出执行裁定之日起五日内执行。

Article 60 An administrative organ applying to the people's court for enforcement need not pay any application fee. The enforcement fees shall be borne by the party against whom enforcement is sought.
Where the people's court conducts enforcement by transfer or auction, it may deduct the enforcement fees after transfer or auction.
For properties that shall be auctioned according to law, the people's court shall authorize an auction institution to auction such properties according to the provisions of the Auction Law of the People's Republic of China.
The transferred deposits or remittances or the proceeds from auction or legal disposition shall be turned over to the state treasury or transferred into the designated financial accounts, and shall not be withheld in any form, privately divided, or privately divided in disguise.

第六十条 行政机关申请人民法院强制执行，不缴纳申请费。强制执行的费用由被执行人承担。
人民法院以划拨、拍卖方式强制执行的，可以在划拨、拍卖后将强制执行的费用扣除。
依法拍卖财物，由人民法院委托拍卖机构依照《中华人民共和国拍卖法》的规定办理。
划拨的存款、汇款以及拍卖和依法处理所得的款项应当上缴国库或者划入财政专户，不得以任何形式截留、私分或者变相私分。

Chapter VI Legal Liability

第六章 法律责任

Article 61 Where an administrative organ implementing administrative compulsion falls under any of the following circumstances,

第六十一条 行政机关实施行政强制，有下列情形之一的，由上级行政机关或者

the administrative organ at the higher level or the relevant department shall order it to make correction, and the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law:
(1) Implementing administrative compulsion without any basis in law or regulation;
(2) Altering the object, conditions and manner of administrative compulsion;
(3) Implementing administrative compulsion in violation of statutory procedures;
(4) Implementing administrative enforcement at night or on a statutory holiday in violation of this Law;
(5) Forcing the party concerned to perform the relevant administrative decision by such means as cutting off the supply of water, electricity, heating and gas for the living of residents; or
(6) Otherwise implementing administrative compulsion in violation of law.

有关部门责令改正，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：
（一）没有法律、法规依据的；
（二）改变行政强制对象、条件、方式的；
（三）违反法定程序实施行政强制的；
（四）违反本法规定，在夜间或者法定节假日实施行政强制执行的；
（五）对居民生活采取停止供水、供电、供热、供燃气等方式迫使当事人履行相关行政决定的；
（六）有其他违法实施行政强制情形的。

Article 62 Where an administrative organ falls under any of the following circumstances in violation of this Law, the administrative organ at the higher level or the relevant department shall order it to make correction, and the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law:
(1) Expanding the extent of seizure, impoundment or freezing;
(2) Using or damaging the premises, facilities or properties seized or impounded;
(3) Failing to make a handling decision within the statutory term of seizure or impoundment or failing to timely lift seizure or impoundment according to law; or
(4) Failing to make a handling decision within the statutory term of the freezing of deposits or remittances or failing to timely lift the freezing according to law.

第六十二条 违反本法规定，行政机关有下列情形之一的，由上级行政机关或者有关部门责令改正，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：
（一）扩大查封、扣押、冻结范围的；
（二）使用或者损毁查封、扣押场所、设施或者财物的；
（三）在查封、扣押法定期间不作出处理决定或者未依法及时解除查封、扣押的；
（四）在冻结存款、汇款法定期间不作出处理决定或者未依法及时解除冻结的。

Article 63 Where an administrative organ withholds, privately divides, or privately divides in disguise the properties seized or impounded, the deposits or remittances transferred, or the proceeds from auction or legal disposition, the public finance department or the relevant department shall recover them; and the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law, including major demerit, demotion, removal or dismissal.
If any staff member of an administrative organ takes advantage of his/her position to appropriate the seized or impounded premises, facilities or properties, the administrative organ at the higher level or the relevant department shall order him/her to make correction, and subject him/her to disciplinary actions according to law, including major demerit, demotion, removal or dismissal.

第六十三条 行政机关将查封、扣押的财物或者划拨的存款、汇款以及拍卖和依法处理所得的款项，截留、私分或者变相私分的，由财政部门或者有关部门予以追缴；对直接负责的主管人员和其他直接责任人员依法给予记大过、降级、撤职或者开除的处分。
行政机关工作人员利用职务上的便利，将查封、扣押的场所、设施或者财物据为己有的，由上级行政机关或者有关部门责令改正，依法给予记大过、降级、撤职或者开除的处分。

Article 64 Where an administrative organ or any of its staff members seeks any benefit for any entity or individual by taking advantage of the administrative compulsory power, the administrative organ at the higher level and the relevant department shall order it or him/her to make correction, and the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law.

第六十四条 行政机关及其工作人员利用行政强制权为单位或者个人谋取利益的，由上级行政机关或者有关部门责令改正，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。

Article 65 Where a financial institution commits any of the following acts in violation of this Law, the financial regulatory institution shall order it to make correction, and the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law:
(1) Leaking information to the party concerned before freezing;
(2) Failing to freeze or transfer the deposits or remittances that shall be immediately frozen or transferred, which results in the displacement of the deposits or remittances;
(3) Freezing or transferring the deposits or remittances that shall not be frozen or transferred; or
(4) Failing to timely lift the freezing of deposits or remittances.

第六十五条 违反本法规定，金融机构有下列行为之一的，由金融业监督管理机构责令改正，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：
（一）在冻结前向当事人泄露信息的；
（二）对应当立即冻结、划拨的存款、汇款不冻结或者不划拨，致使存款、汇款转移的；
（三）将不应当冻结、划拨的存款、汇款予以冻结或者划拨的；
（四）未及时解除冻结存款、汇款的。

Article 66 Where a financial institution transfers funds into any account other than the state treasury or designated financial accounts in violation of this Law, the financial regulatory institution shall order it to make correction, and impose a fine twice the amount of funds illegally transferred. The directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law.
Where an administrative organ or people's court instructs a financial institution to transfer funds into any account other than the state treasury or designated financial accounts in violation of this Law, the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law.

第六十六条 违反本法规定，金融机构将款项划入国库或者财政专户以外的其他账户的，由金融业监督管理机构责令改正，并处以违法划拨款项二倍的罚款；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。
违反本法规定，行政机关、人民法院指令金融机构将款项划入国库或者财政专户以外的其他账户的，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。

Article 67 Where a people's court or any of its staff members commits any illegal act or expands the extent of enforcement during enforcement, the directly liable person in charge and other directly liable persons shall be subject to disciplinary actions according to law.

第六十七条 人民法院及其工作人员在强制执行中有违法行为或者扩大强制执行范围的，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。

Article 68 Whoever violates this Law, causing any loss to any citizen, legal person or other organization, shall make compensation for the loss according to law.
Whoever violates this Law shall be subject to criminal liability if the violation constitutes a crime.

第六十八条 违反本法规定，给公民、法人或者其他组织造成损失的，依法给予赔偿。
违反本法规定，构成犯罪的，依法追究刑事责任。

Chapter VII Supplementary Provisions

第七章 附则

Article 69 A time limit of not more than 10 days as mentioned in this Law refers to work days, excluding statutory public holidays.

第六十九条 本法中十日以内期限的规定是指工作日，不含法定节假日。

Article 70 Where an organization with the function of administering public affairs as authorized by a law or administrative regulation conducts administrative compulsion in its own name within the statutory authority, the relevant provisions on administrative organs in this Law shall apply.

第七十条 法律、行政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强制，适用本法有关行政机关的规定。

Article 71 This Law shall come into force on January 1, 2012.

第七十一条 本法自 2012 年 1 月 1 日起施行。

中华人民共和国公司法（2013 修订）

发文机关： 全国人民代表大会常务委员会

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中华人民共和国公司法（2013 修订）

（1993 年 12 月 29 日第八届全国人民代表大会常务委员会第五次会议通过 根据 1999 年 12 月 25 日第九届全国人民代表大会常务委员会第十三次会议《关于修改〈中华人民共和国公司法〉的决定》第一次修正 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〈中华人民共和国公司法〉的决定》第二次修正 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 根据 2013 年 12 月 28 日第十二届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国海洋环境保护法〉等七部法律的决定》第三次修正）

第一章 总则

第一条 为了规范公司的组织和行为，保护公司、股东和债权人的合法权益，维护社会经济秩序，促进社会主义市场经济的发展，制定本法。

第二条 本法所称公司是指依照本法在中国境内设立的有限责任公司和股份有限公司。

第三条 公司是企业法人，有独立的法人财产，享有法人财产权。公司以其全部财产对公司的债务承担责任。

有限责任公司的股东以其认缴的出资额为限对公司承担责任；股份有限公司的股东以其认购的股份为限对公司承担责任。

第四条 公司股东依法享有资产收益、参与重大决策和选择管理者等权利。

第五条 公司从事经营活动，必须遵守法律、行政法规，遵守社会公德、商业道德，诚实守信，接受政府和社会公众的监督，承担社会责任。

公司的合法权益受法律保护，不受侵犯。

第六条 设立公司，应当依法向公司登记机关申请设立登记。符合本法规定的设立条 件的，由公司登记机关分别登记为有限责任公司或者股份有限公司；不符合本法规定的设立条 件的，不得登记为有限责任公司或者股份有限公司。

法律、行政法规规定设立公司必须报经批准的，应当在公司登记前依法办理批准手续。

公众可以向公司登记机关申请查询公司登记事项，公司登记机关应当提供查询服务。

第七条 依法设立的公司，由公司登记机关发给公司营业执照。公司营业执照签发日期为公司成立日期。

公司营业执照应当载明公司的名称、住所、注册资本、经营范围、法定代表人姓名等事项。

公司营业执照记载的事项发生变更的，公司应当依法办理变更登记，由公司登记机关换发营业执照。

第八条 依照本法设立的有限责任公司，必须在公司名称中标明有限责任公司或者有限公司字样。

依照本法设立的股份有限公司，必须在公司名称中标明股份有限公司或者股份公司字样。

第九条 有限责任公司变更为股份有限公司，应当符合本法规定的股份有限公司的条 件。股份有限公司变更为有限责任公司，应当符合本法规定的有限责任公司的条 件。

有限责任公司变更为股份有限公司的，或者股份有限公司变更为有限责任公司的，公司变更前的债权、债务由变更后的公司承继。

第十条 公司以其主要办事机构所在地为住所。

第十一条 设立公司必须依法制定公司章程。公司章程对公司、股东、董事、监事、高级管理人员具有约束力。

第十二条 公司的经营范围由公司章程规定，并依法登记。公司可以修改公司章程，改变经营范围，但是应当办理变更登记。

公司的经营范围中属于法律、行政法规规定须经批准的项目，应当依法经过批准。

第十三条 公司法定代表人依照公司章程的规定，由董事长、执行董事或者经理担任，并依法登记。公司法定代表人变更，应当办理变更登记。

第十四条 公司可以设立分公司。设立分公司，应当向公司登记机关申请登记，领取营业执照。分公司不具有法人资格，其民事责任由公司承担。

公司可以设立子公司，子公司具有法人资格，依法独立承担民事责任。

第十五条 公司可以向其他企业投资；但是，除法律另有规定外，不得成为对所投资企业的债务承担连带责任的出资人。

第十六条 公司向其他企业投资或者为他人提供担保，依照公司章程的规定，由董事会或者股东会、股东大会决议；公司章程对投资或者担保的总额及单项投资或者担保的数额有限额规定的，不得超过规定的限额。

公司为公司股东或者实际控制人提供担保的，必须经股东会或者股东大会决议。

前款规定的股东或者受前款规定的实际控制人支配的股东，不得参加前款规定事项的表决。该项表决由出席会议的其他股东所持表决权的过半数通过。

第十七条 公司必须保护职工的合法权益，依法与职工签订劳动合同，参加社会保险，加强劳动保护，实现安全生产。

公司应当采用多种形式，加强公司职工的职业教育和岗位培训，提高职工素质。

第十八条 公司职工依照《中华人民共和国工会法》组织工会，开展工会活动，维护职工合法权益。公司应当为本公司工会提供必要的活动条 件。公司工会代表职工就职工的劳动报酬、工作时间、福利、保险和劳动安全卫生等事项依法与公司签订集体合同。

公司依照宪法和有关法律的规定，通过职工代表大会或者其他形式，实行民主管理。

公司研究决定改制以及经营方面的重大问题、制定重要的规章制度时，应当听取公司工会的意见，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。

第十九条 在公司中，根据中国共产党章程的规定，设立中国共产党的组织，开展党的活动。公司应当为党组织的活动提供必要条 件。

第二十条 公司股东应当遵守法律、行政法规和公司章程，依法行使股东权利，不得滥用股东权利损害公司或者其他股东的利益；不得滥用公司法人独立地位和股东有限责任损害公司债权人的利益。

公司股东滥用股东权利给公司或者其他股东造成损失的，应当依法承担赔偿责任。

公司股东滥用公司法人独立地位和股东有限责任，逃避债务，严重损害公司债权人利益的，应当对公司债务承担连带责任。

第二十一条 公司的控股股东、实际控制人、董事、监事、高级管理人员不得利用其关联关系损害公司利益。

违反前款规定，给公司造成损失的，应当承担赔偿责任。

第二十二条 公司股东会或者股东大会、董事会的决议内容违反法律、行政法规的无效。

股东会或者股东大会、董事会的会议召集程序、表决方式违反法律、行政法规或者公司章程，或者决议内容违反公司章程的，股东可以自决议作出之日起六十日内，请求人民法院撤销。

股东依照前款规定提起诉讼的，人民法院可以应公司的请求，要求股东提供相应担保。

公司根据股东会或者股东大会、董事会决议已办理变更登记的，人民法院宣告该决议无效或者撤销该决议后，公司应当向公司登记机关申请撤销变更登记。

第二章 有限责任公司的设立和组织机构

第一节 设立

第二十三条 设立有限责任公司，应当具备下列条 件：

(一)股东符合法定人数；

(二)有符合公司章程规定的全体股东认缴的出资额；

(三)股东共同制定公司章程；

(四)有公司名称，建立符合有限责任公司要求的组织机构；

(五)有公司住所。

第二十四条 有限责任公司由五十个以下股东出资设立。

第二十五条 有限责任公司章程应当载明下列事项：

(一)公司名称和住所；

(二)公司经营范围；

(三)公司注册资本；

(四)股东的姓名或者名称；

(五)股东的出资方式、出资额和出资时间；

(六)公司的机构及其产生办法、职权、议事规则；

(七)公司法定代表人；

(八)股东会会议认为需要规定的其他事项。

股东应当在公司章程上签名、盖章。

第二十六条 有限责任公司的注册资本为在公司登记机关登记的全体股东认缴的出资额。

法律、行政法规以及国务院决定对有限责任公司注册资本实缴、注册资本最低限额另有规定的，从其规定。

第二十七条 股东可以用货币出资，也可以用实物、知识产权、土地使用权等可以用货币估价并可以依法转让的非货币财产作价出资；但是，法律、行政法规规定不得作为出资的财产除外。

对作为出资的非货币财产应当评估作价，核实财产，不得高估或者低估作价。法律、行政法规对评估作价有规定的，从其规定。

第二十八条 股东应当按期足额缴纳公司章程中规定的各自所认缴的出资额。股东以货币出资的，应当将货币出资足额存入有限责任公司在银行开设的账户；以非货币财产出资的，应当依法办理其财产权的转移手续。

股东不按照前款规定缴纳出资的，除应当向公司足额缴纳外，还应当向已按期足额缴纳出资的股东承担违约责任。

第二十九条 股东认足公司章程规定的出资后，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报送公司登记申请书、公司章程等文件，申请设立登记。

第三十条 有限责任公司成立后，发现作为设立公司出资的非货币财产的实际价额显著低于公司章程所定价额的，应当由交付该出资的股东补足其差额；公司设立时的其他股东承担连带责任。

第三十一条 有限责任公司成立后，应当向股东签发出资证明书。

出资证明书应当载明下列事项：

(一)公司名称；

(二)公司成立日期；

(三)公司注册资本；

(四)股东的姓名或者名称、缴纳的出资额和出资日期；

(五)出资证明书的编号和核发日期。

出资证明书由公司盖章。

第三十二条 有限责任公司应当置备股东名册，记载下列事项：

(一)股东的姓名或者名称及住所；

(二)股东的出资额；

(三)出资证明书编号。

记载于股东名册的股东，可以依股东名册主张行使股东权利。

公司应当将股东的姓名或者名称向公司登记机关登记；登记事项发生变更的，应当办理变更登记。未经登记或者变更登记的，不得对抗第三人。

第三十三条 股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。

股东可以要求查阅公司会计账簿。股东要求查阅公司会计账簿的，应当向公司提出书面请求，说明目的。公司有合理根据认为股东查阅会计账簿有不正当目的，可能损害公司合法利益的，可以拒绝提供查阅，并应当自股东提出书面请求之日起十五日内书面答复股东并说明理由。公司拒绝提供查阅的，股东可以请求人民法院要求公司提供查阅。

第三十四条 股东按照实缴的出资比例分取红利；公司新增资本时，股东有权优先按照实缴的出资比例认缴出资。但是，全体股东约定不按照出资比例分取红利或者不按照出资比例优先认缴出资的除外。

第三十五条 公司成立后，股东不得抽逃出资。

第二节 组织机构

第三十六条 有限责任公司股东会由全体股东组成。股东会是公司的权力机构，依照本法行使职权。

第三十七条 股东会行使下列职权：

(一)决定公司的经营方针和投资计划；

(二)选举和更换非由职工代表担任的董事、监事，决定有关董事、监事的报酬事项；

(三)审议批准董事会的报告；

(四)审议批准监事会或者监事的报告；

(五)审议批准公司的年度财务预算方案、决算方案；

(六)审议批准公司的利润分配方案和弥补亏损方案；

(七)对公司增加或者减少注册资本作出决议；

(八)对发行公司债券作出决议；

(九)对公司合并、分立、解散、清算或者变更公司形式作出决议；

(十)修改公司章程；

(十一)公司章程规定的其他职权。

对前款所列事项股东以书面形式一致表示同意的，可以不召开股东会会议，直接作出决定，并由全体股东在决定文件上签名、盖章。

第三十八条 首次股东会会议由出资最多的股东召集和主持，依照本法规定行使职权。

第三十九条 股东会会议分为定期会议和临时会议。

定期会议应当依照公司章程的规定按时召开。代表十分之一以上表决权的股东，三分之一以上的董事，监事会或者不设监事会的公司的监事提议召开临时会议的，应当召开临时会议。

第四十条 有限责任公司设立董事会的，股东会会议由董事会召集，董事长主持；董事长不能履行职务或者不履行职务的，由副董事长主持；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事主持。

有限责任公司不设董事会的，股东会会议由执行董事召集和主持。

董事会或者执行董事不能履行或者不履行召集股东会会议职责的，由监事会或者不设监事会的公司的监事召集和主持；监事会或者监事不召集和主持的，代表十分之一以上表决权的股东可以自行召集和主持。

第四十一条 召开股东会会议，应当于会议召开十五日前通知全体股东；但是，公司章程另有规定或者全体股东另有约定的除外。

股东会应当对所议事项的决定作成会议记录，出席会议的股东应当在会议记录上签名。

第四十二条 股东会会议由股东按照出资比例行使表决权；但是，公司章程另有规定的除外。

第四十三条 股东会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

股东会会议作出修改公司章程、增加或者减少注册资本的决议，以及公司合并、分立、解散或者变更公司形式的决议，必须经代表三分之二以上表决权的股东通过。

第四十四条 有限责任公司设董事会，其成员为三人至十三人；但是，本法第五十条 另有规定的除外。

两个以上的国有企业或者两个以上的其他国有投资主体投资设立的有限责任公司，其董事会成员中应当有公司职工代表；其他有限责任公司董事会成员中可以有公司职工代表。董事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

董事会设董事长一人，可以设副董事长。董事长、副董事长的产生办法由公司章程规定。

第四十五条 董事任期由公司章程规定，但每届任期不得超过三年。董事任期届满，连选可以连任。

董事任期届满未及时改选，或者董事在任期内辞职导致董事会成员低于法定人数的，在改选出的董事就任前，原董事仍应当依照法律、行政法规和公司章程的规定，履行董事职务。

第四十六条 董事会对股东会负责，行使下列职权：

(一)召集股东会会议，并向股东会报告工作；

(二)执行股东会的决议；

(三)决定公司的经营计划和投资方案；

(四)制订公司的年度财务预算方案、决算方案；

(五)制订公司的利润分配方案和弥补亏损方案；

(六)制订公司增加或者减少注册资本以及发行公司债券的方案；

(七)制订公司合并、分立、解散或者变更公司形式的方案；

(八)决定公司内部管理机构的设置；

(九)决定聘任或者解聘公司经理及其报酬事项，并根据经理的提名决定聘任或者解聘公司副经理、财务负责人及其报酬事项；

(十)制定公司的基本管理制度；

(十一)公司章程规定的其他职权。

第四十七条 董事会会议由董事长召集和主持；董事长不能履行职务或者不履行职务的，由副董事长召集和主持；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事召集和主持。

第四十八条 董事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

董事会应当对所议事项的决定作成会议记录，出席会议的董事应当在会议记录上签名。

董事会决议的表决，实行一人一票。

第四十九条 有限责任公司可以设经理，由董事会决定聘任或者解聘。经理对董事会负责，行使下列职权：

(一)主持公司的生产经营管理工作，组织实施董事会决议；

(二)组织实施公司年度经营计划和投资方案；

(三)拟订公司内部管理机构设置方案；

(四)拟订公司的基本管理制度；

(五)制定公司的具体规章；

(六)提请聘任或者解聘公司副经理、财务负责人；

(七)决定聘任或者解聘除应由董事会决定聘任或者解聘以外的负责管理人员；

(八)董事会授予的其他职权。

公司章程对经理职权另有规定的，从其规定。

经理列席董事会会议。

第五十条 股东人数较少或者规模较小的有限责任公司，可以设一名执行董事，不设董事会。执行董事可以兼任公司经理。

执行董事的职权由公司章程规定。

第五十一条 有限责任公司设监事会，其成员不得少于三人。股东人数较少或者规模较小的有限责任公司，可以设一至二名监事，不设监事会。

监事会应当包括股东代表和适当比例的公司职工代表，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。监事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

监事会设主席一人，由全体监事过半数选举产生。监事会主席召集和主持监事会会议；监事会主席不能履行职务或者不履行职务的，由半数以上监事共同推举一名监事召集和主持监事会会议。

董事、高级管理人员不得兼任监事。

第五十二条 监事的任期每届为三年。监事任期届满，连选可以连任。

监事任期届满未及时改选，或者监事在任期内辞职导致监事会成员低于法定人数的，在改选出的监事就任前，原监事仍应当依照法律、行政法规和公司章程的规定，履行监事职务。

第五十三条 监事会、不设监事会的公司的监事行使下列职权：

(一)检查公司财务；

(二)对董事、高级管理人员执行公司职务的行为进行监督，对违反法律、行政法规、公司章程或者股东会决议的董事、高级管理人员提出罢免的建议；

(三)当董事、高级管理人员的行为损害公司的利益时，要求董事、高级管理人员予以纠正；

(四)提议召开临时股东会会议，在董事会不履行本法规定的召集和主持股东会会议职责时召集和主持股东会会议；

(五)向股东会会议提出提案；

(六)依照本法第一百五十一条 的规定，对董事、高级管理人员提起诉讼；

(七)公司章程规定的其他职权。

第五十四条 监事可以列席董事会会议，并对董事会决议事项提出质询或者建议。

监事会、不设监事会的公司的监事发现公司经营情况异常，可以进行调查；必要时，可以聘请会计师事务所等协助其工作，费用由公司承担。

第五十五条 监事会每年度至少召开一次会议，监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章 程规定。

监事会决议应当经半数以上监事通过。

监事会应当对所议事项的决定作成会议记录，出席会议的监事应当在会议记录上签名。

第五十六条 监事会、不设监事会的公司的监事行使职权所必需的费用，由公司承担。

第三节一人有限责任公司的特别规定

第五十七条 一人有限责任公司的设立和组织机构，适用本节规定；本节没有规定的，适用本章第一节、第二节的规定。

本法所称一人有限责任公司，是指只有一个自然人股东或者一个法人股东的有限责任公司。

第五十八条 一个自然人只能投资设立一个一人有限责任公司。该一人有限责任公司不能投资设立新的一人有限责任公司。

第五十九条 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。

第六十条 一人有限责任公司章程由股东制定。

第六十一条 一人有限责任公司不设股东会。股东作出本法第三十七条 第一款所列决定时，应当采用书面形式，并由股东签名后置备于公司。

第六十二条 一人有限责任公司应当在每一会计年度终了时编制财务会计报告，并经会计师事务所审计。

第六十三条 一人有限责任公司的股东不能证明公司财产独立于股东自己的财产的，应当对公司债务承担连带责任。

第四节 国有独资公司的特别规定

第六十四条 国有独资公司的设立和组织机构，适用本节规定；本节没有规定的，适用本章第一节、第二节的规定。

本法所称国有独资公司，是指国家单独出资、由国务院或者地方人民政府授权本级人民政府国有资产监督管理机构履行出资人职责的有限责任公司。

第六十五条 国有独资公司章程由国有资产监督管理机构制定，或者由董事会制订报国有资产监督管理机构批准。

第六十六条 国有独资公司不设股东会，由国有资产监督管理机构行使股东会职权。国有资产监督管理机构可以授权公司董事会行使股东会的部分职权，决定公司的重大事项，但公司的合并、分立、解散、增加或者减少注册资本和发行公司债券，必须由国有资产监督管理机构决定；其中，重要的国有独资公司合并、分立、解散、申请破产的，应当由国有资产监督管理机构审核后，报本级人民政府批准。

前款所称重要的国有独资公司，按照国务院的规定确定。

第六十七条 国有独资公司设董事会，依照本法第四十六条 、第六十六条 的规定行使职权。董事每届任期不得超过三年。董事会成员中应当有公司职工代表。

董事会成员由国有资产监督管理机构委派；但是，董事会成员中的职工代表由公司职工代表大会选举产生。

董事会设董事长一人，可以设副董事长。董事长、副董事长由国有资产监督管理机构从董事会成员中指定。

第六十八条 国有独资公司设经理，由董事会聘任或者解聘。经理依照本法第四十九条 规定行使职权。

经国有资产监督管理机构同意，董事会成员可以兼任经理。

第六十九条 国有独资公司的董事长、副董事长、董事、高级管理人员，未经国有资产监督管理机构同意，不得在其他有限责任公司、股份有限公司或者其他经济组织兼职。

第七十条 国有独资公司监事会成员不得少于五人，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。

监事会成员由国有资产监督管理机构委派；但是，监事会成员中的职工代表由公司职工代表大会选举产生。监事会主席由国有资产监督管理机构从监事会成员中指定。

监事会行使本法第五十三条 第(一)项至第(三)项规定的职权和国务院规定的其他职权。

第三章 有限责任公司的股权转让

第七十一条 有限责任公司的股东之间可以相互转让其全部或者部分股权。

股东向股东以外的人转让股权，应当经其他股东过半数同意。股东应就其股权转让事项书面通知其他股东征求同意，其他股东自接到书面通知之日起满三十日未答复的，视为同意转让。其他股东半数以上不同意转让的，不同意的股东应当购买该转让的股权；不购买的，视为同意转让。

经股东同意转让的股权，在同等条 件下，其他股东有优先购买权。两个以上股东主张行使优先购买权的，协商确定各自的购买比例；协商不成的，按照转让时各自的出资比例行使优先购买权。

公司章程对股权转让另有规定的，从其规定。

第七十二条 人民法院依照法律规定的强制执行程序转让股东的股权时，应当通知公司及全体股东，其他股东在同等条 件下有优先购买权。其他股东自人民法院通知之日起满二十日不行使优先购买权的，视为放弃优先购买权。

第七十三条 依照本法第七十一条 、第七十二条 转让股权后，公司应当注销原股东的出资证明书，向新股东签发出资证明书，并相应修改公司章程和股东名册中有关股东及其出资额的记载。对公司章程的该项修改不需再由股东会表决。

第七十四条 有下列情形之一的，对股东会该项决议投反对票的股东可以请求公司按照合理的价格收购其股权：

(一)公司连续五年不向股东分配利润，而公司该五年连续盈利，并且符合本法规定的分配利润条 件的；

(二)公司合并、分立、转让主要财产的；

(三)公司章程规定的营业期限届满或者章程规定的其他解散事由出现，股东会会议通过决议修改章程使公司存续的。

自股东会会议决议通过之日起六十日内，股东与公司不能达成股权收购协议的，股东可以自股东会会议决议通过之日起九十日内向人民法院提起诉讼。

第七十五条 自然人股东死亡后，其合法继承人可以继承股东资格；但是，公司章程另有规定的除外。

第四章 股份有限公司的设立和组织机构

第一节 设立

第七十六条 设立股份有限公司，应当具备下列条 件：

(一)发起人符合法定人数；

(二)有符合公司章程规定的全体发起人认购的股本总额或者募集的实收股本总额；

(三)股份发行、筹办事项符合法律规定；

(四)发起人制订公司章程，采用募集方式设立的经创立大会通过；

(五)有公司名称，建立符合股份有限公司要求的组织机构；

(六)有公司住所。

第七十七条 股份有限公司的设立，可以采取发起设立或者募集设立的方式。

发起设立，是指由发起人认购公司应发行的全部股份而设立公司。

募集设立，是指由发起人认购公司应发行股份的一部分，其余股份向社会公开募集或者向特定对象募集而设立公司。

第七十八条 设立股份有限公司，应当有二人以上二百人以下为发起人，其中须有半数以上的发起人在中国境内有住所。

第七十九条 股份有限公司发起人承担公司筹办事务。

发起人应当签订发起人协议，明确各自在公司设立过程中的权利和义务。

第八十条 股份有限公司采取发起设立方式设立的，注册资本为在公司登记机关登记的全体发起人认购的股本总额。在发起人认购的股份缴足前，不得向他人募集股份。

股份有限公司采取募集方式设立的，注册资本为在公司登记机关登记的实收股本总额。

法律、行政法规以及国务院决定对股份有限公司注册资本实缴、注册资本最低限额另有规定的，从其规定。

第八十一条 股份有限公司章程应当载明下列事项：

(一)公司名称和住所；

(二)公司经营范围；

(三)公司设立方式；

(四)公司股份总数、每股金额和注册资本；

(五)发起人的姓名或者名称、认购的股份数、出资方式和出资时间；

(六)董事会的组成、职权和议事规则；

(七)公司法定代表人；

(八)监事会的组成、职权和议事规则；

(九)公司利润分配办法；

(十)公司的解散事由与清算办法；

(十一)公司的通知和公告办法；

(十二)股东大会会议认为需要规定的其他事项。

第八十二条 发起人的出资方式，适用本法第二十七条 的规定。

第八十三条 以发起设立方式设立股份有限公司的，发起人应当书面认足公司章程规定其认购的股份，并按照公司章程规定缴纳出资。以非货币财产出资的，应当依法办理其财产权的转移手续。

发起人不依照前款规定缴纳出资的，应当按照发起人协议承担违约责任。

发起人认足公司章程规定的出资后，应当选举董事会和监事会，由董事会向公司登记机关报送公司章程以及法律、行政法规规定的其他文件，申请设立登记。

第八十四条 以募集设立方式设立股份有限公司的，发起人认购的股份不得少于公司股份总数的百分之三十五；但是，法律、行政法规另有规定的，从其规定。

第八十五条 发起人向社会公开募集股份，必须公告招股说明书，并制作认股书。认股书应当载明本法第八十六条 所列事项，由认股人填写认购股数、金额、住所，并签名、盖章。认股人按照所认购股数缴纳股款。

第八十六条 招股说明书应当附有发起人制订的公司章程，并载明下列事项：

(一)发起人认购的股份数；

(二)每股的票面金额和发行价格；

(三)无记名股票的发行总数；

(四)募集资金的用途；

(五)认股人的权利、义务；

(六)本次募股的起止期限及逾期未募足时认股人可以撤回所认股份的说明。

第八十七条 发起人向社会公开募集股份，应当由依法设立的证券公司承销，签订承销协议。

第八十八条 发起人向社会公开募集股份，应当同银行签订代收股款协议。

代收股款的银行应当按照协议代收和保存股款，向缴纳股款的认股人出具收款单据，并负有向有关部门出具收款证明的义务。

第八十九条 发行股份的股款缴足后，必须经依法设立的验资机构验资并出具证明。发起人应当自股款缴足之日起三十日内主持召开公司创立大会。创立大会由发起人、认股人组成。

发行的股份超过招股说明书规定的截止期限尚未募足的，或者发行股份的股款缴足后，发起人在三十日内未召开创立大会的，认股人可以按照所缴股款并加算银行同期存款利息，要求发起人返还。

第九十条 发起人应当在创立大会召开十五日前将会议日期通知各认股人或者予以公告。创立大会应有代表股份总数过半数的发起人、认股人出席，方可举行。

创立大会行使下列职权：

(一)审议发起人关于公司筹办情况的报告；

(二)通过公司章程；

(三)选举董事会成员；

(四)选举监事会成员；

(五)对公司的设立费用进行审核；

(六)对发起人用于抵作股款的财产的作价进行审核；

(七)发生不可抗力或者经营条 件发生重大变化直接影响公司设立的，可以作出不设立公司的决议。

创立大会对前款所列事项作出决议，必须经出席会议的认股人所持表决权过半数通过。

第九十一条 发起人、认股人缴纳股款或者交付抵作股款的出资后，除未按期募足股份、发起人未按期召开创立大会或者创立大会决议不设立公司的情形外，不得抽回其股本。

第九十二条 董事会应于创立大会结束后三十日内，向公司登记机关报送下列文件，申请设立登记：

(一)公司登记申请书；

(二)创立大会的会议记录；

(三)公司章程；

(四)验资证明；

(五)法定代表人、董事、监事的任职文件及其身份证明；

(六)发起人的法人资格证明或者自然人身份证明；

(七)公司住所证明。

以募集方式设立股份有限公司公开发行股票的，还应当向公司登记机关报送国务院证券监督管理机构的核准文件。

第九十三条 股份有限公司成立后，发起人未按照公司章程的规定缴足出资的，应当补缴；其他发起人承担连带责任。

股份有限公司成立后，发现作为设立公司出资的非货币财产的实际价额显著低于公司章程所定价额的，应当由交付该出资的发起人补足其差额；其他发起人承担连带责任。

第九十四条 股份有限公司的发起人应当承担下列责任：

(一)公司不能成立时，对设立行为所产生的债务和费用负连带责任；

(二)公司不能成立时，对认股人已缴纳的股款，负返还股款并加算银行同期存款利息的连带责任；

(三)在公司设立过程中，由于发起人的过失致使公司利益受到损害的，应当对公司承担赔偿责任。

第九十五条 有限责任公司变更为股份有限公司时，折合的实收股本总额不得高于公司净资产额。有限责任公司变更为股份有限公司，为增加资本公开发行股份时，应当依法办理。

第九十六条 股份有限公司应当将公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议记录、监事会会议记录、财务会计报告置备于本公司。

第九十七条 股东有权查阅公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议决议、监事会会议决议、财务会计报告，对公司的经营提出建议或者质询。

第二节 股东大会

第九十八条 股份有限公司股东大会由全体股东组成。股东大会是公司的权力机构，依照本法行使职权。

第九十九条 本法第三十七条 第一款关于有限责任公司股东会职权的规定，适用于股份有限公司股东大会。

第一百条 股东大会应当每年召开一次年会。有下列情形之一的，应当在两个月内召开临时股东大会：

(一)董事人数不足本法规定人数或者公司章程所定人数的三分之二时；

(二)公司未弥补的亏损达实收股本总额三分之一时；

(三)单独或者合计持有公司百分之十以上股份的股东请求时；

(四)董事会认为必要时；

(五)监事会提议召开时；

(六)公司章程规定的其他情形。

第一百零一条 股东大会会议由董事会召集，董事长主持；董事长不能履行职务或者不履行职务的，由副董事长主持；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事主持。

董事会不能履行或者不履行召集股东大会会议职责的，监事会应当及时召集和主持；监事会不召集和主持的，连续九十日以上单独或者合计持有公司百分之十以上股份的股东可以自行召集和主持。

第一百零二条 召开股东大会会议，应当将会议召开的时间、地点和审议的事项于会议召开二十日前通知各股东；临时股东大会应当于会议召开十五日前通知各股东；发行无记名股票的，应当于会议召开三十日前公告会议召开的时间、地点和审议事项。

单独或者合计持有公司百分之三以上股份的股东，可以在股东大会召开十日前提出临时提案并书面提交董事会；董事会应当在收到提案后二日内通知其他股东，并将该临时提案提交股东大会审议。临时提案的内容应当属于股东大会职权范围，并有明确议题和具体决议事项。

股东大会不得对前两款通知中未列明的事项作出决议。

无记名股票持有人出席股东大会会议的，应当于会议召开五日前至股东大会闭会时将股票交存于公司。

第一百零三条 股东出席股东大会会议，所持每一股份有一表决权。但是，公司持有的本公司股份没有表决权。

股东大会作出决议，必须经出席会议的股东所持表决权过半数通过。但是，股东大会作出修改公司章程、增加或者减少注册资本的决议，以及公司合并、分立、解散或者变更公司形式的决议，必须经出席会议的股东所持表决权的三分之二以上通过。

第一百零四条 本法和公司章程规定公司转让、受让重大资产或者对外提供担保等事项必须经股东大会作出决议的，董事会应当及时召集股东大会会议，由股东大会就上述事项进行表决。

第一百零五条 股东大会选举董事、监事，可以依照公司章程的规定或者股东大会的决议，实行累积投票制。

本法所称累积投票制，是指股东大会选举董事或者监事时，每一股份拥有与应选董事或者监事人数相同的表决权，股东拥有的表决权可以集中使用。

第一百零六条 股东可以委托代理人出席股东大会会议，代理人应当向公司提交股东授权委托书，并在授权范围内行使表决权。

第一百零七条 股东大会应当对所议事项的决定作成会议记录，主持人、出席会议的董事应当在会议记录上签名。会议记录应当与出席股东的签名册及代理出席的委托书一并保存。

第三节 董事会、经理

第一百零八条 股份有限公司设董事会，其成员为五人至十九人。

董事会成员中可以有公司职工代表。董事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

本法第四十五条 关于有限责任公司董事任期的规定，适用于股份有限公司董事。

本法第四十六条 关于有限责任公司董事会职权的规定，适用于股份有限公司董事会。

第一百零九条 董事会设董事长一人，可以设副董事长。董事长和副董事长由董事会以全体董事的过半数选举产生。

董事长召集和主持董事会会议，检查董事会决议的实施情况。副董事长协助董事长工作，董事长不能履行职务或者不履行职务的，由副董事长履行职务；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事履行职务。

第一百一十条 董事会每年度至少召开两次会议，每次会议应当于会议召开十日前通知全体董事和监事。

代表十分之一以上表决权的股东、三分之一以上董事或者监事会，可以提议召开董事会临时会议。董事长应当自接到提议后十日内，召集和主持董事会会议。

董事会召开临时会议，可以另定召集董事会的通知方式和通知时限。

第一百一十一条 董事会会议应有过半数的董事出席方可举行。董事会作出决议，必须经全体董事的过半数通过。

董事会决议的表决，实行一人一票。

第一百一十二条 董事会会议，应由董事本人出席；董事因故不能出席，可以书面委托其他董事代为出席，委托书中应载明授权范围。

董事会应当对会议所议事项的决定作成会议记录，出席会议的董事应当在会议记录上签名。

董事应当对董事会的决议承担责任。董事会的决议违反法律、行政法规或者公司章程、股东大会决议，致使公司遭受严重损失的，参与决议的董事对公司负赔偿责任。但经证明在表决时曾表明异议并记载于会议记录的，该董事可以免除责任。

第一百一十三条 股份有限公司设经理，由董事会决定聘任或者解聘。

本法第四十九条 关于有限责任公司经理职权的规定，适用于股份有限公司经理。

第一百一十四条 公司董事会可以决定由董事会成员兼任经理。

第一百一十五条 公司不得直接或者通过子公司向董事、监事、高级管理人员提供借款。

第一百一十六条 公司应当定期向股东披露董事、监事、高级管理人员从公司获得报酬的情况。

第四节 监事会

第一百一十七条 股份有限公司设监事会，其成员不得少于三人。

监事会应当包括股东代表和适当比例的公司职工代表，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。监事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

监事会设主席一人，可以设副主席。监事会主席和副主席由全体监事过半数选举产生。监事会主席召集和主持监事会会议；监事会主席不能履行职务或者不履行职务的，由监事会副主席召集和主持监事会会议；监事会副主席不能履行职务或者不履行职务的，由半数以上监事共同推举一名监事召集和主持监事会会议。

董事、高级管理人员不得兼任监事。

本法第五十二条 关于有限责任公司监事任期的规定，适用于股份有限公司监事。

第一百一十八条 本法第五十三条 、第五十四条 关于有限责任公司监事会职权的规定，适用于股份有限公司监事会。

监事会行使职权所必需的费用，由公司承担。

第一百一十九条 监事会每六个月至少召开一次会议。监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经半数以上监事通过。

监事会应当对所议事项的决定作成会议记录，出席会议的监事应当在会议记录上签名。

第五节上市公司组织机构的特别规定

第一百二十条 本法所称上市公司，是指其股票在证券交易所上市交易的股份有限公司。

第一百二十一条 上市公司在一年内购买、出售重大资产或者担保金额超过公司资产总额百分之三十的，应当由股东大会作出决议，并经出席会议的股东所持表决权的三分之二以上通过。

第一百二十二条 上市公司设独立董事，具体办法由国务院规定。

第一百二十三条 上市公司设董事会秘书，负责公司股东大会和董事会会议的筹备、文件保管以及公司股东资料的管理，办理信息披露事务等事宜。

第一百二十四条 上市公司董事与董事会会议决议事项所涉及的企业有关联关系的，不得对该项决议行使表决权，也不得代理其他董事行使表决权。该董事会会议由过半数的无关联关系董事出席即可举行，董事会会议所作决议须经无关联关系董事过半数通过。出席董事会的无关联关系董事人数不足三人的，应将该事项提交上市公司股东大会审议。

第五章 股份有限公司的股份发行和转让

第一节 股份发行

第一百二十五条 股份有限公司的资本划分为股份，每一股的金额相等。

公司的股份采取股票的形式。股票是公司签发的证明股东所持股份的凭证。

第一百二十六条 股份的发行，实行公平、公正的原则，同种类的每一股份应当具有同等权利。

同次发行的同种类股票，每股的发行条 件和价格应当相同；任何单位或者个人所认购的股份，每股应当支付相同价额。

第一百二十七条 股票发行价格可以按票面金额，也可以超过票面金额，但不得低于票面金额。

第一百二十八条 股票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。

股票应当载明下列主要事项：

(一)公司名称；

(二)公司成立日期；

(三)股票种类、票面金额及代表的股份数；

(四)股票的编号。

股票由法定代表人签名，公司盖章。

发起人的股票，应当标明发起人股票字样。

第一百二十九条 公司发行的股票，可以为记名股票，也可以为无记名股票。

公司向发起人、法人发行的股票，应当为记名股票，并应当记载该发起人、法人的名称或者姓名，不得另立户名或者以代表人姓名记名。

第一百三十条 公司发行记名股票的，应当置备股东名册，记载下列事项：

(一)股东的姓名或者名称及住所；

(二)各股东所持股份数；

(三)各股东所持股票的编号；

(四)各股东取得股份的日期。

发行无记名股票的，公司应当记载其股票数量、编号及发行日期。

第一百三十一条 国务院可以对公司发行本法规定以外的其他种类的股份，另行作出规定。

第一百三十二条 股份有限公司成立后，即向股东正式交付股票。公司成立前不得向股东交付股票。

第一百三十三条 公司发行新股，股东大会应当对下列事项作出决议：

(一)新股种类及数额；

(二)新股发行价格；

(三)新股发行的起止日期；

(四)向原有股东发行新股的种类及数额。

第一百三十四条 公司经国务院证券监督管理机构核准公开发行新股时，必须公告新股招股说明书和财务会计报告，并制作认股书。

本法第八十七条 、第八十八条 的规定适用于公司公开发行新股。

第一百三十五条 公司发行新股，可以根据公司经营情况和财务状况，确定其作价方案。

第一百三十六条 公司发行新股募足股款后，必须向公司登记机关办理变更登记，并公告。

第二节 股份转让

第一百三十七条 股东持有的股份可以依法转让。

第一百三十八条 股东转让其股份，应当在依法设立的证券交易场所进行或者按照国务院规定的其他方式进行。

第一百三十九条 记名股票，由股东以背书方式或者法律、行政法规规定的其他方式转让；转让后由公司将受让人的姓名或者名称及住所记载于股东名册。

股东大会召开前二十日内或者公司决定分配股利的基准日前五日内，不得进行前款规定的股东名册的变更登记。但是，法律对上市公司股东名册变更登记另有规定的，从其规定。

第一百四十条 无记名股票的转让，由股东将该股票交付给受让人后即发生转让的效力。

第一百四十一条 发起人持有的本公司股份，自公司成立之日起一年内不得转让。公司公开发行股份前已发行的股份，自公司股票在证券交易所上市交易之日起一年内不得转让。

公司董事、监事、高级管理人员应当向公司申报所持有的本公司的股份及其变动情况，在任职期间每年转让的股份不得超过其所持有本公司股份总数的百分之二十五；所持本公司股份自公司股票上市交易之日起一年内不得转让。上述人员离职后半年内，不得转让其所持有的本公司股份。公司章程可以对公司董事、监事、高级管理人员转让其所持有的本公司股份作出其他限制性规定。

第一百四十二条 公司不得收购本公司股份。但是，有下列情形之一的除外：

(一)减少公司注册资本；

(二)与持有本公司股份的其他公司合并；

(三)将股份奖励给本公司职工；

(四)股东因对股东大会作出的公司合并、分立决议持异议，要求公司收购其股份的。

公司因前款第(一)项至第(三)项的原因收购本公司股份的，应当经股东大会决议。公司依照前款规定收购本公司股份后，属于第(一)项情形的，应当自收购之日起十日内注销；属于第(二)项、第(四)项情形的，应当在六个月内转让或者注销。

公司依照第一款第(三)项规定收购的本公司股份，不得超过本公司已发行股份总额的百分之五；用于收购的资金应当从公司的税后利润中支出；所收购的股份应当在一年内转让给职工。

公司不得接受本公司的股票作为质押权的标的。

第一百四十三条 记名股票被盗、遗失或者灭失，股东可以依照《中华人民共和国民事诉讼法》规定的公示催告程序，请求人民法院宣告该股票失效。人民法院宣告该股票失效后，股东可以向公司申请补发股票。

第一百四十四条 上市公司的股票，依照有关法律、行政法规及证券交易所交易规则上市交易。

第一百四十五条 上市公司必须依照法律、行政法规的规定，公开其财务状况、经营情况及重大诉讼，在每会计年度内半年公布一次财务会计报告。

第六章 公司董事、监事、高级管理人员的资格和义务

第一百四十六条 有下列情形之一的，不得担任公司的董事、监事、高级管理人员：

(一)无民事行为能力或者限制民事行为能力；

(二)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，执行期满未逾五年，或者因犯罪被剥夺政治权利，执行期满未逾五年；

(三)担任破产清算的公司、企业的董事或者厂长、经理，对该公司、企业的破产负有个人责任的，自该公司、企业破产清算完结之日起未逾三年；

(四)担任因违法被吊销营业执照、责令关闭的公司、企业的法定代表人，并负有个人责任的，自该公司、企业被吊销营业执照之日起未逾三年；

(五)个人所负数额较大的债务到期未清偿。

公司违反前款规定选举、委派董事、监事或者聘任高级管理人员的，该选举、委派或者聘任无效。

董事、监事、高级管理人员在任职期间出现本条 第一款所列情形的，公司应当解除其职务。

第一百四十七条 董事、监事、高级管理人员应当遵守法律、行政法规和公司章程，对公司负有忠实义务和勤勉义务。

董事、监事、高级管理人员不得利用职权收受贿赂或者其他非法收入，不得侵占公司的财产。

第一百四十八条 董事、高级管理人员不得有下列行为：

(一)挪用公司资金；

(二)将公司资金以其个人名义或者以其他个人名义开立账户存储；

(三)违反公司章程的规定，未经股东会、股东大会或者董事会同意，将公司资金借贷给他人或者以公司财产为他人提供担保；

(四)违反公司章程的规定或者未经股东会、股东大会同意，与本公司订立合同或者进行交易；

(五)未经股东会或者股东大会同意，利用职务便利为自己或者他人谋取属于公司的商业机会，自营或者为他人经营与所任职公司同类的业务；

(六)接受他人与公司交易的佣金归为己有；

(七)擅自披露公司秘密；

(八)违反对公司忠实义务的其他行为。

董事、高级管理人员违反前款规定所得的收入应当归公司所有。

第一百四十九条 董事、监事、高级管理人员执行公司职务时违反法律、行政法规或者公司章程的规定，给公司造成损失的，应当承担赔偿责任。

第一百五十条 股东会或者股东大会要求董事、监事、高级管理人员列席会议的，董事、监事、高级管理人员应当列席并接受股东的质询。

董事、高级管理人员应当如实向监事会或者不设监事会的有限责任公司的监事提供有关情况和资料，不得妨碍监事会或者监事行使职权。

第一百五十一条 董事、高级管理人员有本法第一百四十九条 规定的情形的，有限责任公司的股东、股份有限公司连续一百八十日以上单独或者合计持有公司百分之一以上股份的股东，可以书面请求监事会或者不设监事会的有限责任公司的监事向人民法院提起诉讼；监事有本法第一百四十九条 规定的情形的，前述股东可以书面请求董事会或者不设董事会的有限责任公司的执行董事向人民法院提起诉讼。

监事会、不设监事会的有限责任公司的监事，或者董事会、执行董事收到前款规定的股东书面请求后拒绝提起诉讼 ,或者自收到请求之日起三十日内未提起诉讼 ,或者情况紧急、不立即提起诉讼将会使公司利益受到难以弥补的损害的 ,前款规定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。

他人侵犯公司合法权益，给公司造成损失的，本条 第一款规定的股东可以依照前两款的规定向人民法院提起诉讼。

第一百五十二条 董事、高级管理人员违反法律、行政法规或者公司章程的规定，损害股东利益的，股东可以向人民法院提起诉讼。

第七章 公司债券

第一百五十三条 本法所称公司债券，是指公司依照法定程序发行、约定在一定期限还本付息的有价证券。

公司发行公司债券应当符合《中华人民共和国证券法》规定的发行条 件。

第一百五十四条 发行公司债券的申请经国务院授权的部门核准后，应当公告公司债券募集办法。

公司债券募集办法中应当载明下列主要事项：

(一)公司名称；

(二)债券募集资金的用途；

(三)债券总额和债券的票面金额；

(四)债券利率的确定方式；

(五)还本付息的期限和方式；

(六)债券担保情况；

(七)债券的发行价格、发行的起止日期；

(八)公司净资产额；

(九)已发行的尚未到期的公司债券总额；

(十)公司债券的承销机构。

第一百五十五条 公司以实物券方式发行公司债券的，必须在债券上载明公司名称、债券票面金额、利率、偿还期限等事项，并由法定代表人签名，公司盖章。

第一百五十六条 公司债券，可以为记名债券，也可以为无记名债券。

第一百五十七条 公司发行公司债券应当置备公司债券存根簿。

发行记名公司债券的，应当在公司债券存根簿上载明下列事项：

(一)债券持有人的姓名或者名称及住所；

(二)债券持有人取得债券的日期及债券的编号；

(三)债券总额，债券的票面金额、利率、还本付息的期限和方式；

(四)债券的发行日期。

发行无记名公司债券的，应当在公司债券存根簿上载明债券总额、利率、偿还期限和方式、发行日期及债券的编号。

第一百五十八条 记名公司债券的登记结算机构应当建立债券登记、存管、付息、兑付等相关制度。

第一百五十九条 公司债券可以转让，转让价格由转让人与受让人约定。

公司债券在证券交易所上市交易的，按照证券交易所的交易规则转让。

第一百六十条 记名公司债券，由债券持有人以背书方式或者法律、行政法规规定的其他方式转让；转让后由公司将受让人的姓名或者名称及住所记载于公司债券存根簿。

无记名公司债券的转让，由债券持有人将该债券交付给受让人后即发生转让的效力。

第一百六十一条 上市公司经股东大会决议可以发行可转换为股票的公司债券，并在公司债券募集办法中规定具体的转换办法。上市公司发行可转换为股票的公司债券，应当报国务院证券监督管理机构核准。

发行可转换为股票的公司债券，应当在债券上标明可转换公司债券字样，并在公司债券存根簿上载明可转换公司债券的数额。

第一百六十二条 发行可转换为股票的公司债券的，公司应当按照其转换办法向债券持有人换发股票，但债券持有人对转换股票或者不转换股票有选择权。

第八章 公司财务、会计

第一百六十三条 公司应当依照法律、行政法规和国务院财政部门的规定建立本公司的财务、会计制度。

第一百六十四条 公司应当在每一会计年度终了时编制财务会计报告，并依法经会计师事务所审计。

财务会计报告应当依照法律、行政法规和国务院财政部门的规定制作。

第一百六十五条 有限责任公司应当依照公司章程规定的期限将财务会计报告送交各股东。

股份有限公司的财务会计报告应当在召开股东大会年会的二十日前置备于本公司，供股东查阅；公开发行股票的股份有限公司必须公告其财务会计报告。

第一百六十六条 公司分配当年税后利润时，应当提取利润的百分之十列入公司法定公积金。公司法定公积金累计额为公司注册资本的百分之五十以上的，可以不再提取。

公司的法定公积金不足以弥补以前年度亏损的，在依照前款规定提取法定公积金之前，应当先用当年利润弥补亏损。

公司从税后利润中提取法定公积金后，经股东会或者股东大会决议，还可以从税后利润中提取任意公积金。

公司弥补亏损和提取公积金后所余税后利润，有限责任公司依照本法第三十四条 的规定分配；股份有限公司按照股东持有的股份比例分配，但股份有限公司章程规定不按持股比例分配的除外。

股东会、股东大会或者董事会违反前款规定，在公司弥补亏损和提取法定公积金之前向股东分配利润的，股东必须将违反规定分配的利润退还公司。

公司持有的本公司股份不得分配利润。

第一百六十七条 股份有限公司以超过股票票面金额的发行价格发行股份所得的溢价款以及国务院财政部门规定列入资本公积金的其他收入，应当列为公司资本公积金。

第一百六十八条 公司的公积金用于弥补公司的亏损、扩大公司生产经营或者转为增加公司资本。但是，资本公积金不得用于弥补公司的亏损。

法定公积金转为资本时，所留存的该项公积金不得少于转增前公司注册资本的百分之二十五。

第一百六十九条 公司聘用、解聘承办公司审计业务的会计师事务所，依照公司章程的规定，由股东会、股东大会或者董事会决定。

公司股东会、股东大会或者董事会就解聘会计师事务所进行表决时，应当允许会计师事务所陈述意见。

第一百七十条 公司应当向聘用的会计师事务所提供真实、完整的会计凭证、会计账簿、财务会计报告及其他会计资料，不得拒绝、隐匿、谎报。

第一百七十一条 公司除法定的会计账簿外，不得另立会计账簿。

对公司资产，不得以任何个人名义开立账户存储。

第九章 公司合并、分立、增资、减资

第一百七十二条 公司合并可以采取吸收合并或者新设合并。

一个公司吸收其他公司为吸收合并，被吸收的公司解散。两个以上公司合并设立一个新的公司为新设合并，合并各方解散。

第一百七十三条 公司合并，应当由合并各方签订合并协议，并编制资产负债表及财产清单。公司应当自作出合并决议之日起十日内通知债权人，并于三十日内在报纸上公告。债权人自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，可以要求公司清偿债务或者提供相应的担保。

第一百七十四条 公司合并时，合并各方的债权、债务，应当由合并后存续的公司或者新设的公司承继。

第一百七十五条 公司分立，其财产作相应的分割。

公司分立，应当编制资产负债表及财产清单。公司应当自作出分立决议之日起十日内通知债权人，并于三十日内在报纸上公告。

第一百七十六条 公司分立前的债务由分立后的公司承担连带责任。但是，公司在分立前与债权人就债务清偿达成的书面协议另有约定的除外。

第一百七十七条 公司需要减少注册资本时，必须编制资产负债表及财产清单。

公司应当自作出减少注册资本决议之日起十日内通知债权人，并于三十日内在报纸上公告。债权人自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，有权要求公司清偿债务或者提供相应的担保。

第一百七十八条 有限责任公司增加注册资本时，股东认缴新增资本的出资，依照本法设立有限责任公司缴纳出资的有关规定执行。

股份有限公司为增加注册资本发行新股时，股东认购新股，依照本法设立股份有限公司缴纳股款的有关规定执行。

第一百七十九条 公司合并或者分立，登记事项发生变更的，应当依法向公司登记机关办理变更登记；公司解散的，应当依法办理公司注销登记；设立新公司的，应当依法办理公司设立登记。

公司增加或者减少注册资本，应当依法向公司登记机关办理变更登记。

第十章 公司解散和清算

第一百八十条 公司因下列原因解散：

(一)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；

(二)股东会或者股东大会决议解散；

(三)因公司合并或者分立需要解散；

(四)依法被吊销营业执照、责令关闭或者被撤销；

(五)人民法院依照本法第一百八十二条 的规定予以解散。

第一百八十一条 公司有本法第一百八十条 第(一)项情形的 ,可以通过修改公司章程而存续。

依照前款规定修改公司章程，有限责任公司须经持有三分之二以上表决权的股东通过，股份有限公司须经出席股东大会会议的股东所持表决权的三分之二以上通过。

第一百八十二条 公司经营管理发生严重困难，继续存续会使股东利益受到重大损失，通过其他途径不能解决的，持有公司全部股东表决权百分之十以上的股东，可以请求人民法院解散公司。

第一百八十三条 公司因本法第一百八十条 第(一)项、第(二)项、第(四)项、第(五)项规定而解散的，应当在解散事由出现之日起十五日内成立清算组，开始清算。有限责任公司的清算组由股东组成，股份有限公司的清算组由董事或者股东大会确定的人员组成。逾期不成立清算组进行清算的，债权人可以申请人民法院指定有关人员组成清算组进行清算。人民法院应当受理该申请，并及时组织清算组进行清算。

第一百八十四条 清算组在清算期间行使下列职权：

(一)清理公司财产，分别编制资产负债表和财产清单；

(二)通知、公告债权人；

(三)处理与清算有关的公司未了结的业务；

(四)清缴所欠税款以及清算过程中产生的税款；

(五)清理债权、债务；

(六)处理公司清偿债务后的剩余财产；

(七)代表公司参与民事诉讼活动。

第一百八十五条 清算组应当自成立之日起十日内通知债权人，并于六十日内在报纸上公告。债权人应当自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，向清算组申报其债权。

债权人申报债权，应当说明债权的有关事项，并提供证明材料。清算组应当对债权进行登记。

在申报债权期间，清算组不得对债权人进行清偿。

第一百八十六条 清算组在清理公司财产、编制资产负债表和财产清单后，应当制定清算方案，并报股东会、股东大会或者人民法院确认。

公司财产在分别支付清算费用、职工的工资、社会保险费用和法定补偿金，缴纳所欠税款，清偿公司债务后的剩余财产，有限责任公司按照股东的出资比例分配，股份有限公司按照股东持有的股份比例分配。

清算期间，公司存续，但不得开展与清算无关的经营活动。公司财产在未依照前款规定清偿前，不得分配给股东。

第一百八十七条 清算组在清理公司财产、编制资产负债表和财产清单后，发现公司财产不足清偿债务的，应当依法向人民法院申请宣告破产。

公司经人民法院裁定宣告破产后，清算组应当将清算事务移交给人民法院。

第一百八十八条 公司清算结束后，清算组应当制作清算报告，报股东会、股东大会或者人民法院确认，并报送公司登记机关，申请注销公司登记，公告公司终止。

第一百八十九条 清算组成员应当忠于职守，依法履行清算义务。

清算组成员不得利用职权收受贿赂或者其他非法收入，不得侵占公司财产。

清算组成员因故意或者重大过失给公司或者债权人造成损失的，应当承担赔偿责任。

第一百九十条 公司被依法宣告破产的，依照有关企业破产的法律实施破产清算。

第十一章 外国公司的分支机构

第一百九十一条 本法所称外国公司是指依照外国法律在中国境外设立的公司。

第一百九十二条 外国公司在中国境内设立分支机构，必须向中国主管机关提出申请，并提交其公司章程、所属国的公司登记证书等有关文件，经批准后，向公司登记机关依法办理登记，领取营业执照。

外国公司分支机构的审批办法由国务院另行规定。

第一百九十三条 外国公司在中国境内设立分支机构，必须在中国境内指定负责该分支机构的代表人或者代理人，并向该分支机构拨付与其所从事的经营活动相适应的资金。

对外国公司分支机构的经营资金需要规定最低限额的，由国务院另行规定。

第一百九十四条 外国公司的分支机构应当在其名称中标明该外国公司的国籍及责任形式。

外国公司的分支机构应当在本机构中置备该外国公司章程。

第一百九十五条 外国公司在中国境内设立的分支机构不具有中国法人资格。

外国公司对其分支机构在中国境内进行经营活动承担民事责任。

第一百九十六条 经批准设立的外国公司分支机构，在中国境内从事业务活动，必须遵守中国的法律，不得损害中国的社会公共利益，其合法权益受中国法律保护。

第一百九十七条 外国公司撤销其在中国境内的分支机构时，必须依法清偿债务，依照本法有关公司清算程序的规定进行清算。未清偿债务之前，不得将其分支机构的财产移至中国境外。

第十二章 法律责任

第一百九十八条 违反本法规定，虚报注册资本、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，对虚报注册资本的公司，处以虚报注册资本金额百分之五以上百分之十五以下的罚款；对提交虚假材料或者采取其他欺诈手段隐瞒重要事实的公司，处以五万元以上五十万元以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第一百九十九条 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，处以虚假出资金额百分之五以上百分之十五以下的罚款。

第二百条 公司的发起人、股东在公司成立后，抽逃其出资的，由公司登记机关责令改正，处以所抽逃出资金额百分之五以上百分之十五以下的罚款。

第二百零一条 公司违反本法规定，在法定的会计账簿以外另立会计账簿的，由县级以上人民政府财政部门责令改正，处以五万元以上五十万元以下的罚款。

第二百零二条 公司在依法向有关主管部门提供的财务会计报告等材料上作虚假记载或者隐瞒重要事实的，由有关主管部门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。

第二百零三条 公司不依照本法规定提取法定公积金的，由县级以上人民政府财政部门责令如数补足应当提取的金额，可以对公司处以二十万元以下的罚款。

第二百零四条 公司在合并、分立、减少注册资本或者进行清算时，不依照本法规定通知或者公告债权人的，由公司登记机关责令改正，对公司处以一万元以上十万元以下的罚款。

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百分之五以上百分之十以下的罚款；对直接负责的主管人员和其他直接责任人员处以一万元以上十万元以下的罚款。

第二百零五条 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。

第二百零六条 清算组不依照本法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一倍以上五倍以下的罚款。

第二百零七条 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，处以违法所得一倍以上五倍以下的罚款，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，处以所得收入一倍以上五倍以下的罚款，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其出具的评估结果、验资或者验证证明不实，给公司债权人造成损失的，除能够证明自己没有过错的外，在其评估或者证明不实的金额范围内承担赔偿责任。

第二百零八条 公司登记机关对不符合本法规定条 件的登记申请予以登记，或者对符合本法规定条 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。

第二百零九条 公司登记机关的上级部门强令公司登记机关对不符合本法规定条 件的登记申请予以登记，或者对符合本法规定条 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。

第二百一十条 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，可以并处十万元以下的罚款。

第二百一十一条 公司成立后无正当理由超过六个月未开业的，或者开业后自行停业连续六个月以上的，可以由公司登记机关吊销营业执照。

公司登记事项发生变更时，未依照本法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，处以一万元以上十万元以下的罚款。

第二百一十二条 外国公司违反本法规定，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，可以并处五万元以上二十万元以下的罚款。

第二百一十三条 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。

第二百一十四条 公司违反本法规定，应当承担民事赔偿责任和缴纳罚款、罚金的，其财产不足以支付时，先承担民事赔偿责任。

第二百一十五条 违反本法规定，构成犯罪的，依法追究刑事责任。

第十三章 附则

第二百一十六条 本法下列用语的含义：

(一)高级管理人员，是指公司的经理、副经理、财务负责人，上市公司董事会秘书和公司章程规定的其他人员。

(二)控股股东，是指其出资额占有限责任公司资本总额百分之五十以上或者其持有的股份占股份有限公司股本总额百分之五十以上的股东；出资额或者持有股份的比例虽然不足百分之五十，但依其出资额或者持有的股份所享有的表决权已足以对股东会、股东大会的决议产生重大影响的股东。

(三)实际控制人，是指虽不是公司的股东，但通过投资关系、协议或者其他安排，能够实际支配公司行为的人。

(四)关联关系，是指公司控股股东、实际控制人、董事、监事、高级管理人员与其直接或者间接控制的企业之间的关系，以及可能导致公司利益转移的其他关系。但是，国家控股的企业之间不仅因为同受国家控股而具有关联关系。

第二百一十七条 外商投资的有限责任公司和股份有限公司适用本法；有关外商投资的法律另有规定的，适用其规定。

第二百一十八条 本法自 2006 年 1 月 1 日起施行。

Company Law of the People's Republic of China (Amended in 2013)

Promulgation Authorities: Standing Committee of the National People's Congress

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Company Law of the People's Republic of China (Amended in 2013)

Chapter I General Principles

Article 1 This Law is formulated for the purposes of standardising the organisation and activities of companies, protecting the legal rights and interests of companies, shareholders and creditors, safeguarding social and economic order and promoting the development of socialist market economy.

Article 2 Companies referred to in this Law shall mean limited liability companies and companies limited by shares established in China in accordance with the provisions of this Law.

Article 3 A company is an enterprise legal person which owns independent legal person property and enjoys legal person property rights. The liability of a company shall be limited to its entire assets.

The liability of a shareholder of a limited liability company shall be limited to the amount of its capital contribution. The liability of a shareholder of a company limited by shares shall be limited to the number of its subscribed shares.

Article 4 Shareholders of a company shall be entitled to gains on assets, participation in major decision-making and selection of managers etc. in accordance with the law.

Article 5 Companies engaging in business activities shall comply with the provisions of laws and administrative regulations, uphold social morality, business ethics, honesty and trustworthiness, accept supervision of the government and social public and bear social responsibility.

The legal rights and interests of companies shall be protected by the law and shall not be infringed.

Article 6 Applications shall be submitted to the company registration authorities in accordance with the law for registration and incorporation of companies. Applications which satisfy the requirements for incorporation stipulated in this Law shall be registered by the company registration authorities as limited liability companies or companies limited by shares respectively. Applications which do not satisfy the requirements for incorporation stipulated in this Law shall not be registered as limited liability companies or companies limited by shares.

Where it is provided by the laws and administrative regulations that company incorporation requires prior approval, such approval formalities shall be completed in accordance with the law prior to the application for company registration.

The public may apply to inquire company registration matters with the company registration authorities; the company registration authorities shall provide such inquiry services.

Article 7 Companies incorporated in accordance with the law shall be issued a business licence by the company registration authorities. The date of issuance of a business licence shall be the date of incorporation of the company.

A business licence shall state the name and address, registered capital, scope of operations of the company and the name of its legal representative.

Where there is a change in the details stated on a business licence, the company shall complete change of registration formalities in accordance with the law and the company registration authorities shall issue a new business licence.

Article 8 Limited liability companies incorporated in accordance with this Law shall include the wordings "limited liability company" or "company limited" in their company name.

Companies limited by shares incorporated in accordance with this Law shall include the wordings "company limited by shares" or "joint stock company" in their company name.

Article 9 A limited liability company proposing to be converted to a company limited by shares shall comply with the requirements for companies limited by shares stipulated in this Law. A company limited by shares proposing to be converted to a limited liability company shall comply with the requirements for limited liability companies stipulated in this Law.

In the case of a conversion from a limited liability company into a company limited shares or vice versa, the liability of the company before the conversion shall be assumed by the converted company.

Article 10 The address of the company shall be its principal business office.

Article 11 A company shall draft its articles of association in accordance with the law. The articles of association of the company shall be binding on the company, shareholders, directors, supervisors and senior management personnel.

Article 12 The scope of operations of a company shall be provided in the articles of association of the company and be registered in accordance with the law. The scope of operations of a company may be amended by a revision to the articles of association of the company, and change of registration formalities shall be completed.

Where it is provided in the laws and administrative regulations that the scope of operations of a company is subject to approval, such approval formalities shall be completed in accordance with the law.

Article 13 The chairman, an executive director or a manager shall act as the legal representative of the company in accordance with the provisions of the articles of association of the company and registration formalities shall be completed in accordance with the law. Where there is a change of legal representative of the company, change of registration formalities shall be completed.

Article 14 Companies may register branch companies. Applications for incorporation of branch companies shall be submitted to the company registration authorities and a

business licence shall be issued for successful applications. A branch company does not possess legal person qualification and its civil liability shall be borne by the company.

Companies may incorporate subsidiaries. A subsidiary possesses legal person qualification and shall bear civil liability independently in accordance with the law.

Article 15 A company may invest in other enterprises. However, unless otherwise provided by the law, a company shall not act as a contributory which bears joint liability of an investee enterprise.

Article 16 Where a company invests in other enterprises or provide guarantee for others, a resolution passed by the board of directors or board of shareholders or a general meeting in accordance with the articles of association of the company shall be required. Where the articles of association of the company provide a limit for the total amount of such investment or guarantee or the amount of each investment or guarantee, such limits shall not be exceeded.

In the case of a company providing guarantee for a shareholder or the actual controlling party of the company, a resolution passed by the board of shareholders or a general meeting is required.

Shareholders stipulated in the preceding paragraph or shareholders controlled by the actual controlling party stipulated in the preceding paragraph shall not participate in the resolution in respect of the matter stipulated in the preceding paragraph. Such a resolution shall be passed by a simple majority of votes cast by other shareholders attending the meeting.

Article 17 Companies shall protect the legal rights and interests of their employees, enter into labour contracts with their employees in accordance with the law, participate in social insurance, strengthen labour protection and implement work safety.

Companies shall adopt various measures to strengthen vocational education and job training and upgrade staff's quality.

Article 18 The employees of companies shall organise labour unions in accordance with the provisions of the Trade Union Law of the People's Republic of China, develop trade union activities and safeguard the legal rights and interests of employees. Companies shall provide the requisite conditions for the activities of their trade unions. A trade union shall represent the employees to negotiate with the company on wages, working hours, welfare, insurance, work safety and sanitation etc. and enter into a collective contract with the company in accordance with the law.

Companies shall implement democratic management through employees' representative congress or other means in accordance with the provisions of the Constitution and relevant laws.

A company studying and proposing a structural reform, deliberating on major business issues and drafting important rules and policies shall seek the comments of the trade union and hear the opinions and proposals of the employees through the employees' representative congress or other means.

Article 19 Where a Chinese Communist Party organisation is to be established in the company in accordance with the articles of association of the Chinese Communist Party to develop Party activities, the company shall provide the requisite conditions for such Party organisation activities.

Article 20 Shareholders of a company shall exercise shareholders' rights in accordance with the provisions of laws and administrative regulations and the articles of association of the company and shall not abuse their shareholders' rights to cause damage to the company or the interests of other shareholders or abuse the independent legal person status of the company and limited liability of the shareholders to cause damage to the interests of the creditors of the company.

Shareholders of a company who abuse their shareholders' rights and cause the company or other shareholders to suffer damages shall bear compensation liability in accordance with the law.

Shareholders of a company who abuse the independent legal person status of the company and limited liability of shareholders to evade debts and cause damage to the interests of the creditors of the company shall bear joint liability for the company's debt.

Article 21 The controlling shareholders, actual controlling party, directors, supervisors and senior management personnel of a company shall not use their relationship to cause damage to the company's interests.

Persons who violate the aforesaid provisions and cause the company to suffer losses shall bear compensation liability.

Article 22 A resolution passed by the board of shareholders or a shareholders' meeting or the board of directors which violates the provisions of laws and administrative regulations shall be void.

Where the convening procedures and voting method of a meeting of the board of shareholders or board of directors or a shareholders' meeting violates the provisions of laws and administrative regulations or the articles of association of the company or the contents of the resolution violate the articles of association of the company, the shareholders may apply to a people's court within 60 days from the date of resolution for rescission of the resolution.

Where the shareholders file for a lawsuit in accordance with the provisions of the preceding paragraph, the people's court may, upon a request of the company, ask the shareholders to provide the corresponding guarantee.

Where a company has completed change of registration formalities in accordance with a resolution passed by the board of shareholders or a shareholders' meeting or the board of directors and upon nullification or rescission of the resolution by a people's court, the company shall apply to the company registration authorities for rescission of the change of registration.

Chapter II Establishment and Organisation of Limited Liability Companies

Section 1 Establishment

Article 23 Incorporation of a limited liability companies shall satisfy the following requirements:

(1) the quorum of shareholders shall be met;

(2) the amount of capital contribution made by all its shareholders shall be in compliance with the articles of association of the company;

(3) the articles of association of the company shall be jointly drafted by the shareholders of the company;

(4) a company name shall exist and the organisation shall satisfy the requirements of a limited liability company; and

(5) a company address shall exist.

Article 24 Limited liability companies shall be incorporated by not more than 50 shareholders contributing to the capital.

Article 25 The articles of association of limited liability companies shall state the following matters:

(1) name and address of the company;

(2) scope of operations of the company;

(3) the registered capital of the company;

(4) name of the shareholders;

(5) method of capital contribution of the shareholders and amount and timing of capital contribution;

(6) the organisation of the company and the method of organisation, duties and powers and rules of procedure;

(7) legal representative of the company; and

(8) other matters required by the shareholders' meeting to be stipulated.

The shareholders shall sign and affix their seals to the company's articles of association.

Article 26 The registered capital of a limited liability company shall be the amount of capital contribution made by all its shareholders who are registered with the company registration authorities.

Where the laws, administrative regulations and decisions of the State Council provide for the minimum amount of paid-in or registered capital for the limited liability company, such provisions shall prevail.

Article 27 Shareholders may make capital contribution in cash or in kind, intellectual property, land use rights and other non-cash properties which can be evaluated in currency and transferred in accordance with the law, except for properties prohibited by laws and administrative regulations to be used for capital contribution.

Non-cash properties used for capital contribution shall be evaluated and verified; and shall not be overvalued or undervalued. Where there are provisions in the laws and administrative regulations on valuation, such provisions shall prevail.

Article 28 The shareholders shall make their respective capital contribution in accordance with the amount of their subscribed capital and the schedule stipulated in the articles of association of the company. Shareholders making capital contribution in cash shall deposit

the full amount of their capital contribution in cash into a bank account of the limited liability company. Shareholders making capital contribution using non-cash properties shall complete the transfer formalities for the property rights in accordance with the law.

Shareholders who fail to make capital contribution in accordance with the said provisions shall, in addition to making the capital contribution in full, bear default liability towards other shareholders who have made their capital contributions in full in accordance with the schedule.

Article 29 Once the shareholders subscribe for the full amount of capital contribution specified in the articles of association of the company, the representative appointed by all the shareholders or their common proxy shall submit a company registration application form, articles of association of the company, etc. to the company registration authorities to apply for incorporation and registration.

Article 30 Where it is discovered after the incorporation of a limited liability company that the actual value of non-cash properties used for capital contribution for company incorporation is significantly lower than the value stipulated in the articles of association of the company, the shareholders who made the capital contribution shall make up for the difference; and other shareholders at the time of company incorporation shall bear joint liability.

Article 31 Upon incorporation of a limited liability company, a capital contribution certificate shall be issued to the shareholders.

A capital contribution certificate shall state the following matters:

(1) name of the company;

(2) date of incorporation of the company;

(3) registered capital of the company;

(4) name of the shareholder and the amount and date of capital contribution; and

(5) serial number of the capital contribution certificate and date of issuance.

The company seal shall be affixed to capital contribution certificates.

Article 32 Limited liability companies shall set up a register of shareholders which state the following matters:

(1) name and address of the shareholders;

(2) amount of capital contribution of the shareholders; and

(3) serial numbers of the capital contribution certificates.

Shareholders named in the register of shareholders may exercise their shareholders' rights in accordance with the register of shareholders.

Companies shall register the names of their shareholders with the company registration authorities. Where there is a change in the registration details, change of registration formalities shall be completed. Where the registration or change of registration formalities is not completed, no defence against third party claims shall be made.

Article 33 Shareholders shall have the right to check and make copies of the articles of association, minutes of shareholders' meetings, resolutions of the board of directors and board of supervisors and financial reports of the company.

Shareholders may request to check the accounts of the company. A shareholder who requests to check the accounts of the company shall make a written request and state the purpose. If the company has reasonable grounds to believe that the shareholder who makes the request has an ulterior motive and may cause damage to the legal interests of the company, it may reject the request and shall give a written reply to the shareholder stating the reason within 15 days from the date of the written request of the shareholder. Where the company rejects the request, the shareholder may apply to a people's court for access to the company's accounts.

Article 34 Shareholders shall be entitled to bonus sharing in accordance with the ratio of capital contribution; in the event of an increase in capital, the shareholders shall have pre-emptive right to subscribe to new capital in accordance with the ratio of capital contribution, unless all the shareholders agreed that bonus sharing or subscription to new capital shall not be in accordance with the ratio of capital contribution.

Article 35 Upon the incorporation of a company, the shareholders shall not withdraw their capital contribution.

Section 2 Organisation

Article 36 The board of shareholders of a limited liability company shall comprise all shareholders of the company. The board of shareholders is the authority of the company and shall exercise their duties and powers in accordance with the provisions of this Law.

Article 37 The board of shareholders shall exercise the following duties and powers:

(1) decide on the business direction and investment plans of the company;

(2) elect and remove directors and supervisors who are not representatives of the employees and decide on the remuneration of directors and supervisors;

(3) review and approve reports of the board of directors;

(4) review and approve reports of the supervisors or the board of supervisors;

(5) review and approve the annual financial budget and financial accounting plan of the company;

(6) review and approve the profit distribution plan and loss recovery plan of the company;

(7) resolve on increase or reduction of registered capital of the company;

(8) resolve on issue of corporate bonds;

(9) resolve on merger, division, dissolution, liquidation or change of company structure;

(10) amend the articles of association of the company; and

(11) other duties and powers stipulated in the articles of association of the company.

The shareholders may pass a resolution in writing unanimously for a direct decision on the aforesaid matters without convening a shareholders' meeting and all the shareholders shall sign and affix their seal on the decision document.

Article 38 The first shareholders' meeting shall be convened and chaired by the shareholder who made the largest amount of capital contribution and shall exercise its duties and powers in accordance with the provisions of this Law.

Article 39 Shareholders' meetings include regular meetings and ad hoc meetings.

Regular meetings shall be convened regularly in accordance with the provisions of the articles of association of the company. Shareholders holding one-tenth or more of the voting rights or one-third or above of the board of directors or board of supervisors or the supervisors (in the case of a company which does not have a board of supervisors) may propose to convene an ad hoc meeting.

Article 40 In the case of limited liability companies which have established a board of directors, the shareholders' meetings shall be convened by the board of directors and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall chair the shareholders' meeting; where the deputy chairman is unable or fails to perform to do so, a director appointed by more than half of the board of directors shall chair the meeting.

In the case of limited liability companies which have not established a board of directors, the shareholders' meetings shall be convened and chaired by the executive director.

Where the board of directors or the executive director is unable or fails to convene a shareholders' meeting, the board of supervisors or the supervisor (in the case of companies which have not established a board of supervisors) shall convene and chair the meeting; where the board of supervisors or the supervisor does not convene and chair a meeting, shareholders holding one-tenth or more of the voting rights may convene and chair the meeting.

Article 41 All shareholders shall be notified 15 days before a shareholders' meeting is convened, unless otherwise provided in the articles of association of the company or otherwise agreed by all shareholders.

The board of shareholders shall record minutes of meeting and the shareholders present at the meeting shall sign on the minutes of meeting.

Article 42 The voting rights exercisable by shareholders at a shareholders' meeting shall be based on the ratio of capital contribution, unless otherwise provided in the articles of association of the company.

Article 43 The rule of procedure and voting procedures of a board of shareholders shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

Resolutions passed by a shareholders' meeting on amendment to the articles of association of the company, increase or reduction of registered capital, and company merger, division, dissolution or change of company structure shall be passed by shareholders holding two-thirds or more of the voting rights.

Article 44 The board of directors of limited liability companies shall comprise three to 13 members, unless otherwise provided in Article 50 hereof.

The board of directors of a limited liability company invested and incorporated by two or more State-owned enterprises or two or more other State-owned investment entities shall comprise employees' representatives; the board of directors of other limited liability companies may comprise employees' representatives. Employees' representatives who sit on the board of directors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of directors shall appoint one chairman and may appoint a deputy chairman. The method for the creation of the chairman and vice-chairmen shall be stipulated in the articles of association of the company.

Article 45 The term of appointment of a director shall be stipulated by the articles of association of the company, but each term shall not exceed three years. Upon expiry of the term of appointment, a director may be re-elected.

Where no new appointment is made upon expiry of the term of appointment of a director or a director has resigned during his/her term of appointment and causes the number of directors that constitutes the board of directors to fall below the quorum, the original director shall, prior to the new director taking office, continue to perform his/her duties as a director in accordance with the provisions of laws and administrative regulations and the articles of association of the company.

Article 46 The board of directors shall be accountable to the board of shareholders and shall exercise the following duties and powers:

(1) convene shareholders' meetings and report to the board of shareholders;

(2) execute the resolutions passed by the board of shareholders;

(3) decide on the business plans and investment schemes of the company;

(4) formulate the annual financial budget and financial accounting plan of the company;

(5) formulate the profit distribution plan and loss recovery plan of the company;

(6) formulate the plan for increase or reduction of registered capital and issue of corporate bonds;

(7) formulate the plan for merger, division, dissolution or change of company structure;

(8) decide on the set-up of internal management organisation of the company;

(9) decide on appointment or dismissal of company managers and their remuneration, and decide on appointment or dismissal of deputy managers and finance controller of the company based on the nomination by the managers as well as their remuneration.

(10) formulate the basic management system of the company; and

(11) other duties and powers stipulated in the articles of association of the company.

Article 47 Meetings of the board of directors shall be convened and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall convene and chair the meeting; where the deputy chairman is unable or fails to perform his/her duties, a director appointed by half or more of the board of directors shall convene and chair the meeting.

Article 48 The rules of procedure and voting procedures of the board of directors shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

The board of directors shall record minutes of meeting and the directors present at the meeting shall sign on the minutes of meeting.

The board of directors shall exercise one vote per person for passing of resolutions.

Article 49 Managers of limited liability companies may be appointed or dismissed by the board of directors. The manager shall be responsible to the board of directors and shall exercise the following functions and powers:

(1) manage the production and business operations of the company and organise and implement resolutions passed by the board of directors;

(2) organise and implement the annual business plan and investment scheme of the company;

(3) draft the plan for setting up of internal management organisation of the company;

(4) draft the basic management system of the company;

(5) formulate company rules and policies;

(6) recommend appointment or dismissal of deputy manager and financial controller of the company;

(7) decide on appointment or dismissal of management staff other than those positions which are to be decided by the board of directors; and

(8) other duties and powers granted by the board of directors.

Where there are provisions in the articles of association of the company on the duties and powers of managers, such provisions shall prevail.

Managers shall attend meetings of the board of directors.

Article 50 Limited liability companies with relatively fewer shareholders or of a relatively smaller scale may appoint an executive director instead of establishing a board of directors. An executive director may hold the post of company manager concurrently.

The duties and powers of the executive director shall be stipulated by the articles of association of the company.

Article 51 The board of supervisors of a limited liability company shall comprise not less than three members. Limited liability companies with relatively fewer shareholders or of a relatively smaller scale may appoint one to two supervisors instead of establishing a board of supervisors.

The board of supervisors shall include shareholders' representatives and an appropriate number of employees' representatives; the ratio of employees' representative therein shall not be less than one-third and such ratio shall be stipulated by the articles of association of the company. Employees' representatives sitting on the board of supervisors shall be

appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of supervisors shall appoint a chairman; the chairman shall be elected by more than half of the board of supervisors. The chairman of the board of supervisors shall convene and chair meetings of the board of supervisors; where the chairman of the board of supervisors is unable or fails to perform his/her duties, a supervisor appointed by more than half of the board of supervisors shall convene and chair the meeting(s) of the board of supervisors.

Directors and senior management personnel shall not hold the post of supervisor concurrently.

Article 52 The term of appointment of a supervisor shall be three years. Upon expiry of the term of appointment, a supervisor may be re-elected.

Where no new appointment is made upon expiry of the term of appointment of a supervisor or a supervisor resigns during his/her term of appointment and causes the number of supervisors that constitutes the board of supervisors to fall below the quorum, the original supervisor shall, prior to the new supervisor taking office, continue to perform his/her duties as a supervisor in accordance with the provisions of laws and administrative regulations and the articles of association of the company.

Article 53 A board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) shall exercise the following duties and powers:

(1) inspect the company finances;

(2) supervise the performance of duties by directors and senior management personnel and propose to remove a director or senior management personnel who violates the provision of the laws and administrative regulations and the articles of association of the company or the resolutions of the board of shareholders;

(3) require a director or senior management personnel who acts against the interests of the company to make correction;

(4) propose to convene ad hoc shareholders' meeting, convene and chair a shareholders' meeting when the board of directors fails to convene and chair a shareholders' meeting in accordance with the provisions of this Law;

(5) make proposals at shareholders' meetings;

(6) file a lawsuit against a director or senior management personnel in accordance with the provisions of Article 151 hereof; and

(7) other duties and powers stipulated in the articles of association of the company.

Article 54 Supervisors may attend meetings of the board of directors and query resolutions of the board of directors or give suggestions.

A board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) may conduct investigation upon discovering irregularities in the business operations and may appoint an accounting firm etc. to assist in the investigation if necessary; such expenses shall be borne by the company.

Article 55 The board of supervisors shall convene at least one meeting every year; a supervisor may propose to convene an ad hoc meeting of the board of supervisors.

The rule of procedures and voting procedures of a board of supervisors shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

Resolutions of a board of supervisors shall be passed by a simple majority of votes.

The board of supervisors shall record minutes of meeting and the supervisors present at the meeting shall sign on the minutes of meeting.

Article 56 Expenses incurred by a board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) in exercising their duties and powers shall be borne by the company.

Section 3 Special Provisions on One-person Limited Liability Companies

Article 57 The provisions of this Section shall apply to the establishment and organisation of one-person limited liability companies. Where there is no provision in this Section, the provisions of Sections 1 and 2 of this Chapter shall apply.

One-person limited liability companies referred to in this Law shall mean limited liability companies with only one natural person shareholder or one legal person shareholder.

Article 58 A natural person may invest in a one-person limited liability company only. Such a one-person limited liability company shall not invest in the setting up of a new one-person limited liability company.

Article 59 A one-person limited liability company shall declare in its company registration details whether the company is wholly-funded by a natural person or a legal person and state so in its business licence.

Article 60 The articles of association of one-person limited liability companies shall be formulated by the shareholder.

Article 61 One-person limited liability companies are not required to establish a board of shareholders. The shareholder shall put decisions stipulated in Article 37(1) hereof in writing and keep such documents in the company after signing.

Article 62 One-person limited liability companies shall formulate a financial accounting report at each accounting year-end for audit by an accounting firm.

Article 63 A shareholder of a one-person limited liability company who is unable to prove that the company's assets are independent of the shareholder's personal assets shall bear joint liability for the company's debt.

Section 4 Special provisions on State-owned wholly-funded companies

Article 64 The provisions of this Section shall apply to the establishment and organisation of State-owned wholly-funded companies. Where there is no provision in this Section, the provisions of Sections 1 and 2 of this Chapter shall apply.

State-owned wholly-funded companies referred to in this Law shall mean limited liability companies wholly funded by the State and for which the State Council or a local people's

government has authorised the State-owned assets supervision and administration authorities of the local people's government to perform the duties of a capital contributory.

Article 65 The articles of association of State-owned wholly-funded companies shall be formulated by the State-owned assets supervision and administration authorities or formulated by the board of directors and submitted to the State-owned assets supervision and administration authorities for approval.

Article 66 In the case of State-owned wholly-funded companies which do not establish a board of shareholders, the State-owned assets supervision and administration authorities shall exercise the duties and powers of the board of shareholders. The State-owned assets supervision and administration authorities may authorise the board of directors to exercise some duties and powers of the board of shareholders and to decide on important matters of the company; however, any merger, division, dissolution, increase or reduction in registered capital and issue of corporate bonds of the company shall be decided by the State-owned assets supervision and administration authorities; a merger, division, dissolution, bankruptcy application of significant State-owned wholly-funded companies shall be examined by the State-owned assets supervision and administration authorities and reported to the people's government of counterpart level.

The aforesaid significant State-owned wholly-funded companies shall be determined in accordance with the provisions of the State Council.

Article 67 The board of directors of State-owned wholly-funded companies shall exercise duties and powers stipulated in Article 46 and Article 66 hereof. The term of appointment of directors shall not exceed three years. The board of directors shall comprise employees' representatives.

The board of directors shall comprise employees' representatives. The board of directors shall be appointed by the State-owned assets supervision and administration authorities; however employees' representatives sitting on the board of directors shall be elected by an employees' representative congress.

The board of directors shall appoint one chairman and may appoint a deputy chairman. The chairman and deputy chairmen shall be appointed by the State-owned assets supervision and administration authorities from members of the board of directors.

Article 68 The managers of State-owned wholly-funded companies shall be appointed or dismissed by the board of directors. The managers shall exercise duties and powers in accordance with the provisions of Article 49 hereof.

A director may take the post of manager concurrently with the consent of the State-owned assets supervision and administration authorities.

Article 69 The chairman, deputy chairmen, directors and senior management personnel of State-owned wholly-funded companies shall not hold a post concurrently in other limited liability companies, companies limited by shares or economic organisations without the consent of the State-owned assets supervision and administration authorities.

Article 70 The board of supervisors of State-owned wholly-funded companies shall comprise not less than five members; the ratio of employees' representatives shall not be less than one-third. The ratio shall be stipulated by the articles of association of the company.

The board of supervisors shall be appointed by the State-owned assets supervision and administration authorities; however, employees' representatives sitting on the board of

supervisors shall be elected by an employees' representative congress. The chairman of the board of supervisors shall be appointed by the State-owned assets supervision and administration authorities from members of the board of supervisors.

The board of supervisors shall exercise the duties and powers stipulated in Article 53(1) to (3) hereof and other duties and powers stipulated by the State Council.

Chapter III Share Transfers of Limited Liability Companies

Article 71 The shareholders of a limited liability company may transfer all or part of their equity interests among themselves.

A shareholder proposing to transfer its equity interests to a non-shareholder shall obtain the consent of more than half of the other shareholders. The shareholder shall inform the other shareholders of the proposed equity transfer in writing and seek their consent. Failure to reply within 30 days from receipt of the written notice shall be deemed as consent to the proposed transfer. Where more than half of the other shareholders do not consent to the proposed transfer, the non-consenting shareholders shall acquire such equity interests, failing which they shall be deemed to have consented to the proposed transfer.

Where the shareholders consent to the proposed transfer, the other shareholders shall have pre-emptive right to acquire such equity interests on similar terms. Where two or more shareholders intend to exercise their pre-emptive rights, they shall negotiate and determine the acquisition ratio. Where the negotiation fails, the shareholders shall exercise their pre-emptive rights based on the ratio of capital contribution at the time of the proposed transfer.

Where there are provisions in the articles of association of the company for transfer of equity interests, such provisions shall prevail.

Article 72 A people's court handling transfer of equity interests of a shareholder in accordance with the enforcement procedures stipulated by the laws shall inform the company and all its shareholders; the other shareholders shall have pre-emptive rights to acquire such equity interests on similar terms. Failure to exercise pre-emptive rights within 20 days from receipt of the notice of the people's court shall be deemed as a forfeiture of pre-emptive rights by the other shareholders.

Article 73 Following a transfer of equity interests in accordance with the provisions of Article 71 and Article 72 hereof, the company shall cancel the capital contribution certificate of the original shareholder, issue a new capital contribution certificate to the new shareholder(s) and make corresponding amendments to the articles of association of the company and the records of shareholders and their amount of capital contribution in the register of shareholders. Such amendment to the articles of association of the company shall not require a resolution of the board of shareholders.

Article 74 Under any of the following circumstances, shareholders who cast an opposing vote to a resolution passed by the board of shareholders may request that the company acquire their equity interests based on a reasonable price:

(1) the company has not made a profit distribution to the shareholders for five consecutive years although the company has been profitable for those five consecutive years and satisfy profit distribution requirements stipulated in this Law;

(2) merger, division and transfer of main assets of the company; or

(3) expiry of the term of business operations stipulated in the articles of association of the company or the occurrence of a trigger event for dissolution stipulated in the articles of association or the passing of a resolution by a shareholders' meeting to amend the articles of association for subsistence of the company.

Where the shareholders fail to conclude an agreement for acquisition of equity interests within 60 days from the date of the resolution by the shareholders' meeting, the shareholders may file a lawsuit with a people's court within 90 days from the date of the resolution of the shareholders' meeting.

Article 75 Upon the death of a natural person successor, the lawful successor of a natural person shareholder may succeed the shareholder's qualifications, unless otherwise provided by the articles of association of the company.

Chapter IV Establishment and Organisation of Companies Limited by Shares

Section 1 Incorporation

Article 76 Establishment of companies limited by shares shall satisfy the following requirements:

(1) the number of promoters satisfies the quorum;

(2) The total share capital subscribed or the total paid-in capital raised by all the promoters is in compliance with the articles of association of the company;

(3) share issues and preparatory matters satisfy the provisions of the law;

(4) the articles of association of the company shall be formulated by the promoters and shall be adopted by the founding meeting if the company is established by a share float method;

(5) a company name shall exist and the organisation shall satisfy the requirements of a company limited by shares;

(6) a company address shall exist.

Article 77 Establishment of a company limited by shares may adopt the promotion method or share float method.

Establishment by promotion shall mean that the promoters set up a company by subscribing to the entire share capital of the company.

Establishment by share float shall mean that the promoters establish a company by subscribing to a part of the shares to be issued by the company and offering the remaining shares to the public or to specific targets.

Article 78 The number of promoters required for the establishment of a company limited by shares shall be more than two but less than 200 and half of the promoters shall have a domicile in China.

Article 79 The promoters of a company limited by shares shall handle the preparatory matters of the company.

The promoters shall enter into a promoters' agreement to specify their respective rights and obligations in the process of establishment of the company.

Article 80 If a company limited by shares is established by promotion, its registered capital shall be the total share capital subscribed by all the promoters at the time of registration with the company registration authorities. The company shall not offer shares to others until the shares subscribed by promoters are paid up.

The registered capital of a company limited by shares established by share float shall be the actual paid-up capital at the time of registration with the company registration authorities.

Where the laws and administrative regulations provide for the minimum amount of registered capital for companies limited by shares, such provisions shall prevail.

Article 81 The articles of association of companies limited by shares shall state the following matters:

(1) name and address of the company;

(2) scope of operations of the company;

(3) the method of establishment of the company;

(4) total number of shares of the company, par value of each share and amount of the registered capital;

(5) names of the promoters, number of shares subscribed to, and method and timing of capital contribution;

(6) composition of the board of directors, duties and powers and rules of procedure;

(7) legal representative of the company; and

(8) composition of the board of supervisors, duties and powers and rules of procedure;

(9) profit distribution method of the company;

(10) trigger events for dissolution of the company and liquidation method;

(11) company notices and announcement method; and

(12) other matters required by the board of shareholders to be stipulated.

Article 82 The provisions of Article 27 shall apply to the methods of capital contribution by promoters.

Article 83 Where a company limited by shares is established by promotion, the promoters shall subscribe in writing the full shares as specified in the articles of association of the company, and make capital contribution in accordance with the articles of association of the company. In the case of capital contribution to be made in non-cash assets, the formalities for transfer of property rights shall be completed in accordance with the provisions of the law.

Promoters who fail to make capital contribution in accordance with the provisions of the preceding paragraph shall bear default liability in accordance with the provisions of the promoters' agreement.

Once the shareholders subscribe for the full amount of capital contribution as specified in the articles of association of the company, the board of directors and board of supervisors shall be elected, and the former shall submit the articles of association of the company and other documents stipulated by the laws and administrative regulations to the company registration authorities to apply for incorporation and registration.

Article 84 The shares subscribed by the promoters of a company limited by shares established by share float shall not be less than 35% of the share capital of the company, unless otherwise provided in the laws and administrative regulations.

Article 85 Promoters shall make an announcement of the prospectus for a share offering to the public and prepare a subscription form. The subscription form shall state the items specified in Article 86 hereof for the subscriber to fill in the number of shares subscribed, monetary amount and address; the subscriber shall sign and affix seal on the subscription form. The subscriber shall make payment based on the number of shares subscribed.

Article 86 The prospectus shall include the articles of association of the company formulated by the promoters and state the following matters:

(1) number of shares subscribed by the promoters;

(2) par value of each share and the issue price;

(3) total number of bearer shares to be issued;

(4) usage of the funds raised;

(5) rights and obligations of a subscriber; and

(6) a statement stating the commencement and cut-off date for the share offering and that where the shares are not fully subscribed by the cut-off date, the subscribers may withdraw their subscription.

Article 87 A share offering by the promoters to the public shall be underwritten by a securities company established in accordance with the law and an underwriting agreement shall be entered into.

Article 88 Promoters offering shares to the public shall enter into a custodial agreement with a receiving bank.

The receiving bank shall collect payments from the subscribers on behalf of the issuer in accordance with the agreement and issue receipts to the subscribers who have made payments, and shall have the obligation to show proof of collection to the relevant authorities.

Article 89 Upon the issued share capital being fully paid up, a capital verification organisation established in accordance with the law shall conduct a capital verification and issue a certificate. The promoters shall convene the founding meeting within 30 days from the date on which the share capital is fully paid up. The founding meeting shall be constituted by the subscribers.

Where the issued share capital is not fully subscribed by the cut-off date stipulated in the prospectus or the promoters fail to convene the founding meeting within 30 days following the issued share capital being fully paid up, the subscribers may demand from the promoters a refund of the payment and bank deposit interest for the same period.

Article 90 The promoters shall give notice to all subscribers 15 days in advance of the date of the founding meeting or make an announcement. The quorum of the founding meeting shall be promoters and subscribers holding more than half of the total number of shares.

The founding meeting shall exercise the following duties and powers:

(1) review the report of promoters on preparatory status of the company;

(2) adopt the articles of association of the company;

(3) elect members of the board of directors;

(4) elect members of the board of supervisors;

(5) review the setting up expenses of the company;

(6) review the consideration of the assets used for capital contribution by the promoters;

(7) in the event of a force majeure event or a significant change in the business conditions which bears a direct influence on the establishment of the company, a resolution to halt the incorporation of the company may be made.

A resolution of the founding meeting on any of the matters stipulated in the aforesaid paragraph shall be passed by a simple majority of votes held by the subscribers.

Article 91 The promoters and subscribers shall not withdraw their share capital after they have made their capital contribution, except where the shares are not fully subscribed by the deadline or the promoters fail to convene the founding meeting or the founding meeting passed a resolution on halting the incorporation of the company.

Article 92 The board of directors shall submit the following documents to the company registration authorities within 30 days from conclusion of the founding meeting to apply for incorporation and registration:

(1) application form for company registration;

(2) minutes of the founding meeting;

(3) articles of association of the company;

(4) capital verification certificate;

(5) letter of appointment for the legal representative, directors and supervisors and their identity documents;

(6) legal person certificate or identity document of the promoters; and

(7) certificate of company address.

A company limited by shares established by share float shall submit the approval document issued by the securities regulatory authorities of the State Council to the company registration authorities if it proposes to offer shares to the public.

Article 93 Promoters of a company limited by shares who fail to make full capital contribution in accordance with the provisions of the articles of association of the company shall make up for the payment; other promoters shall bear joint liability.

Where it is discovered after the incorporation of a company limited by shares that the actual value of non-cash assets used for capital contribution for the incorporation is significantly lower than the amount stated in the articles of association of the company, the promoter who made the capital contribution shall make up for the difference; other promoters shall bear joint liability.

Article 94 The promoters of companies limited by shares shall:

(1) bear the debts and expenses incurred for the incorporation in the event that the incorporation is unsuccessful; and

(2) bear joint liability for refund of the payments made by the subscribers and bank deposit interest for the same period in the event that the incorporation is unsuccessful;

(3) compensate the company for damages incurred by the company in the course of incorporation due to the fault of the promoters.

Article 95 In the case of a conversion from a limited liability company into a company limited by shares, the total amount of converted paid-up capital shall not exceed the net asset value of the company. A share offering by a company limited by shares converted from a limited liability company for the purpose of an increase in capital shall be handled in accordance with the provisions of the law.

Article 96 Companies limited by shares shall keep the articles of association of the company, register of shareholders, corporate bonds counterfoil book, minutes of meetings of the board of shareholders, minutes of meetings of the board of directors, minutes of meetings of the board of supervisors and financial reports at the company.

Article 97 Shareholders shall have the right to inspect the articles of association of the company, register of shareholders, corporate bonds counterfoil book, minutes of meetings of the board of shareholders, resolutions of the board of directors, resolutions of the board of supervisors and finance reports and may give suggestions on or query the operations of the company.

Section 2 Shareholders' General Meetings

Article 98 A shareholders' general meeting of a company limited by shares shall be constituted by all the shareholders. The shareholders' general meeting shall be the authority of the company and shall exercise duties and powers in accordance with the provisions of this Law.

Article 99 The provisions of Article 37(1) hereof on the duties and powers of the board of shareholders of limited liability companies shall apply to shareholders' general meetings of companies limited by shares.

Article 100 A shareholders' general meeting shall be convened once every year. A shareholders' general meeting shall be convened within two months of any of the following events:

(1) the number of directors falls below two-thirds of the quorum stipulated in this Law or articles of association of the company;

(2) the losses of the company which have not been made good equal one-third of the paid-up capital of the company;

(3) requisition of a shareholders' general meeting by a shareholder who holds 10% or more of the company's shares or several shareholders who hold 10% or more of the company's shares jointly;

(4) the board of directors deems it necessary to convene a shareholders' general meeting;

(5) the board of supervisors proposes to convene a shareholders' general meeting; or

(6) other events stipulated by the articles of association of the company.

Article 101 Shareholders' general meetings shall be convened by the board of directors and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall chair the meeting; where the deputy chairman is unable or fails to perform his/her duties, a director appointed by more than half of the board of directors shall chair the meeting.

Where the board of directors is unable to or fails to convene a shareholders' general meeting, the board of supervisors shall convene and chair a meeting promptly; where the board of supervisors fails to convene and chair the meeting, a shareholder who holds 10% or more of the shares of the company or several shareholders who hold 10% or more of the shares of the company jointly for 90 days or more consecutively may convene and chair the meeting.

Article 102 All the shareholders shall be informed in writing 20 days in advance of a shareholders' general meeting of the date and venue of meeting and the agenda. All the shareholders shall be informed 15 days in advance of an extraordinary general meeting; where the agenda includes an issue of bearer shares, a notice of the meeting stating the date and venue of the meeting and the agenda shall be given 30 days in advance.

A shareholder who holds 3% or more of the shares of the company or several shareholders who hold 30% or more of the shares of the company jointly may submit a written proposal of an agenda item ten days before a shareholders' general meeting to the board of directors; the board of directors shall inform other shareholders of the proposal within two days from receipt of the proposal and table the proposal at the shareholders' general meeting for review. The contents of the proposed agenda item shall be within the scope of duties and powers of the shareholders' general meeting and shall contain a specific topic and specific resolution.

The shareholders' general meeting shall not resolve on matters which are not set out in the notice of meeting.

Holders of bearer shares attending a shareholders' general meeting shall deposit their share certificates with the company from five days before the meeting to the conclusion of the shareholders' general meeting.

Article 103 Shareholders attending a shareholders' general meeting shall exercise one vote per share. Company shares held by the company shall not carry voting rights.

Resolutions of a shareholders' general meeting shall be passed by a simple majority of votes cast by shareholders present at the meeting. Resolutions of a shareholders' general meeting on amendment to the articles of association of the company, increase or reduction in registered capital, merger, division, dissolution or change of company structure shall be passed by two-thirds majority of votes cast by shareholders present at the meeting.

Article 104 Where the provisions of this Law and the articles of association of the company require a resolution of the shareholders' general meeting for the transfer of major assets to others or vice versa or provision of guarantee to external parties etc., the board of directors shall convene a shareholders' general meeting promptly for the passing of a resolution on the aforesaid matter.

Article 105 A cumulative voting system may be implemented for the election of directors and supervisors at a shareholders' general meeting in accordance with the provisions of the articles of association of the company or a resolution of the shareholders' general meeting.

The cumulative voting system referred to in this Law shall mean that the voting rights carried by each share shall correspond to the number of directors or supervisors to be elected and the shareholders may use their voting rights collectively for election of directors or supervisors at a shareholders' general meeting.

Article 106 Shareholders may appoint their proxies to attend a shareholders' general meeting; the proxies shall submit a power of attorney to the company and exercise the voting rights within the scope of authorisation.

Article 107 Minutes of shareholders' general meetings shall be recorded and signed by the chairman and directors who attended the meeting. The minutes of the meeting shall be kept together with the roster of the signatures of the shareholders attending the meeting and the powers of attorney of attending proxies.

Section 3 Board of Directors, and Managers

Article 108 The board of directors of companies limited by shares shall comprise five to 19 members.

The board of directors may comprise employees' representatives. Employees' representatives who sit on the board of directors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The provisions of Article 45 hereof on the term of appointment of directors of limited liability companies shall apply to directors of companies limited by shares.

The provisions of Article 46 hereof on duties and powers of the board of directors of limited liability companies shall apply to the board of directors of companies limited by shares.

Article 109 The board of directors shall appoint a chairman and may appoint a deputy chairman. The chairman and a deputy chairman shall be elected by a simply majority of votes cast by all the directors.

The chairman shall convene and chair meetings of the board of directors, check the status of implementation of resolutions of the board of directors. The deputy chairman shall assist the chairman to perform his/her duties; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall perform the duties; where the deputy chairman is unable or fails to perform the duties, a director appointed by more than half of the board of directors shall perform the duties.

Article 110 The board of directors shall convene at least two meetings every year. All the directors and supervisors shall be informed of the meeting ten days before a meeting.

Shareholders holding one-tenth or more of the voting rights or one-third or more of the board of directors or board of supervisors may propose to convene an ad hoc meeting of the board of directors. The chairman shall convene and chair a meeting of the board of directors within ten days from receipt of the proposal.

The board of directors may determine the method and period of notice in the case of an ad hoc meeting convened by the board of directors.

Article 111 A meeting of board of directors shall be constituted by more than half of the board of directors. Resolutions of the board of directors shall be passed by a simple majority of votes cast by all the directors.

Each director shall have one vote for each resolution of the board of directors.

Article 112 Directors shall attend meetings of the board of directors in person; a director who is unable to attend a meeting may issue a power of attorney to appoint another director to attend the meeting on his behalf; the power of attorney shall state the scope of authorisation.

Minutes of meetings of the board of directors shall be recorded and signed by the directors who attended the meeting.

The directors shall be liable for resolutions of the board of directors. Where a resolution of the board of directors violates the provisions of laws and administrative regulations or the articles of association of the company or a resolution of the shareholders' general meeting and causes the company to suffer serious damages, directors who participated in the resolution shall bear compensation liability towards the company. A director who can prove that he/she has objected to the resolution and such objection is recorded in the minutes of meeting, the liability of the director may be waived.

Article 113 Managers of companies limited by shares may be appointed or dismissed by the board of directors.

The provisions of Article 50 on duties and powers of the managers of limited liability companies shall apply to the managers of companies limited by shares.

Article 114 The board of directors may appoint a director to take the post of manager concurrently.

Article 115 A company shall not provide loans to its directors, supervisors or senior management personnel directly or through its subsidiaries.

Article 116 Companies shall disclose information on remuneration of directors, supervisors and senior management personnel to their shareholders regularly.

Section 4 Board of Supervisors

Article 117 Companies limited by shares shall establish a board of supervisors comprising not less than three members.

The board of supervisors shall include shareholders' representatives and an appropriate number of employees' representatives; the ratio of employees' representative therein shall not be less than one-third and such ratio shall be stipulated by the articles of association of the company. Employees' representatives sitting on the board of supervisors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of supervisors shall appoint a chairman and may appoint a deputy chairman. The chairman and deputy chairman of the board of supervisors shall be elected by more than half of the board of supervisors. The chairman of the board of supervisors shall convene and chair meetings of the board of supervisors; where the chairman of the board of supervisors is unable or fails to perform his/her duties, the deputy chairman of the board of supervisors shall convene and chair meetings of the board of supervisors; where the deputy chairman of the board of supervisors is unable or fails to perform his/her duties, a supervisor appointed by more than half of the board of supervisors shall convene and chair the meetings of the board of supervisors.

Directors and senior management personnel shall not hold the post of supervisor concurrently.

The provisions of Article 52 hereof on the term of appointment of supervisors of limited liability companies shall apply to the supervisors of companies limited by shares.

Article 118 The provisions of Article 53 and Article 54 hereof on duties and powers of the board of supervisors of limited liability companies shall apply to the board of supervisors of companies limited by shares.

Expenses incurred by the board of supervisors in the exercising of duties and powers shall be borne by the company.

Article 119 The board of supervisors shall convene at least one meeting every six months. A supervisor may propose to convene an ad hoc meeting of the board of supervisors.

The rule of procedures and voting procedures of a board of supervisors shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

Resolutions of a board of supervisors shall be passed by a simple majority of votes.

The board of supervisors shall record minutes of meeting and the supervisors present at the meeting shall sign on the minutes of meeting.

Section 5 Special Provisions on Organisation of Listed Companies

Article 120 Listed companies referred to in this Law shall mean companies limited by shares whose shares are listed and traded on a stock exchange.

Article 121 Where a listed company acquired or sold major assets or provided guarantee amount(s) which exceeds 30% or more of its assets, a resolution of the shareholders' general meeting passed by a two-third majority of shareholders who attended the meeting shall be required.

Article 122 Listed companies shall appoint independent directors; the specific measures shall be provided by the State Council.

Article 123 Listed companies shall appoint a board secretary to be responsible for preparation of meetings of the board of shareholders and board of directors, keeping of documents, management of shareholders' information and handling of information disclosure etc.

Article 124 The board of directors and directors of a listed company shall abstain from voting on a resolution or vote on behalf of another director if they are an interested party in the resolution matter. The meeting of the board of directors may be constituted by more than half of those directors who are not a related party; the resolution of the board of directors shall be passed by a simple majority of votes cast by directors who are not a related party. Where the number of directors who are not a related party is less than 3, the matter shall be submitted to the board of shareholders of the listed company for review.

Chapter V Share Issues and Share Transfers of Companies Limited by Shares

Section 1 Share Issues

Article 125 The capital of a company limited by shares is divided into shares of equal par value.

Shares of the companies shall be in script form. Share certificates shall be the proof issued by a company for the shares held by the shareholders.

Article 126 Share issues shall comply with the principles of fairness and equity.

Shares of the same type shall rank pari passu. The terms and price shall be the same for all shares of the same type in a share issue. An organisation or individual shall pay the same price for each share subscribed.

Article 127 Shares may be issued at the par value or at a premium but shall not be issued below par value.

Article 128 Shares shall be issued in script form or other forms stipulated by the securities regulatory authorities of the State Council.

A share certificate shall state the following:

(1) name of the company;

(2) date of incorporation of the company;

(3) type of shares, par value and number of shares; and

(4) serial number of the share certificate.

Share certificates shall be signed by the legal representative and affixed with the company seal.

Share certificates for promoter's shares shall state the wordings "promoter's shares

Article 129 Shares issued by a company may be in the form of registered shares or bearer shares.

Shares issued by a company to promoters or legal persons shall take the form of registered shares and the share certificates shall state the name of the promoter or legal person and shall not state another name or the name of a representative.

Article 130 Companies issuing registered shares shall keep a register of shareholders which records the following:

(1) name and address of the shareholder;

(2) number of shares held by each shareholder;

(3) serial number of the share certificate of each shareholder; and

(4) date of acquisition of shares of each shareholder.

Companies issuing bearer shares shall record the number of shares, serial number of share certificates and date of issue.

Article 131 The State Council may formulate separate regulations on companies issuing other types of shares which are not provided in this Law.

Article 132 A company limited by shares shall deliver share certificates to their shareholders upon its incorporation. A company shall not deliver share certificates to its shareholders prior to its incorporation.

Article 133 A resolution on the following matters shall be passed in accordance with the provisions of the articles of association of the company for issue of new shares:

(1) type and number of new shares;

(2) issue price of new shares;

(3) date of commencement and cut-off date for issue of new shares; and

(4) type and number of new shares issued to existing shareholders.

Article 134 Companies approved by the securities regulatory authorities of the State Council to issue new shares shall announce the prospectus of the new shares and financial report and prepare a subscription form.

The provisions of Article 87 and Article 88 hereof shall apply to issuing new shares.

Article 135 A company may determine the pricing scheme in accordance with its business and financial status for issue of new shares.

Article 136 A company shall complete change of registration formalities with the company registration authorities and make an announcement after all the new shares are fully subscribed.

Section 2 Share Transfers

Article 137 Shareholders may transfer their shares in accordance with the provisions of the law.

Article 138 Share transfers by shareholders shall be carried out at a stock exchange established in accordance with the law or via other methods stipulated by the State Council.

Article 139 Transfer of registered shares shall be made by shareholders by way of endorsement or other methods stipulated by laws and administrative regulations; the company shall record the name and address of the transferee in the register of shareholders upon the transfer.

Alteration of records in the register of shareholders shall not be made within 20 days before the convening of a shareholders' general meeting or within five days from the record date for determination of dividend distribution by the company. Where the law provides otherwise for alteration of records in the register of shareholders of listed companies, such provisions shall prevail.

Article 140 Transfer of bearer shares shall take effect upon delivery of the share certificate by the shareholder to the transferee.

Article 141 Shares held by promoters shall not be transferred within one year from the date of incorporation of the company. Shares issued by the company before the share offering shall not be transferred within one year from the date on which the shares of the company are listed on a stock exchange.

Directors, supervisors and senior management personnel of a company shall declare their shareholding in the company and changes in such shareholding to the company; and shall not transfer more than 25% of their shareholding in the company during their term of appointment or transfer their shares within one year from the date on which the shares of the company are listed on a stock exchange. The aforesaid persons shall not transfer their shares in the company within half a year after leaving their post. The articles of association of the company may make restrictive provisions on transfer of shares of the company held by directors, supervisors and senior management personnel.

Article 142 Companies shall not make a share buyback, except under any of the following circumstances:

(1) reduction of registered capital of the company;

(2) merger with another company which holds shares of the company;

(3) distribution of shares to employees as an incentive; and

(4) request from shareholders who object to a resolution of a shareholders' general meeting on merger or division of the company for the company to acquire their shares.

A resolution of a shareholders' general meeting is required for a share buyback by a company under any of the circumstances stipulated in (1) to (3) above. The shares acquired under a share buyback made under the circumstances stipulated in (1) shall be cancelled within ten days from the date of acquisition of the shares; the shares shall be transferred or cancelled within six months if the share buyback is made under the circumstances stipulated in (2) and (4).

The shares acquired under a share buyback made by a company in accordance with the provisions of (3) shall not exceed 5% of the issued share capital; funds used for the acquisition shall be paid out from the post-tax profit of the company; the acquired shares shall be transferred to employees within one year.

A company shall not accept its own shares as pledge subject.

Article 143 A shareholder whose registered shares are stolen, lost or extinguished may request, pursuant to the announcement and assertion of claim procedures stipulated in the Civil Litigation Law of the People's Republic of China for a people's court to declare the shares invalid. Upon declaration of the shares by the people's court to be void, the shareholder may apply for issue of replacement shares.

Article 144 Shares of listed companies shall be listed and traded in accordance with the provisions of the relevant laws and administrative regulations and stock exchange rules.

Article 145 Listed companies shall announce information on their financial status, business status and any major lawsuit in accordance with the provisions of laws and administrative regulations and announce half-year financial reports.

Chapter VI Qualifications and Obligations of Company Directors, Supervisors and Senior Management Personnel

Article 146 The following persons shall not act as a director, supervisor or senior management personnel:

(1) a person who has no civil capacity or who has limited civil capacity;

(2) a person who has been convicted for corruption, bribery, conversion of property or disruption of the order of socialist market economy and a five-year period has not lapsed since expiry of the execution period or a person who has been stripped of political rights for being convicted of a crime and a five-year period has not lapsed since expiry of the execution period;

(3) a person who acted as a director, factory manager, manager in a company which has been declared bankrupt or liquidated and who is personally accountable for the bankruptcy or liquidation of the company; and a three-year period has not lapsed since the completion of bankruptcy or liquidation of such company;

(4) a person who has acted as a legal representative of a company which has its business licence revoked or being ordered to close down for a breach of law and who is personally accountable, and a three-year period has not lapsed since the revocation of the business licence of such company; and

(5) a person who is unable to repay a relatively large amount of personal debts.

Where the election or appointment of a director, supervisor or senior management personnel is in violation of the aforesaid provisions, such election or appointment shall be void.

In the event of the circumstances stipulated in (1) above during the term of appointment of a director, supervisor or senior management personnel, the company shall remove the director, supervisor or senior management personnel. Election or appointment of a director, supervisor or senior management staff which violates the aforesaid provisions shall be

void. A director, supervisor or senior management staff who encounters the circumstance set out in (1) above shall be terminated by the company.

Article 147 Directors, supervisors and senior management personnel shall comply with the provisions of laws and administrative regulations and the articles of association of the company and bear fiduciary duties towards the company.

Directors, supervisors and senior management personnel shall not abuse their duties and rights to receive bribes or other illegal income and shall not convert company assets.

Article 148 A director or senior management personnel shall not:

(1) misappropriate company funds;

(2) deposit company funds in a bank account opened in his/her name or in the name of others;

(3) use of company funds to make loans to others or provide guarantee for others without the consent of the board of shareholders, a shareholders' general meeting or the board of directors and in violation of the provisions of the articles of association of the company;

(4) enter into contracts with the company or carry out transactions with the company in violation of the provisions of the articles of association of the company or without the consent of the board of shareholders or a shareholders' general meeting;

(5) abuse his/her duties and powers to seize commercial opportunities of the company for himself/herself or others or engage in similar business as the company's on his/her own or with others without the consent of the board of shareholders or a shareholders' general meeting;

(6) pocket the commissions for transactions between the company and other parties;

(7) disclose company secrets arbitrarily; and

(8) do any other act which violates his/her fiduciary duties towards the company.

Income received by directors and senior management personnel in violation of the aforesaid provisions shall belong to the company.

Article 149 A director, supervisor or senior management personnel who violates the provisions of laws and administrative regulations or the articles of association of the company in his/her performance of duties and powers and causing the company to suffer damages shall bear compensation liability.

Article 150 Where the board of shareholders or a shareholders' general meeting requires a director, supervisor or senior management personnel to attend a meeting, the director, supervisor or senior management personnel shall attend the meeting and answer the queries of the shareholders.

Directors or senior management personnel shall provide the relevant information and data truthfully to the board of supervisors or the supervisor (in the case of a limited liability company which has not established a board of supervisors) and shall not obstruct the exercising of powers and performance of duties by the board of supervisors or the supervisor.

Article 151 In the event of circumstances stipulated in Article 149 hereof involving a director or senior management personnel, a shareholder or a group of shareholders of a limited liability company or a company limited by shares holding 1% or more of shares in the company for 180 days consecutively may submit a request in writing to the board of supervisors or the supervisor (in the case of a limited liability company which has not established a board of supervisors) to file a lawsuit with a people's court; Under any of the circumstances stipulated in Article 149 hereof involving a supervisor, the aforesaid shareholder(s) may submit a request in writing to the board of directors or the executive director (in the case of a limited liability company which have not established a board of directors) to file a lawsuit with a people's court.

Where the board of supervisors or the supervisor (in the case of a limited liability company which has not established a board of supervisors) or the board of directors or the executive director refuses to file a lawsuit pursuant to the written request of the shareholder(s) or fails to file a lawsuit within 30 days from receipt of the request or where the circumstances are urgent and the company will suffer irrecoverable losses if a lawsuit is not filed forthwith, the aforesaid shareholder(s) shall have the right to file a lawsuit with a people's court directly in their own name to protect the interests of the company.

In the event of an infringement of the legal interests of the company by others which causes the company to suffer damages, shareholders mentioned in the first paragraph of this article may file a lawsuit with a people's court in accordance with the provisions of the aforesaid paragraphs.

Article 152 In the event that a director or senior management personnel violates the provisions of the laws and administrative regulations or the articles of association of the company and infringes upon the interests of the shareholders, the shareholders may file a lawsuit with a people's court.

Chapter VII Corporate Bonds

Article 153 Corporate bonds referred to in this Law shall mean priced securities issued by companies in accordance with statutory procedures for which the issuer agrees to pay principal and interest to the holders within a stipulated period.

Issue of corporate bonds shall satisfy the issue requirements stipulated in the Securities Law of the People's Republic of China.

Article 154 The method of offering of corporate bonds shall be announced upon approval of the application for issue of corporate bonds by the authorised department of the State Council.

The method of offer of company bonds shall specify the following main particulars:

(1) name of the company;

(2) usage of the funds raised;

(3) issue size and par value;

(4) how the coupon rate is determined;

(5) period and method of principal repayment and interest payment;

(6) guarantee for the issue;

(7) issue price and time limit of the issue;

(8) net assets of the company;

(9) total amount of outstanding bonds previously issued; and

(10) underwriter of the issue.

Article 155 Corporate bond certificates shall state the name of the company, par value of the bond, coupon rate, repayment schedule etc and shall be signed by the legal representative and affixed with the company seal.

Article 156 Corporate bonds may take the form of registered bonds or bearer bonds.

Article 157 Companies shall keep a corporate bond counterfoil book.

The following matters shall be stated in the corporate bond counterfoil book for an issue of registered bonds:

(1) name and address of bondholder;

(2) date of acquisition of the bonds and serial number of the corporate bond certificate;

(3) total amount of bonds, par value of the bonds, coupon rate, method and period of principal repayment and interest payment; and

(4) date of issue.

The corporate bond counterfoil record book for bearer bonds shall state the total amount of bonds, coupon rate, schedule and method of repayment, date of issue and serial numbers of the bond certificates.

Article 158 Registration and settlement organisations for registered bonds shall establish the relevant systems for bond registration, custodian, interest payment and redemption etc.

Article 159 Corporate bonds shall be transferable and the transfer price shall be agreed between the transferor and the transferee.

Trading of corporate bonds on a stock exchange shall comply with the trading rules of the stock exchange.

Article 160 Registered bonds shall be transferred by way of endorsement by the bondholder or other methods stipulated by the laws and administrative regulations. Upon completion of the transfer, the company shall record the name and address of the transferee in the corporate bond counterfoil record book.

Transfer of bearer bonds shall take effect upon delivery of the bond by the bondholder to the transferee.

Article 161 A shareholders' general meeting of a listed company may pass a resolution on issuance of convertible corporate bonds and stipulate the method of conversion in the prospectus of the bond issue. Listed companies issuing convertible corporate bonds shall obtain the approval of the securities regulatory authorities of the State Council.

The corporate bond certificates for convertible corporate bonds shall state the wordings "convertible corporate bonds" and the balance of convertible corporate bonds shall be recorded in the corporate bond counterfoil record book.

Article 162 Companies which have issued convertible corporate bonds shall convert such corporate bonds into shares for the bondholders in accordance with the method of conversion; however the bondholders shall have the right to opt for conversion of such corporate bonds into shares or not to convert.

Chapter VIII Finance and Accounting of Companies

Article 163 Companies shall establish their finance and accounting system in accordance with the provisions of the laws and administrative regulations and the rules of the finance authorities of the State Council.

Article 164 Companies shall prepare financial accounting reports at the end of each accounting year and such financial accounting reports shall be audited by an accounting firm in accordance with the provisions of the law.

Preparation of financial accounting reports shall comply with the provisions of the laws and administrative regulations and the rules of the finance authorities of the State Council.

Article 165 Limited liability companies shall deliver their financial accounting reports to all shareholders by the deadline stipulated in the articles of association of the company.

The financial accounting reports of a company limited by shares shall be made available at the company at least 20 days before the date of the annual general meeting for inspection by the shareholders; companies limited by shares which have made public offering of shares shall announce their financial accounting reports.

Article 166 Companies shall contribute 10% of the profits into their statutory surplus reserve upon distribution of their post-tax profits of the current year. A company may discontinue the contribution when the aggregate sum of the statutory surplus reserve is more than 50% of its registered capital.

Where the balance of the statutory surplus reserve of a company is insufficient to make good its losses in the previous year, the company shall make good such losses using its profits of the current year before making contribution to the statutory surplus reserve in accordance with the provisions of the preceding paragraph.

Upon contribution to the statutory surplus reserve using its post-tax profits, a company may make further contribution to the surplus reserve using its post-tax profits in accordance with a resolution of the board of shareholders or a shareholders' general meeting.

The provisions of Article 34 hereof shall apply to the limited liability companies for making good of losses and contribution to the surplus reserve using post-tax profits; companies limited by shares shall make contributions based on the shareholding ratio of the shareholders, unless their articles of association provide otherwise.

Where the board of shareholders, the shareholders' general meeting or the board of directors violates the provisions of the preceding paragraphs to make profit distribution to the shareholders before making good the losses and contributing to the statutory surplus reserve, the shareholders shall return such distributed profits to the company.

Companies which have made a share buyback shall not make profit distributions on bought-back shares.

Article 167 The proceeds from shares of a company limited by shares issued at a premium and other income which are required to be contributed to the statutory surplus reserve as provided by the finance authorities of the State Council shall be contributed to the statutory surplus reserve accordingly.

Article 168 The surplus reserve of a company shall be used to make good the losses of the company or expand the business and production of the company or converted into additional capital. However, the statutory surplus reserve shall not be used to make good the losses of the company.

In the event of a conversion of statutory surplus reserve into additional capital, the balance of the statutory surplus reserve after the conversion shall not be less than 25% of the registered capital of the company before the increase.

Article 169 Appointment or removal of the auditor of a company shall comply with the provisions of the provisions of the articles of association of the company and decided by the board of shareholders, a shareholders' general meeting or the board of directors.

The board of shareholders, a shareholders' general meeting or the board of directors shall allow the auditor to make a representation when passing a resolution on the removal of the auditor.

Article 170 Companies shall provide accurate and complete accounting vouchers, accounting books, financial accounting reports and other accounting information to their auditor and shall not refuse to provide information, hide or provide false information.

Article 171 Companies shall not establish separate accounting books other than statutory accounting books.

Company assets shall not be deposited in accounts opened and maintained in the name of an individual.

Chapter IX Merger, Division, Increase in Capital and Capital Reduction of Companies

Article 172 Mergers of companies may take the form of mergers by absorption or mergers by new establishment.

Mergers by absorption shall mean that one company admits one or more other companies into its own company, whereby the admitting company survives and the admitted company or companies are dissolved. Mergers by new establishment shall mean that two or more companies merge to establish a new company, whereby each party to the merger is dissolved.

Article 173 The parties to a merger shall enter into a merger agreement for a company merger and prepare a balance sheet and a list of assets. The company shall notify its creditors within ten days from the date of the resolution on the merger and publish an announcement on the newspapers within 30 days. The creditors may demand, within 30 days from receipt of the notice (or within 45 days for those creditors who did not receive the notice), that the company settles the debts or provide the corresponding guarantee.

Article 174 The surviving company or the newly established company of a merger will assume the claims and debts of the parties to the merger.

Article 175 In the event of a division, the assets of the company shall be divided accordingly.

A company which proposes a division shall prepare a balance sheet and a list of assets. The company shall notify their creditors within ten days from the date of resolution on the division and publish an announcement on the newspapers within 30 days.

Article 176 The surviving company of a division shall bear joint liability for the debts of a company prior to its division, unless the company prior to the division and its creditors have entered into an agreement in writing on debt settlement.

Article 177 A company which proposes to reduce its registered capital shall prepare a balance sheet and a list of property.

The company shall notify its creditors within ten days from the date of resolution on reduction in registered capital and publish an announcement on the newspapers within 30 days. The creditors may demand, within 30 days from receipt of the notice (or within 45 days for those creditors who did not receive the notice), that the company settles the debts or provide the corresponding guarantee.

Article 178 Contribution to the additional capital of a limited liability company by its shareholders shall comply with the relevant provisions of this Law on capital contribution by shareholders of limited liability companies at the time of establishment.

Subscription by shareholders to new shares issued by a company limited by shares for an increase in registered capital shall comply with the relevant provisions of this Law on subscription of shares by shareholders of companies limited by shares at the time of establishment.

Article 179 In the event of a merger or division or change in registration details, change of registration formalities shall be completed with the company registration authorities in accordance with the provisions of the law; when a company is dissolved, de-registration formalities shall be completed in accordance with the provisions of the law; registration formalities shall be completed in accordance with the provisions of the law for establishment of a new company.

Change in registration formalities shall be completed with the company registration authorities in accordance with the provisions of the law for increase or reduction of registered capital.

Chapter X Dissolution and Liquidation of Companies

Article 180 A company shall be dissolved for the following reasons:

(1) expiry of the term of operation stipulated in the articles of association of the company or occurrence of an event which triggers the dissolution as provided in the articles of association of the company;

(2) a resolution on dissolution has been passed by the board of shareholders or a shareholders' general meeting;

(3) where the dissolution is required by a merger or division;

(4) the business licence is revoked or the company is ordered to be closed down;

(5) a dissolution of the company is ordered by a people's court in accordance with the provisions of Article 182 hereof.

Article 181 In the event of any of the circumstances set out in Article 180(1) hereof, the company may continue to exist by making an amendment to its articles of association.

Amendment to the articles of association of a limited liability company in accordance with the provisions of the preceding paragraph shall require a resolution passed by a two-third majority of votes cast by its shareholders; in the case of a company limited by shares, such a resolution shall be passed by a two-third majority of votes cast by its shareholders present at a shareholders' general meeting.

Article 182 Where a company experiences serious difficulties in its business and the shareholders will suffer serious damages if the company continues its operation, a shareholder or a group of shareholders holding 10% or more of the shares of the company may, in the absence of any other means, request for a mandatory dissolution of the company by a people's court.

Article 183 Where a company is dissolved in accordance with the provisions of Article 180(1), (2), (4) or (5) , a liquidation group shall be established to commence liquidation within 15 days from the occurrence of the event which triggers the dissolution. The liquidation group of a limited liability company shall be formed by the shareholders; the liquidation group of a company limited by shares shall comprise members appointed by the directors or the board of shareholders. Where the liquidation group is not established by the deadline to conduct liquidation, the creditors may apply to a people's court to appoint a liquidation group to conduct liquidation. The people's court shall accept the application and form a liquidation group promptly to conduct liquidation.

Article 184 The liquidation group shall exercise the following duties and powers during the liquidation period:

(1) disposal of company assets, preparation of balance sheet and list of assets;

(2) notification to creditors and public announcement;

(3) handling outstanding business of the company which relates to the liquidation;

(4) settlement of outstanding tax payments and tax payments which arise during the liquidation period;

(5) settlement of creditors' rights and debts;

(6) disposal of assets remaining after settlement of the company's debts; and

(7) representing the company in civil litigation.

Article 185 The liquidation group shall notify the creditors within ten days from the date of its establishment and publish an announcement on the newspapers within 60 days. The creditors may, within 30 days from receipt of the notice (or within 45 days for those creditors who did not receive the notice), declare their creditors' rights to the liquidation group.

Creditors declaring their creditors' rights shall provide details of the creditors' rights and the relevant proof. The liquidation group shall register the creditors' rights.

During the declaration period, the liquidation group shall not settle any creditors' rights.

Article 186 Upon disposal of company assets and preparation of the balance sheet and list of assets by the liquidation group, a liquidation plan shall be formulated and reported to the board of shareholders, a shareholders' general meeting or a people's court for confirmation.

The company assets shall be applied for the payment of liquidation expenses, employees' wages, social security premiums and statutory compensation, payment of outstanding taxes and settlement of company debts; the remaining assets shall be distributed to shareholders in accordance with the ratio of capital contribution in the case of a limited liability company and in accordance with the ratio of shareholders in the case of a company limited by shares.

During the liquidation period, a company shall not engage in business operations which are not related to the liquidation. Company assets shall not be distributed to the shareholders prior to settlement of the aforesaid liabilities.

Article 187 Where the liquidation group discovers upon disposal of company assets and preparation of the balance sheet and list of assets that the company assets are insufficient to settle the debts, an application shall be made to a people's court to declare the company bankrupt.

Where a company has been declared bankrupt by a people's court, the liquidation group shall transfer the liquidation task to the people's court.

Article 188 Upon completion of the liquidation, the liquidation group shall prepare and submit a liquidation report to the board of shareholders, a shareholders' general meeting or a people's court for confirmation, submit a copy of the liquidation report to the company registration authorities to apply for de-registration and make a public announcement of the termination of the company.

Article 189 Members of a liquidation group shall perform their duties diligently and perform liquidation obligations in accordance with the provisions of the law.

Members of a liquidation group shall not abuse their duties and rights to accept bribes or other illegal income and shall not convert company assets.

Members of a liquidation group shall bear compensation liability towards the company or its creditors for damages suffered by the company or its creditors due to an intentional or serious mistake of the member(s) of the liquidation group.

Article 190 Where a company is declared bankrupt in accordance with the provisions of the law, bankruptcy liquidation shall be conducted in accordance with the provisions of enterprise bankruptcy laws.

Chapter XI Branches of Foreign Companies

Article 191 Foreign companies referred to in this Law shall mean companies established outside China in accordance with the provisions of foreign laws.

Article 192 An application for establishment of a branch in China by a foreign company, the articles of association of the company and certificate of incorporation issued by the country of origin etc shall be submitted to the authorities in China. Upon approval,

registration formalities shall be completed with the company registration authorities and a business licence shall be obtained.

Measures on examination and approval of branches of foreign companies shall be provided separately by the State Council.

Article 193 A foreign company shall appoint a representative or an agent for its branch in China and allocate funds corresponding to the operations of the branch.

The State Council shall provide regulations on the statutory minimum operating funds of branches of foreign companies separately.

Article 194 Branches of foreign companies shall state their nationality and form of business entity in their name.

Branches of foreign companies shall keep a copy of the articles of association of the foreign company in their office.

Article 195 Branches established in China by foreign companies do not qualify as a Chinese legal person.

Foreign companies shall bear civil liability for the businesses carried out by their branches in China.

Article 196 Branches of foreign companies duly established in China to engage in business activities shall comply with the provisions of China laws and shall not infringe upon public interest; their legal rights and interests shall be protected by China laws.

Article 197 A foreign company shall settle all debts of its branch in China in accordance with the provisions of the law when it closes down its branch in China and shall conduct liquidation in accordance with company liquidation procedures stipulated in this Law. Prior to settlement of the debts, a foreign company shall not transfer the assets of its branch out of China.

Chapter XII Legal Liability

Article 198 Any party who violates the provisions of this Law in making a fraudulent declaration of its registered capital, submitting false materials or adopt other fraudulent means to conceal important fact to obtain company registration shall be ordered by the company registration authorities to make correction; a fine ranging from 5% to 15% of the registered capital shall be imposed on a company which has made fraudulent declaration; a fine ranging from RMB50,000 to RMB500,000 shall be imposed on a company which has submitted false materials or adopt other fraudulent means to conceal important fact; where the circumstances are serious, the company shall be de-registered or have its business licence revoked.

Article 199 Promoters or shareholders who made false capital contribution or fail to make cash or non-cash contribution in accordance with the schedule shall be ordered by the company registration authorities to make correction and imposed with a fine ranging from 5% to 15% of the amount of false capital contribution.

Article 200 Promoters or shareholders who withdraw their capital contribution after the company is incorporated shall be ordered by the company registration authorities to make correction and a fine ranging from 5% to 15% of the amount of withdrawn capital contribution.

Article 201 A company which violates the provisions of this Law in establishing separate accounting books other than statutory accounting books shall be ordered by the finance authorities of a people's government of county level and above to make correction and be imposed with a fine ranging from RMB50,000 to RMB500,000.

Article 202 Where a company made false records or concealed important fact on financial accounting reports etc provided to the relevant authorities as required by the law, the person-in-charge and other personnel who are directly responsible shall be imposed a fine ranging from RMB30,000 to RMB300,000 by the relevant authorities.

Article 203 A company which fails to contribute to statutory surplus reserve in accordance with the provisions of this Law shall be ordered by a people's government of county level and above to make up for the contribution and may be imposed a fine of not more than RMB200,000.

Article 204 A company which fails to notify its creditors or make an announcement for its merger, division, reduction in registered capital or liquidation in accordance with the provisions of this Law shall be ordered by the company registration authorities to make correction and be imposed a fine ranging from RMB10,000 to RMB100,000.

A company in liquidation which concealed its assets or made false records on its balance sheet or list of assets or distribute company assets before settlement of its debts shall be ordered by the company registration authorities to make correction and be imposed a fine ranging from 5% to 10% of the amount of company assets concealed or the amount of company assets distributed prior to debt settlement; the person-in-charge and other personnel who are directly responsible shall be imposed a fine ranging from RMB10,000 to RMB100,000.

Article 205 The company registration authorities shall issue a warning to a company in liquidation which engages in business operations unrelated to the liquidation and confiscate its illegal income.

Article 206 A liquidation group which fails to submit a liquidation report to the company registration authorities in accordance with the provisions of this Law or concealed an important fact or made a major omission in the liquidation report shall be ordered by the company registration authorities to make correction.

A member of a liquidation group who abuses his/her duties and powers to obtain dishonest gains, illegal income or conversion of company assets shall be ordered by the company registration authorities to return the company asset and surrender the illegal income and be imposed a fine ranging from one to five times the amount of the illegal income.

Article 207 The company registration authorities shall confiscate the illegal income of an asset valuation organisation or a capital verification organisation which provides false materials and impose a fine ranging from one to five times of the amount of illegal income; the relevant authorities may order the organisation to cease operations or revoke the qualification certificate of those personnel who are directly responsible or revoke the business licence of the organisation.

An asset valuation organisation or a capital verification organisation which provides a report containing a major omission by mistake shall be ordered by the company registration authorities to make correction; where the circumstances are serious, a fine ranging from one to five times of the income shall be imposed and the relevant authorities may order the organisation to cease operations or revoke the qualification certificate of those personnel who are directly responsible or revoke the business licence of the organisation.

Where the creditors of the company suffer damages due to an inaccurate valuation or capital verification issued by an asset valuation organisation or a capital verification organisation, the valuation organisation or capital verification organisation shall bear compensation liability within the scope of the inaccurate valuation or verification unless it is able to prove that the fault does not lie with the organisation.

Article 208 Where the company registration authorities grant registration to applicants which do not satisfy the requirements stipulated in this Law or reject registration applications which satisfy the requirements stipulated in this Law, the person-in-charge and other personnel who are directly responsible shall be subject to administrative punishment in accordance with the provisions of the law.

Article 209 Where the higher company registration authorities order the company registration authorities to grant registration to applicants which do not satisfy the requirements stipulated in this Law or to reject registration applications which satisfy the requirements stipulated in this Law or to cover up illegal registration, the person-in-charge and other personnel who are directly responsible shall be subject to administrative punishment in accordance with the provisions of the law.

Article 210 An entity which is not duly registered as a limited liability company or a company limited by shares but uses the name of a limited liability company or a company limited by shares or an entity which is not duly registered as a branch company of a limited liability company or a company limited by shares but uses the name of a branch company of a limited liability company or a company limited by shares shall be ordered by the company registration authorities to make correction or to be closed down and may be imposed a fine of not more than RMB100,000.

Article 211 A company which fails to commence operations after six months from its incorporation or cease operations for more than six months after commencement of operations arbitrarily without any justification shall have its business licence revoked by the company registration authorities.

A company which fails to complete change of registration formalities for a change in company registration details in accordance with the provisions of the Law shall be ordered by the company registration authorities to complete the registration formalities by a stipulated deadline; if the registration formalities are not completed by a stipulated deadline, a fine ranging from RMB10,000 to RMB100,000 shall be imposed.

Article 212 A foreign company which violates the provisions of this Law in establishing a branch company in China shall be ordered by the company registration authorities to make correction or to be closed down and may be imposed a fine ranging from RMB50,000 to RMB200,000.

Article 213 A company which uses the name of a company to engage in activities which compromise national security or public interest shall have its business licence revoked.

Article 214 A company which violates the provisions of this Law shall bear civil compensation liability and pay fines and penalties; where its assets are insufficient for payment, civil compensation shall take precedence.

Article 215 Where a violation of the provisions of this Law constitutes a criminal offence, criminal liability shall be pursued in accordance with the provisions of the law.

Chapter XIII Supplementary Provisions

Article 216 The following terms used in this Law shall take the following definitions:

(1) Senior management personnel shall mean the manager, deputy manager, financial controller, board secretary of a listed company and other personnel stipulated in the articles of association of the company.

(2) Controlling shareholder shall mean a shareholder who contributes to 50% or more of the capital of a limited liability company or a shareholder who holds 50% or more of the shares of a company limited by shares or a shareholder who is able to exercise significant influence on the resolutions of the board of shareholders or a shareholders' general meeting even though it contributes to less than 50% of the capital or holds less than 50% of the shares.

(3) Actual controlling party shall mean a party which exercises actual control over a company as investor or through other agreements or arrangements even though it is not a shareholder of the company.

(4) Related parties shall mean controlling shareholders, actual controlling party, directors, supervisors, senior management personnel of a company and those enterprises which have a direct or indirect control over a company or whose relationship with the company may result in a transfer of the company's interests. However, fellow State-controlled enterprises shall not be deemed as related parties merely for this affiliation.

Article 217 The provisions of this Law shall apply to foreign-invested limited liability companies and companies limited by shares; where the laws on foreign investment provide otherwise, such provisions shall prevail.

Article 218 This Law shall be effective on 1 January 2006.

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。

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。

序号	项目名称	审批部门	取消生效日期
1	跨区域电网输配电价审核	国家能源局	##################
2	发电机组进入及退出商业运营审核	国家能源局	##################
3	电力用户向发电企业直接购电试点	国家能源局	Friday, 17 May 2013
4	中资银行业金融机构分支机构变更营运资金审批	银监会	##################
5	中资银行业金融机构分支机构变更营业场所审批	银监会	##################
6	外资银行营业性机构的分支机构变更营运资金审批	银监会	##################
7	外资银行营业性机构及其分支机构变更营业场所审批	银监会	##################
8	铁路运价里程和货运计费办法审批	国家铁路局	##################
9	对办理税务登记（开业、变更、验证和换证）核准	税务总局	##################

序号	Deregulated review and/or approval	Department in Charge	Effective Date of Repeal(Month/Date/Year)
1	Review and approval of tariff schedule for electricity transmission and distribution among regional grids	National Energy Administration	11/24/14
2	Review and approval of entry into or exit out of commercial operation of power generators	National Energy Administration	11/24/14
3	Trial arrangement of direct deal of electricity between generator company and bulk electricity user	National Energy Administration	05/17/13
4	Review and approval of change in operational fund of branch of local banks in China	China Banking Regulatory Commission	10/10/12
5	Review and approval of change in operational premises of branch of local banks in China	China Banking Regulatory Commission	10/10/12
6	Review and approval of change in operational fund of branch of foreign banks in China	China Banking Regulatory Commission	10/10/12
7	Review and approval of change in operational premises of branch of foreign banks in China	China Banking Regulatory Commission	10/10/12
8	Review and approval of tariff schedule of rates and mileage of cargo transportation	National Railway Administration	08/12/14
9	Review and confirmation of taxation registration for opening and change in business	State Administation of Taxation	12/10/13

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）

总则

第一章　一般规定

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。

中华人民共和国价格法

（1997 年 12 月 29 日第八届全国人民代表大会常务委员会第二十九次会议通过　1997 年 12 月 29 日中华人民共和国主席令第九十二号公布　自 1998 年 5 月 1 日起施行）

目　录

第一章　总　则

第一条　为了规范价格行为，发挥价格合理配置资源的作用，稳定市场价格总水平，保护消费者和经营者的合法权益，促进社会主义市场经济健康发展，制定本法。

第二条　在中华人民共和国境内发生的价格行为，适用本法。

本法所称价格包括商品价格和服务价格。

商品价格是指各类有形产品和无形资产的价格。

服务价格是指各类有偿服务的收费。

第三条 国家实行并逐步完善宏观经济调控下主要由市场形成价格的机制。价格的制定应当符合价值规律，大多数商品和服务价格实行市场调节价，极少数商品和服务价格实行政府指导价或者政府定价。

市场调节价，是指由经营者自主制定，通过市场竞争形成的价格。

本法所称经营者是指从事生产、经营商品或者提供有偿服务的法人、其他组织和个人。

政府指导价，是指依照本法规定，由政府价格主管部门或者其他有关部门，按照定价权限和范围规定基准价及其浮动幅度，指导经营者制定的价格。

政府定价，是指依照本法规定，由政府价格主管部门或者其他有关部门，按照定价权限和范围制定的价格。

第四条 国家支持和促进公平、公开、合法的市场竞争，维护正常的价格秩序，对价格活动实行管理、监督和必要的调控。

第五条 国务院价格主管部门统一负责全国的价格工作。国务院其他有关部门在各自的职责范围内，负责有关的价格工作。

县级以上地方各级人民政府价格主管部门负责本行政区域内的价格工作。县级以上地方各级人民政府其他有关部门在各自的职责范围内，负责有关的价格工作。

第二章 经营者的价格行为

第六条 商品价格和服务价格，除依照本法第十八条规定适用政府指导价或者政府定价外，实行市场调节价，由经营者依照本法自主制定。

第七条 经营者定价，应当遵循公平、合法和诚实信用的原则。

第八条 经营者定价的基本依据是生产经营成本和市场供求状况。

第九条 经营者应当努力改进生产经营管理，降低生产经营成本，为消费者提供价格合理的商品和服务，并在市场竞争中获取合法利润。

第十条 经营者应当根据其经营条件建立、健全内部价格管理制度，准确记录与核定商品和服务的生产经营成本，不得弄虚作假。

第十一条 经营者进行价格活动，享有下列权利：

（一）自主制定属于市场调节的价格；

（二）在政府指导价规定的幅度内制定价格；

（三）制定属于政府指导价、政府定价产品范围内的新产品的试销价格，特定产品除外；

（四）检举、控告侵犯其依法自主定价权利的行为。

第十二条 经营者进行价格活动，应当遵守法律、法规，执行依法制定的政府指导价、政府定价和法定的价格干预措施、紧急措施。

第十三条 经营者销售、收购商品和提供服务，应当按照政府价格主管部门的规定明码标价，注明商品的品名、产地、规格、等级、计价单位、价格或者服务的项目、收费标准等有关情况。

经营者不得在标价之外加价出售商品，不得收取任何未予标明的费用。

第十四条 经营者不得有下列不正当价格行为：

（一）相互串通，操纵市场价格，损害其他经营者或者消费者的合法权益；

（二）在依法降价处理鲜活商品、季节性商品、积压商品等商品外，为了排挤竞争对手或者独占市场，以低于成本的价格倾销，扰乱正常的生产经营秩序，损害国家利益或者其他经营者的合法权益；

（三）捏造、散布涨价信息，哄抬价格，推动商品价格过高上涨的；

（四）利用虚假的或者使人误解的价格手段，诱骗消费者或者其他经营者与其进行交易；

（五）提供相同商品或者服务，对具有同等交易条件的其他经营者实行价格歧视；

（六）采取抬高等级或者压低等级等手段收购、销售商品或者提供服务，变相提高或者压低价格；

（七）违反法律、法规的规定牟取暴利；

（八）法律、行政法规禁止的其他不正当价格行为。

第十五条 各类中介机构提供有偿服务收取费用，应当遵守本法的规定。法律另有规定的，按照有关规定执行。

第十六条 经营者销售进口商品、收购出口商品，应当遵守本章的有关规定，维护国内市场秩序。

第十七条 行业组织应当遵守价格法律、法规，加强价格自律，接受政府价格主管部门的工作指导。

第三章 政府的定价行为

第十八条 下列商品和服务价格，政府在必要时可以实行政府指导价或者政府定价：

（一）与国民经济发展和人民生活关系重大的极少数商品价格；

（二）资源稀缺的少数商品价格；

（三）自然垄断经营的商品价格；

（四）重要的公用事业价格；

（五）重要的公益性服务价格。

第十九条 政府指导价、政府定价的定价权限和具体适用范围，以中央的和地方的定价目录为依据。

中央定价目录由国务院价格主管部门制定、修订，报国务院批准后公布。

地方定价目录由省、自治区、直辖市人民政府价格主管部门按照中央定价目录规定的定价权限和具体适用范围制定，经本级人民政府审核同意，报国务院价格主管部门审定后公布。

省、自治区、直辖市人民政府以下各级地方人民政府不得制定定价目录。

第二十条 国务院价格主管部门和其他有关部门，按照中央定价目录规定的定价权限和具体适用范围制定政府指导价、政府定价；其中重要的商品和服务价格的政府指导价、政府定价，应当按照规定经国务院批准。

省、自治区、直辖市人民政府价格主管部门和其他有关部门，应当按照地方定价目录规定的定价权限和具体适用范围制定在本地区执行的政府指导价、政府定价。

市、县人民政府可以根据省、自治区、直辖市人民政府的授权，按照地方定价目录规定的定价权限和具体适用范围制定在本地区执行的政府指导价、政府定价。

第二十一条 制定政府指导价、政府定价，应当依据有关商品或者服务的社会平均成本和市场供求状况、国民经济与社会发展要求以及社会承受能力，实行合理的购销差价、批零差价、地区差价和季节差价。

第二十二条 政府价格主管部门和其他有关部门制定政府指导价、政府定价，应当开展价格、成本调查，听取消费者、经营者和有关方面的意见。

政府价格主管部门开展对政府指导价、政府定价的价格、成本调查时，有关单位应当如实反映情况，提供必需的帐簿、文件以及其他资料。

第二十三条 制定关系群众切身利益的公用事业价格、公益性服务价格、自然垄断经营的商品价格等政府指导价、政府定价，应当建立听证会制度，由政府价格主管部门主持，征求消费者、经营者和有关方面的意见，论证其必要性、可行性。

第二十四条 政府指导价、政府定价制定后，由制定价格的部门向消费者、经营者公布。

第二十五条 政府指导价、政府定价的具体适用范围、价格水平，应当根据经济运行情况，按照规定的定价权限和程序适时调整。

消费者、经营者可以对政府指导价、政府定价提出调整建议。

第四章 价格总水平调控

第二十六条 稳定市场价格总水平是国家重要的宏观经济政策目标。国家根据国民经济发展的需要和社会承受能力，确定市场价格总水平调控目标，列入国民经济和社会发展计划，并综合运用货币、财政、投资、进出口等方面的政策和措施，予以实现。

第二十七条 政府可以建立重要商品储备制度，设立价格调节基金，调控价格，稳定市场。

第二十八条 为适应价格调控和管理的需要，政府价格主管部门应当建立价格监测制度，对重要商品、服务价格的变动进行监测。

第二十九条 政府在粮食等重要农产品的市场购买价格过低时，可以在收购中实行保护价格，并采取相应的经济措施保证其实现。

第三十条 当重要商品和服务价格显著上涨或者有可能显著上涨，国务院和省、自治区、直辖市人民政府可以对部分价格采取限定差价率或者利润率、规定限价、实行提价申报制度和调价备案制度等干预措施。

省、自治区、直辖市人民政府采取前款规定的干预措施，应当报国务院备案。

第三十一条 当市场价格总水平出现剧烈波动等异常状态时，国务院可以在全国范围内或者部分区域内采取临时集中定价权限、部分或者全面冻结价格的紧急措施。

第三十二条 依照本法第三十条、第三十一条的规定实行干预措施、紧急措施的情形消除后，应当及时解除干预措施、紧急措施。

第五章 价格监督检查

第三十三条 县级以上各级人民政府价格主管部门，依法对价格活动进行监督检查，并依照本法的规定对价格违法行为实施行政处罚。

第三十四条 政府价格主管部门进行价格监督检查时，可以行使下列职权：

（一）询问当事人或者有关人员，并要求其提供证明材料和与价格违法行为有关的其他资料；

（二）查询、复制与价格违法行为有关的帐簿、单据、凭证、文件及其他资料，核对与价格违法行为有关的银行资料；

（三）检查与价格违法行为有关的财物，必要时可以责令当事人暂停相关营业；

（四）在证据可能灭失或者以后难以取得的情况下，可以依法先行登记保存，当事人或者有关人员不得转移、隐匿或者销毁。

第三十五条 经营者接受政府价格主管部门的监督检查时，应当如实提供价格监督检查所必需的帐簿、单据、凭证、文件以及其他资料。

第三十六条 政府部门价格工作人员不得将依法取得的资料或者了解的情况用于依法进行价格管理以外的任何其他目的，不得泄露当事人的商业秘密。

第三十七条 消费者组织、职工价格监督组织、居民委员会、村民委员会等组织以及消费者，有权对价格行为进行社会监督。政府价格主管部门应当充分发挥群众的价格监督作用。

新闻单位有权进行价格舆论监督。

第三十八条 政府价格主管部门应当建立对价格违法行为的举报制度。

任何单位和个人均有权对价格违法行为进行举报。政府价格主管部门应当对举报者给予鼓励，并负责为举报者保密。

第六章　法律责任

第三十九条　经营者不执行政府指导价、政府定价以及法定的价格干预措施、紧急措施的，责令改正，没收违法所得，可以并处违法所得五倍以下的罚款；没有违法所得的，可以处以罚款；情节严重的，责令停业整顿。

第四十条　经营者有本法第十四条所列行为之一的，责令改正，没收违法所得，可以并处违法所得五倍以下的罚款；没有违法所得的，予以警告，可以并处罚款；情节严重的，责令停业整顿，或者由工商行政管理机关吊销营业执照。有关法律对本法第十四条所列行为的处罚及处罚机关另有规定的，可以依照有关法律的规定执行。

有本法第十四条第（一）项、第（二）项所列行为，属于是全国性的，由国务院价格主管部门认定；属于是省及省以下区域性的，由省、自治区、直辖市人民政府价格主管部门认定。

第四十一条　经营者因价格违法行为致使消费者或者其他经营者多付价款的，应当退还多付部分；造成损害的，应当依法承担赔偿责任。

第四十二条　经营者违反明码标价规定的，责令改正，没收违法所得，可以并处五千元以下的罚款。

第四十三条　经营者被责令暂停相关营业而不停止的，或者转移、隐匿、销毁依法登记保存的财物的，处相关营业所得或者转移、隐匿、销毁的财物价值一倍以上三倍以下的罚款。

第四十四条　拒绝按照规定提供监督检查所需资料或者提供虚假资料的，责令改正，予以警告；逾期不改正的，可以处以罚款。

第四十五条 地方各级人民政府或者各级人民政府有关部门违反本法规定，超越定价权限和范围擅自制定、调整价格或者不执行法定的价格干预措施、紧急措施的，责令改正，并可以通报批评；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。

第四十六条 价格工作人员泄露国家秘密、商业秘密以及滥用职权、徇私舞弊、玩忽职守、索贿受贿，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。

第七章 附 则

第四十七条 国家行政机关的收费，应当依法进行，严格控制收费项目，限定收费范围、标准。收费的具体管理办法由国务院另行制定。

利率、汇率、保险费率、证券及期货价格，适用有关法律、行政法规的规定，不适用本法。

第四十八条 本法自 1998 年 5 月 1 日起施行。

PRICE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Issued on December 29, 1997 and by President's decree of PRC (No. 92). Adopted at the 29th Meeting of the Standing Committee of the Eight National People's Congress and implementation as of May 1, 1998.)

CONTENTS

CHAPTER ONE GENERAL PROVISIONS

Article 1 This law is formulated with a view to standardizing price behavior so as to strengthen their role in rational disposition of resources, stabilize the general price level of the market, protect the lawful rights and interests of consumers and business operators and then promote the healthy development of the socialist market economy.

Article 2 The law is applicable to all the price behaviors that occur within the territory of the People's Republic of China.

The term "price" used in the law includes prices of all kinds of merchandise and prices of all kinds of services.

The term "price of merchandise" refers to the prices of all kinds of tangible and non-tangible assets.

The term "price of services" refers to fees collected for services rendered.

Article 3 The State shall introduce and gradually improve the mechanism of regulation of prices mainly through market force and under a kind of macroeconomic control. Under such a mechanism, pricing should be made to accord with the value law with most of the merchandises

and services to adopt market regulated prices while only a few of them to be put under government-set or guided prices.

Market-regulated prices refer to prices fixed independently by business operators through market competition.

"Business operator" used in this law refers to legal persons, other organizations or individuals that engage in production or marketing of merchandises or provide paid services.

Government-guided prices refer to prices as fixed by business operators according to benchmark prices and range of the prices as set by the government department in charge of price or other related departments within their term of reference.

Government-set prices as fixed by the government department in charge of prices or related departments within their term of reference according to the provisions of this law.

Article 4 The State shall support and prompt fair, open and legal market competition, maintain normal price order and exercise administration, regulation and necessary control over conduct of prices.

Article 5 The State Council department in charge of prices shall be responsible for the administration of the work related to prices in the whole country and other related departments shall be responsible for such work within their terms of reference.

Price departments of the people’s governments at and above the county level shall be responsible for the work related to prices within the regions under their jurisdiction. Price departments of the people’s governments at and above the county level shall be responsible for the work related to prices within their terms of reference.

CHAPTER TWO PRICE BEHAVIOR OF BUSINESS OPERATORS

Article 6 Prices of all merchandises and services, except those as set in Article 18 of this law to adopt government-set or guided prices, shall be subject to market regulation to be fixed by business operators independently according to the provisions of this law.

Article 7 In fixing prices, business operators should follow the principle of fairness, lawfulness, honesty and trustworthiness.

Article 8 Prices should be fixed by business operators basing on the cost of production or operation and market supply and demand.

Article 9 Business operators should strive for a better management to their own production and business operations so as to lower cost and provide consumers with merchandises and services at reasonable prices while obtaining lawful profits in market competition.

Article 10 Business operators should establish and improve their system of internal price management, accurately record and verify the cost of production or operations for their merchandise or services, in which any deception or forgery is not allowed.

Article 11 Operators shall enjoy the following rights in pricing:

1. To fix prices that are subject to market regulation;

2. To fix prices within the guided range as set by the government;

3. To fix prices for new products which are subject to government-set or guided prices, except special products for trial sales; and

4. To report or claim against actions that have infringe upon their rights of independent pricing.

Article 12 In their work related to prices, business operators should strictly keep up with laws, regulations, government guided-prices, government-set prices, legal price intervention measures and emergency measures adopted by the government according to law.

Article 13 In marketing and purchasing merchandises or providing services, business operators should clearly tap the related prices, specify names, places of origin, specifications, grades, price units, prices or items, fee collection standards and other related information according to the government’s regulations.

Business operators must not sell merchandises at prices above the marked prices or collect fees not specified.

Article 14 Business operators must not act whatsoever in the following ways to effect abnormal price behaviors:

1. To work collaboratively with others to control market prices to great detriments to the lawful rights and interests of other business operators or consumers;

2. To engage in dumping sales (except the cases of sales of fresh and live merchandises, seasonal merchandises and stockpiled merchandises at discount) at below cost prices in order to attain an upper hand over rivals or dominate the market and disrupt the normal production and operation

order to great detriments to the interests of the State or the lawful rights and interests of other business operators;

3. To fabricate and spread price rise information for pushing up the prices to excessively high level;

4. To resort to deceitful or misleading means in terms of prices to entice consumers or other business operators into trading in terms of prices;

5. To discriminate in terms of prices same kinds of merchandises or services offered by certain business operators under same trading conditions;

6. To disguisely raise or lower prices at irrational ranges by artificially raising or lowering grades of merchandises or services;

7. To seek exorbitant profits in violation of laws and regulations; and

8. To effect other illicit price behaviors that are forbidden by law or administrative decrees.

Article 15 In collecting fees for services rendered, all intermediary organizations should abide by the provisions of this law, except otherwise provided by other laws.

Article 16 In a bid to keep the domestic market order, business operators must observe related provisions of this chapter in selling imported merchandises or purchasing export merchandises.

Article 17 Organizations of various sectors should abide by laws and regulations governing prices, persist in self-discipline with regard to prices and accept guidance from government price departments.

CHAPTER THREE PRICE BEHAVIOR OF GOVERNMENT

Article 18 The government shall issue government-set or guided prices for the following merchandises and services if necessary:

1. The few merchandises that are of great importance to development of the national economy and the people’s livelihood;

2. The few merchandises that are in shortage of resources;

3. Merchandises of monopoly in nature;

4. Important public utilities;

5. Important services of public welfare in nature.

Article 19 Scope of specific items and uses for government-set or guided prices shall depend on the price catalogs issued by the central and local governments.

Catalogs of central government-set prices shall be fixed and revised by the price department of the State Council and published after the approval of the State Council.

Catalogs of prices to be set by departments of the people's governments of provinces, autonomous regions and municipalities within their power according to scope of specific items and uses as set in the central price catalog could be published with the examination and approval of the people's governments at the same level.

Local people's governments below the provincial, autonomous regional and municipal level shall not make their own price catalogs.

Article 20 State Council price department and other related departments shall fix government-set and guided prices according to scope of items and uses as set in the central prices and the government-set and guided prices for major merchandises and services shall get the approval from the State Council.

Price departments and other related departments of the people's governments of provinces, autonomous regions and municipalities shall fix indicative local government-set and guided prices within their respective power according to scope of items and uses as set in the local price catalogs.

People's governments of cities and counties may fix government-set and guided prices for their localities within their own power according to scope of items and uses as prescribed in the local price catalogs.

Article 21 Government-set and guided prices shall be fixed according to the average cost and market supply and demand of related merchandises or services, the economic and social development and the affordance of the people, allowing rational price differentials between buying and selling, between wholesale and retail sale, among different regions and different seasons.

Article 22 In fixing government-set and guided prices, price departments and other related departments shall carry out investigations into prices and costs and hear views from consumers, business operators and other quarters.

Upon investigated by government price departments and related departments in terms of prices and costs, related units should provide true fact and necessary books, documents and other materials.

Article 23 In fixing government-set and guided prices for public utilities services of public welfare in nature and the prices for merchandises of monopoly in nature that are important to immediate interest of people public hearings presided over by government price department should be conveyed to solicit views from consumers, business operators and other quarters to explore the necessity and feasibility.

Article 24 After the government-set and guided prices are determined, they shall be made public by the price departments.

Article 25 The scope and level of the government-set and guided prices shall properly be adjusted in the light of the operation of the national economy.

Consumers and business operators may put forward their recommendations with regard to the adjustment of the government-set and guided prices.

CHAPTER FOUR CONTROL AND ADJUSTMENT TO GENERAL PRICE LEVEL

Article 26 To stabilize the general price level is one of the major objectives of macro-economic policy. The State shall set targets for the monitoring and adjustment of general price level in the light of the requirements of the development of the national economy and the endurance of the people, list them into the national economic and social development programs and help their realization through means of monetary, fiscal, investment and import and export policies and measures.

Article 27 The government shall build a major merchandise reserve system and establish a price regulation fund to control prices and stabilize the market.

Article 28 In order to better control prices, government price departments shall establish a price monitoring system to monitor changes in the prices of major merchandises and services.

Article 29 Whereas the selling prices of grain and other major farm produce are too low on the market, the government shall introduce protective prices and adopt corresponding measures to ensure the protective prices be put into effect.

Article 30 Whereas prices of major merchandises or services rise sharply or are likely to rise sharply, the State Council and the people’s governments of provinces, autonomous regions and municipalities may set limit at disparity of prices or rate of profitability for part of the

merchandises, fix price ceilings or introduce other measures for intervention such as a system for announcing or recording price rises.

After adoption of above-mentioned intervention measures, provincial, autonomous regional and municipal people’s governments should report to the State Council for the record.

Article 31 When such abnormalities as violent fluctuation in the general price level occur nationwide, the State Council shall introduce power for the concentrated fixation of prices in the whole country or part of the regions for the time being or adopt such emergency measures as freezing part or all prices.

Article 32 The intervention or emergency measures introduced according to the provisions of Article 30 and Article 31 shall be removed or lifted in time when the situations that call for such measures disappear.

CHAPTER FIVE MONITORING AND CHECKING OF PRICES

Article 33 The price departments of the people’s governments at and above the county level exercise monitoring and checking over pricing activities according to law and mete out administrative punishments on acts that violate the law.

Article 34 In exercising monitoring and checking of prices, government price departments shall exercise the following powers:

1. To inquire into people concerned or related personnel and demand for evidences or other materials relating to law-violating acts;

2. To look into and duplicate account books, bills, vouchers, documents or other materials related to price law violating acts and verify banking materials associated with price law violating acts.

3. To check property related to the price law violating acts and, if necessary, order the people concerned to stop business operation.

4. To register and keep some evidences that are liable to be destroyed or kept out of hand or is hard to obtain for which people concerned or related personnel must not in any case remove, hide or destroy.

Article 35 In accepting the monitoring and checking by government price departments, business operators should provide their account books, bills and vouchers, documents or other materials needed for such monitoring and checking.

Article 36 The personnel of government prices departments are wholly prohibited to use materials or information obtained according to law for purposes other than price control or reveal business secrets of the people concerned.

Article 37 Consumer organizations, workers' price monitoring organizations, neighborhood committees, village committees and consumers have the right to exercise monitoring over price activities. Government price departments should give a full play to the monitoring roles of the people.

Medias have the right to mobilize public opinion for the monitoring of prices.

Article 38 Government price departments shall establish a system for reporting acts of violation of the price law.

Any unit or individual has the right to report acts of violation of price law and the government price departments shall encourage such reporting and undertake to keep secret what concerns concerning the reporters.

CHAPTER SIX LEGAL LIABILITIES

Article 39 Business operators who refuse to implement the government-set or guided prices, legal price intervention measures or emergency measures shall be ordered to correct, have their illegal proceeds confiscated and be fined concurrently for an amount less than five times the illegal proceeds. In cases of no illegal proceeds involved, a fine may still be imposed. For serious cases, they shall be ordered to stop business operation and make correction.

Article 40 Business operators who have violated one of the acts listed in Article 14 of this law shall be ordered to correct, have their illegal proceeds confiscated and be fined concurrently for an amount less than five times the illegal proceeds. In cases of no illegal proceeds involved, a warning shall be issued, together with a fine. For serious cases, they shall be ordered to stop operation for correction or have their business licenses revoked.

If other laws have stipulations concerning the punishments for acts listed in Article 14 of this law, the related laws shall prevail. Whether acts listed in 1, 2 of Article 14 and are of national in nature shall be upon the judgment of the State Council price department and whether the acts are regional in nature, they shall be confirmed by price departments of provincial, autonomous regional and municipal people's governments.

Article 41 Whereas business operators have caused overpayment by consumers or other business operators in violation of price law, the part in excess of the due payment shall be returned. If damages are done, the business operators shall undertake to compensate for the losses.

Article 42 Whereas business operators violate the provisions about price marking, they shall be ordered to correct, have their proceeds confiscated and be fined concurrently for an amount of less than RMB5,000.

Article 43 For business operators who refuse to stop operation for correction as ordered or remove, hide or destroy things recorded for keeping according to law, a fine ranging from over one time to less than three times the value of the things removed, hidden or destroyed shall be imposed.

Article 44 Business operators who refuse to provide materials needed for price monitoring and checking or provide false materials shall be ordered to correct, with a warning. Whereas they refuse to correct within the prescribed time limit, a fine shall be imposed.

Article 45 Whereas local people’s governments at all levels or related government departments at all levels fix or adjust prices beyond their terms of reference or refuse to implement price intervention measures or emergency measures shall be ordered to correct and may be criticized by issuing circulars. People in charge or related people directly responsible shall be given administrative punishments according to law.

Article 46 Whereas government personnel in charge of prices have leaked state secrets, commercial secrets or abused their power, resort to deception for personal gains, commit dereliction of duty or accept bribes and the cases are serious enough as to constitute crimes, criminal responsibilities shall be affixed. If a case is not serious enough to constitute a crime, an administrative punishment shall be meted out.

CHAPTER SEVEN SUPPLEMENTARY PROVISIONS

Article 47 State administrative organs shall collect fees strictly according to law, limit fee collection items and scope and standards of fee collection. Specific administration methods for such fee collection shall be provided for separately by the State Council.

Interest rates, exchange rates, insurance premium rates, securities and futures prices shall be subject to related laws or administrative decrees instead of this law.

Article 48 The law shall come into force as of May 1, 1998.

Order of the State Development Planning Commission of the People's Republic of China

(No.11)

The Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council has been approved by the State Council and is hereby promulgated, and shall go into effect on Aug.1, 2001.

Commissioner-in-Chief of the SDPC: Zeng Peiyan

July 4, 2001

The Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council

Number	Category of Goods or Services	Goods or Services of Regulated Price
1	Important central reserve goods and materials;	Purchasing price and marketing price of reserve food, edible vegetable oil (material), and cotton; bid base price of reserve sugar; ex-factory price and ex-warehouse price of reserve rock oil; warehousing price and ex-warehouse price of reserve fertilizer; purchasing price and marketing price of reserve silk
2	Tobacco leaves, salt and civil explosion equipments under state monopoly	Purchasing price of tobacco leaves; ex-factory price and wholesale price of salt; base ex-factory price and its floating range of civil explosion equipments
3	Some fertilizer	Base ex-factory price and its floating range, and port settling price

4	Some important pharmaceutical		Ex-factory price (port price) of anesthetics, first-class psychotropic, prevention and immunity pharmaceutical, prophylactic and contraceptive, retail price of other pharmaceutical
5	Teaching material		Un it price of the printed pages and its floating range
6	Natural gas		Ex-factory price
7	Water supplies of central or trans-provincial water conservancy		Ex-reservoir (beginning of the ditch) price
8	Electric power		Price of electrical power of the transmission-line system that hasn't adopted competitive price
			Distribution price of electrical power
9	Military materials		Ex-factory price
10	Important communication and transportation		Charges of pipeline transport and sundries; port charges; transport price of civil aviation and discount range (including airport charges); price of railway passenger transport and freight transport; and charging standards for sundries
11	Basic postal services		Rates
12	Basic telecommunication services		Rates
13	Important special services	Financial settlement and transaction services	Base price and its floating range
		Engineering prospect and design services	Base price and its floating range
		Some intermediary services	Charging standards

Price Regulation Departments	Remarks
The State Development Planning Commission jointly with relevant departments	The scope of price regulation shall include the price of central reserve food, central reserve edible vegetable oil (material), central reserve cotton, sugar, silk, central reserve rock oil, finished oil, central reserve fertilizer, etc reserved by enterprises that undertake central reserve tasks
The State Development Planning Commission jointly with relevant departments	The quasi purchasing price of tobacco leaf shall be fixed by the State Development Planning Commission jointly with the State Tobacco Monopoly Bureau; other levels of price of specific kind of tobacco shall be fixed by the State Tobacco Monopoly Bureau jointly with the State Development Planning Commission, the scope of salt price regulation shall include fixed salt production enterprises and salt wholesale enterprises; the scope of price regulation of civil explosion equipments shall include all production enterprises of the civil explosion industry
The State Development Planning Commission	The scope of price regulation shall include the ex-factory base price and its floating range of the urea, ammonium nitrate produced by large scale nitrogenous fertilizer enterprises of which the production capacity of synthetic ammonia is more than 300,000 tons per year; the port settling price of fertilizer imported by enterprises that have operation qualification according to central import quota
The State Development Planning Commission	The scope of price regulation shall include the pharmaceutical listed in the state basic medical insurance pharmaceutical catalog and other little special pharmaceutical of which the production and operation are monopolized, State Development Planning Commission Price (2000) No. 2141 State Development Planning Commission Catalog of Fixed Price Pharmaceutical
The State Development Planning Commission	The scope of price regulation shall include the price of teaching material of secondary and primary schools, and of junior colleges and technical secondary schools, the quasi price and its floating range of printed pages set by the State Development Planning Commission; the unit price of printed pages of and the retail price of textbooks of secondary and primary schools set by the departments in charge of price at the provincial levels

The State Development Planning Commission	The scope of price regulation shall include the price of the natural gas of overland pools
The State Development Planning Commission	The scope of price regulation shall include the reservoirs, ditches and riverways directly under the central authority and those across the provinces
The State Development Planning Commission	The scope of price regulation shall include the electrical power quantity of independent electricity generating enterprises that haven't adopted the competitive price and that are dispatched uniformly by the transmission-line system of electric power at the provincial level and above, the price of electrical power of the transmission-line system shall be formed through market competition and the government shall no longer examine and approve it after the reform of electrical power system
The State Development Planning Commission	The scope of price regulation shall include the electrical power sold from the transmission-line system at the provincial level and above, the government shall mainly supervise the price of high-tension transmit electricity and the price of low-tension distributed electricity The State Development Planning Commission
The State Development Planning Commission	The scope of price regulation shall include the equipments and matching products used by the armed forces, army provisions (price of military supplies and allowance settlement price), the price catalog of finished oil used by the armies shall be promulgated separately
The State Development Planning Commission jointly with relevant departments	The scope of price regulation shall include state railways, railways of joint venture (joint cooperation) in which the state occupies the holding position; the charges of major ports along the coast and the Yangtse River and all ports opened to the outside world, airports for civil use, and airports for army-civilian use; transport price of domestic air lines and the part of international air lines within China; sundries of domestic pipe transport and the loading charges, oil storage charges, transfer handling charges related to pipe transport
The State Development Planning Commission	The rates of basic postal services include the price of the service of letters, postcards, printed matters, packages, issuance of newspapers and periodicals, postal exchange, express delivery and confidential letters

The Ministry of Information Industry	The rates of basic telecommunication services include the price of the services of fixed net long distance phone calls and local phone calls, mobile phone calls, etc, the Ministry of Information Service shall ask for the opinions of the State Development Planning Commission in advance when formulating the policies on the rates of communication and information service, the reform schemes and the charging standards for communication services
The State Development Planning Commission	The scope of price regulation shall include the settlement handling charges of various commercial banks and non-bank financial agencies, the transaction handling charges and seat charges of national security transaction agencies, the seat charges of China Foreign Exchange Transaction Center, etc, and shall not include the interest rates and exchange rates
The State Development Planning Commission jointly with relevant departments	The scope of price regulation shall include the prospect, design, and relevant technical services of the investment and construction programs undertaken by the engineering prospect and design units
The State Development Planning Commission	The intermediary services shall adopt government regulation price, government reference price and market adjusting price separately according to the different circumstances, the compulsory services such as testing, authentication, notarization, monopoly arbitration shall adopt government regulated price; the services of inadequate competition such as evaluation, agent, certification, bidding, etc shall adopt government reference price, and the Measures for Administration of Intermediary Service Charges [State Development Planning Commission Price No.2255 (1999)] shall be carried out in specific implementation

Explanations:

1. The base price and its floating range, the charging standards and its floating range listed in the column “Goods or Services of Regulated Price” of this Catalog refer to the government reference price, and the others refer to the government regulated price.

   Charges of state administrative departments, the price of base oil, finished oil and the urban land base price shall be regulated according to relevant provisions.

2. The prices of goods or services that are provided by laws and regulations and that are regulated by the State Development Planning Commission based on the authorization of the State Council according to changes in the market shall come

into this Catalog automatically. For the goods and services that are licensed for the purchasing party or the selling party, the State Development Planning Commission shall regulate the price when pricing dispute arise. The goods (or services) that are set for the purpose of safety or environment protection according to the provisions of relevant laws and regulations of the State shall be regulated by the State Development Planning Commission.

3. According to the provisions of Article 19 of Price Law, the departments in charge of price of the people's governments of all provinces, autonomous regions, municipalities directly under the Central Government shall formulate the local price regulation catalogs within the scope provided in Article 18 of Price Law. The local regulated price catalogs shall include two parts: 1) The categories listed in this Catalog shall be listed in the local regulated price catalogs at the same time, and the price regulation departments of the State Council shall be indicated. Among the goods listed in the central price regulation catalog, the price department of the State Council shall only formulate the price of the representative goods, and the price of those non-representative goods shall be formulated by localities according to the price regulation catalog. 2) The price of local goods and services that are in accordance with the requirements for government reference price and government regulation price provided in Article 18 of the Price Law may be listed in the local price regulation catalogs.

中华人民共和国国家发展计划委员会令

第 11 号

《国家计委和国务院有关部门定价目录》已经国务院批准，现予公布。自 2001 年 8 月 1 日起实行。

国家发展计划委员会主任：

二〇〇一年七月四日

国家计委和国务院有关部门定价目录

编号	品名	定价内容	定价部门	备注
1	重要的中央储备物资	储备粮食、食用植物油（料）、棉花的收购价格和销售价格，储备食糖竞卖底价，储备石油的出厂价格和出库价格，储备化肥入库和出库价格，储备厂丝收购价格和销售价格	国家计委会同有关部门	定价范围为承担中央储备任务的企业收储的中央储备粮食，中央储备食用植物油（料），中央储备棉花、食糖、厂丝，国家储备用原油、成品油，中央救灾储备化肥等
2	国家专营烟叶、食盐和民爆器材	烟叶收购价格，食盐出厂价格、批发价格，民爆器材出厂基准价格及浮动幅度	国家计委会同有关部门	烟叶中准级收购价格由国家计委会同国家烟草专卖局制定，其他具体品种等级收购价格由国家烟草专卖局会同国家计委制定。食盐定价范围包括食盐定点生产企业和批发企业；民爆器材定价范围包括民爆待业所有生产企业
3	部分化肥	出厂基准价格及浮动幅度，港口结算价格	国家计委	定价范围为合成氨年生产能力 30 万吨以上的大型氨肥企业生产的尿素、硝酸铵出厂基准价格及浮动幅度；有经营资格的企业按照中央进口配额进口的化肥港口结算价格

4	部分重要药品	麻醉药品、一类精神药品、国家统一收购的预防免疫药品和避孕红具的出厂价格（口岸价格），其他药品的零售价格	国家计委	定价范围为列入国家基本医疗保险药品目录的药品及其它生产经营具有垄断性的少量特殊药品
5	教材	印张单价及浮动幅度	国家计委	定价范围为中小学和大中专教材。国家计委制定印张中准价及浮动幅度，各省级价格主管部门制定中小学课本印张单价和零售价格
6	天然气	出厂价格	国家计委	定价范围为陆上油气田天然气
7	中央直属及跨省水利工程供水	出库（渠首）价格	国家计委	定价范围包括中央直属及跨省水库、干渠及河道
8	电力	未实行竞价的上网电价	国家计委	定价范围为未实行竞价上网、由省及省以上电网统一调度的独立发电企业的电量。电力体制改革后，上网电价在市场竞争中形成，政府不再审批
		销售电价	国家计委	定价范围为省及省以上电网销售电量。电力体制改革后，政府主要监管高压输电价价格和低压配电价格
9	军品	出厂价格	国家计委	定价范围为武装力量用装备及配套产品，军粮（军供价格和补贴结算价格），供军队用成品油，具体目录另行公布
10	重要交通运输	管道运输及杂项收费，港口收费，民航运输价格及折扣幅度（含机场收费），铁路客货运输价格及杂项作业收费标准	国家计委及有关部门	定价范围为国家铁路、国家控股合资（合作）铁路；沿海长江干线主要港口及所有对外开放港口；民用机场、军民合用机场收费，国内航线及国际航线国内段航空运输价格；国内管道运输杂项收费包括与管道运输相关的装车费、储油费、中转代办费
11	邮政基本业务	资费	国家计委	邮政基本业务资费范围包括信函、明信片、印刷品、包裹、报刊发行、邮政汇兑、特快专递、机要邮件的服务价格

12	电信基本业务		资费	信息产业部	电信基本业务资费范围包括固定网络长途及本地电话、移动电话业务等服务价格。信息产业部在制定通信和信息服务资费政策、改革方案以及通信业务收费标准时，应事先征求国家计委意见
13	重要专业服务	金融结算和交易服务	基准价格及浮动幅度	国家计委	定价范围包括各商业银行和非银行金融机构结算手续费，全国性证券交易机构的交易手续费、席位费，中国外汇交易中心席位费等，不包括利率、汇率
		工程勘察设计服务	基准价格及浮动幅度	国家计委会同有关部门	定价范围为工程勘察设计单位承担的投资建设项目的勘察、设计及相关技术服务
		部分中介服务	收费标准	国家计委	中介服务区别不同情况分别实行政府定价、政府指导价和市民调节价。检验、鉴定、公证、仲裁等垄断、强制性的服务实行政府定价；评估、代理、认证、招投标等竞争不充分的服务实行政府指导价。具体按《中介服务收费管理办法》（计价格[1999]2255号）执行

说明：

一、本目录“定价内容”栏所列的基准价格及浮动幅度、收费标准及浮动幅度是指政府指导价，其它均指政府定价。

国家行政机关收费、原油、成品油价格和城市基准地价公布价格仍按现行有关规定管理。

二、法律法规有明确规定和国务院根据市场情况变化授权国家计委管理的商品或服务价格自动进入本目录。存在买方或卖方垄断的商品和服务，在发生价格矛盾时，由国家计委进行协调和必要的管理。国务院有关部门根据国家有关法律、法规的规定，为了安全、环保等特殊原因，强制在全国范围内使用的商品（或服务）价格，由国家计委进行必要的管理。

三、根据《价格法》第十九条的规定，各省、自治区、直辖市人民政府价格主管部门应当在《价格法》第十八条规定的范围内，制定地方定价目录。地方定价目录包括两部分：（1）列入本目录的品种应同时列入地方定价目录，并注明国务院定价部门。列入中央定价目录的商品中，国务院价格部门只制定代表品价格的，非代表品价格按照定价目录由地方制定。（2）符合《价格法》第十八条规定关于政府指导价格和政府定价条件的地方性商品和服务价格可列入地方定价目录。

Baosteel Co., Ltd successfully issued half billion dollars overseas bonds

[2013-12-13]

On December 7, Baosteel Co., Ltd made an announcement, announcing it successfully issued $500 million foreign bonds. The issuance of dollar bonds was the first time for Baosteel Co., Ltd to use a wholly owned overseas subsidiary Bao-Trans Enterprise as the main body to issue bonds directly and adopted the liquid supporting commitment provided by Baosteel Co., Ltd together with concurrent innovative trading structure of maintaining a good agreement.

On November 29, Baosteel Co., Ltd started to issue overseas dollar bonds. For this transaction, three big international credit rating agencies including Standard & Poor's, Moddy's and Fitch rating respectively granted Baosteel Co., Ltd an A-, A3 and A- long-term credit rating, with a stable outlook. Besides, it granted the planned issuing dollar bonds of Bao-Trans Enterprise an A-, Baa1 and A- rating, fully reflecting the recognition and affirmation of international credit rating agencies on Baosteel Co., Ltd and the trading structure.

For the overseas issuance of dollar bonds, the management level of Baosteel Co., Ltd had the road shows in Singapore and Hong Kong respectively on December 2 and December 3. After two-day fruitful road shows, the representatives from nearly 90 international famous investment institutions were met. During the process of interacting with investors, management level of Baosteel Co., Ltd elaborately explained the innovative trading structure, company's highlighted credits and the planning of Zhanjiang Iron & Steel Base project, which expounded the perception of Baosteel Co., Ltd on the future trends of Chinese iron and steel industry as well as the medium and long-term development strategies of Baosteel Co., Ltd.

The bond trades triggered the strong responses from 136 global professional investment institutions, aggregately receiving $2.2 billion orders. Among them, Asian investors accounted for 85%, and European investors took up 15%. In terms of different types of investors, fund companies accounted for 65%, central banks and insurance companies occupied 16%, banks took up 16% and private banks accounted for 3%.

Finally, Baosteel Co., Ltd successfully issued $500 million and five-year debenture bonds with 3.75% coupon, maturity time being December 12, 2018 and paying interests on a semi-annual basis. Innovative trading patterns and methods of promoting credits not only enabled Bao-Trans Enterprise gain the similar credit rating with Baosteel Co., Ltd, but also ultimately significantly lowered the costs of issuing bonds compared with general modes of maintaining good agreements, achieving a great success. It is known that bonds will be listed on Hong Kong Stock Exchange.

Source Baosteel News Centre

TOP PRINT

< Actively expanding non-steel businesses and making a new progress, Baosight established wireless network for 22 Wanda Plazas

> Baosteel built mobile learning " handheld class", made opportune use of "fragmented" time and took the subway to learn ...

Attachment 20 - Baosteel issued overseas bonds.pdf - 2016-02-23

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 investment 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 functions 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 functions 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 functions 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 the centralization 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 control 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 contributor.
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）

《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。

Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises

Order of the State-owned Assets Supervision and Administration Commission of the State Council

(No.14)

The Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises, which were adopted through discussion at the 38th executive meeting of the director of State-owned Assets Supervision and Administration Commission of the State Council, are hereby promulgated, and shall come into force as of May 7, 2006.

Director of the State-owned Assets Supervision and Administration Commission of the State Council: Li Rongrong

April 7, 2006

Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises

Chapter I General Provisions

Article 1 With a view to strengthening financial supervision over the enterprises (hereinafter referred to as enterprises)whose investment contribution duties are preformed by the State-owned Assets Supervision and Administration Commission of the State Council (hereinafter referred to as the SASAC), regulating the work for comprehensive performance evaluation of enterprises, and comprehensively reflecting the operating quality of enterprise assets, promoting to improve the level of capital returns, and correctly guiding the operation acts of enterprises, the present Measures are formulated in accordance with the Interim Regulations on the Supervision and Administration of State-owned Assets of Enterprises and the relevant state provisions.

Article 2 Comprehensive Performance Evaluation, as mentioned in the present Measures, shall refer to the comprehensive judgment on profit-earning abilities of an enterprise in special operation period, on assets quality, risk of debts, operation increase, and management conditions thereof by the basic method of analysis on input and output and through establishing a comprehensive evaluation index system, and comparing corresponding industrial evaluation standard.

Article 3 The comprehensive performance evaluation on enterprises shall include tenure performance evaluation and annual performance evaluation upon the need of audit on economic liability and financial supervision work.

1. Tenure performance evaluation shall refer to the comprehensive judgment conducted on the person in charge of an enterprise for his business achievement and management status during his tenure.

2. Annual performance evaluation shall refer to the comprehensive judgment conducted on the business achievement of an enterprise in a fiscal year.

Article 4 With a view to ensuring that the work for comprehensive performance evaluation be objective, just, and fair, and effectively bringing into play the overall judgment, management diagnosis, and behavior guide to enterprises, the work for comprehensive performance evaluation shall be carried out on the basis of the financial statements audited by social intermediary institutions.

As to any enterprise that does not make auditing by social intermediary institutions as required, its work for comprehensive performance evaluation shall be carried out on the basis of the financial statements audited by the internal auditing institution of the enterprise.

Article 5 The following principles shall be followed for carrying out the work for comprehensive performance evaluation on enterprises:

1. Overall principle. Comprehensive performance evaluation on enterprises shall be conducted on the various factors that may affect enterprise performance level by making multi-level and multi-angle analysis and comprehensive judgment through establishing a comprehensive index system.

2. Objectivity principle. Comprehensive performance evaluation on enterprises shall sufficiently embody the characteristics of market competition environment, and judge the business achievement and management status of the enterprises in an objective and just manner on the basis of the domestic industrial standard or international industrial standard that are measured uniformly in the same period.

3. Benefit principle. Comprehensive performance evaluation on enterprises shall focus on the examination of the level of return on investment, and apply the basic method of analysis on input and output, and truly reflect the assets operation efficiency of enterprises and capital maintenance and appreciation.

4. Development principle. Comprehensive performance evaluation on enterprises shall, on the basis of comprehensively reflecting the annual financial status and business achievements of enterprises, objectively analyze the increase and development level of the enterprises among the years, and predict the future development ability of the enterprises in a scientific way.

Article 6 The SASAC shall organize to carry out the work for comprehensive performance evaluation on enterprises according to the present Measures, and make guidance and supervision over the work for internal performance evaluation on enterprises.

Chapter II Contents of Evaluation and Evaluation Indexes

Article 7 Comprehensive performance evaluation on enterprises shall consist of two parts: quantitive evaluation on financial performance and qualitative evaluation on management performance.

Article 8 Quantitive evaluation on financial performance shall refer to quantitive comparative analysis and judgment on profit-earning ability, assets quality, risk of debts, and business increase of an enterprise in a certain period.

1. The analysis and judgment on profit-earning ability of an enterprise shall comprehensively reflect the level of input and output of the enterprise and the profit earning-quality and cash

guarantee through capital and assets remuneration level, level of cost and expense control, and operational cash flow status, and other financial indexes.

2. The analysis and judgment on assets quality of an enterprise shall comprehensively reflect the efficiency of the use of economic resources possessed by the enterprise, assets management level and the security of the assets of the enterprise through assets turnover, assets running status, assets structure, and the efficiency of assets, and other financial indicators.

3. The analysis and judgment on the debt risk of an enterprise shall comprehensively reflect the level of debts of the enterprise, solvency, and the debt risk faced by it through the level of debt burden, structure of assets and liabilities, contingent liabilities, and cash solvency.

4. The analysis and judgment on the business increase of an enterprise shall comprehensively reflect the business increase level and the strength for future development of the enterprise through sales increase, capital accumulation, change of benefit, technical input, and other financial indexes.

Article 9 The quantitive evaluation indexes of financial performance shall be divided into basic index and modified index according to the functions and roles of the various indexes.

1. Basic index reflects the major aspects of financial performance of an enterprise in a certain period, and draws a conclusion of the quantitive evaluation on financial performance of the enterprise.

2. Modified index makes up and corrects the evaluation result of basic index according to the differences and complementariness of financial indexes.

Article 10 Qualitative evaluation on management performance shall refer to the qualitative analysis and comprehensive judgment on the operation and management level of an enterprise in a certain period through expert review on the basis of quantitive evaluation on financial performance of the enterprise.

Article 11 Qualitative evaluation index of management performance shall include the establishment and execution of enterprise development strategy, business decision making, development innovation, risk control, base management, human resources, industrial impact, and social contributions, and other aspects.

Article 12 The quantitive evaluation index of financial performance and the qualitative evaluation index of management performance of an enterprise constitute the system of comprehensive performance evaluation index of the enterprise. The weight of each index shall be determined through referring to the consultant expert's opinions and organizing necessary test on the basis of the importance of the evaluation indexes and the guiding functions of each index.

Chapter III Evaluation Standard and Evaluation Method

Article 13 The standard of comprehensive performance evaluation on an enterprise shall include the standard for quantitive evaluation on financial performance and the standard for qualitative evaluation on management performance.

Article 14 The standard for quantitive evaluation on financial performance shall include domestic

industrial standard and international industrial standard.

1. Domestic industrial standard shall be measured uniformly on the basis of the statistical data for annual finance and operation and management by adopting the method of mathematical statistics and promulgated by year, industry, and scale.

2. International industrial standard shall be measured and promulgated on the basis of the actual value of the relevant financial indexes of large enterprises that rank leading internationally in the industry, or on the basis of the advanced value of the relevant financial indexes of the same type of enterprises after getting rid of the difference of business accounting.

Article 15 The classification on the industries subject to the standard of quantitive evaluation on financial performance shall be made in accordance with the industrial classification for national economic activities as promulgated by the state uniformly in combination with the reality of the enterprises.

Article 16 The standard of quantitive evaluation on financial performance may measure out five levels respectively: excellent value, good value, average value, lower value, and worse value on the basis of different industries, different scales and types of indexes.

Article 17 A large enterprise group shall, when making evaluation by adopting domestic standards, make evaluation by adopting international standard positively, and make pairwise comparison on international advanced levels.

Article 18 The standard of qualitative evaluation on management performance shall be formulated and promulgated uniformly through combining the actual level of operation and management of the enterprises and the supervision requirements of capital contributors on the basis of the evaluation contents, and divided into such five levels as superior, good, medium, low, and bad. The standard of qualitative evaluation on management performance shall not be divided by industry, and shall be provided only to the evaluation experts for reference.

Article 19 The actual value of the relevant financial indexes of the quantitive evaluation on financial performance of an enterprise shall be based on the audited financial statements of the enterprise, and shall make reasonable elimination on the difference of accounting policies, acquisition and reorganization of the enterprise, and other objective factors as required, so as to ensure the comparability of the evaluation result.

Article 20 The score of quantitive evaluation on financial performance shall be measured on the basis of the actual value of the evaluation index of an enterprise by comparing the industry and scale standard the enterprise lies in and by using prescribed scoring model.

The score of qualitative evaluation on management performance shall be determined on the basis of the actual conditions of the relevant factors of management performance of the enterprise during the period of evaluation by referring to the standard of qualitative evaluation on management performance.

Article 21 The score of quantitive evaluation on tenure financial performance of an enterprise shall be made on the basis of financial auditing result of the economic liabilities by using the evaluation standard of each year during the tenure, and the score of quantitive evaluation on

tenure financial performance of the enterprise shall be reckoned by using arithmetic average method.

Chapter IV Organization of the Evaluation Work

Article 22 The work of comprehensive performance evaluation on enterprises shall be organized and implemented in light of the principle of "Unifying the method, unifying the standard, and implementing through classification".

1. The work for tenure performance evaluation is an important component of the work for economic liability audit of enterprises, and shall be organized and implemented in accordance with the procedures of SASAC for the work for audit of economic liabilities.

2. The work for annual performance evaluation is an important content of the work for annual financial supervision carried out by SASAC, and shall be organized and implemented in light of the working procedures for settlement of annual financial accounts and the requirements for financial supervision work of SASAC.

Article 23 SASAC shall undertake the following duties in the work for comprehensive performance evaluation on enterprises:

1. Formulating systems and policies of comprehensive performance evaluation on enterprises;

2. Establishing and improving comprehensive performance evaluation index system of enterprises and evaluation methods;

3. Formulating and promulgating the standard for comprehensive performance evaluation on enterprises;

4. Organizing the implementation of the work for tenure and annual comprehensive performance evaluation on enterprises, and circulating a report on the evaluation result; and

5. Guiding and supervising over the work for internal performance evaluation on enterprises.

Article 24 The work for tenure performance evaluation may be carried out upon the need of the work for audit on economic liabilities of enterprises by engaging social intermediary institutions to give assistance and cooperation. The social intermediary institution that gives cooperation upon entrustment shall undertake the following functions in the work for comprehensive performance evaluation on enterprises:

1. Carrying out the work for auditing on financial bases of each year during the tenure upon entrustment;

2. Assisting in the examination and adjustment on basic data of evaluation each year during the tenure;

3. Assisting in measuring the result of quantitive evaluation on financial performance during the tenure

4. Assisting in gathering and collecting the materials of qualitative evaluation on management performance; and

5. Assisting in the implementation of the work for qualitative evaluation on management performance.

Article 25 The work for qualitative evaluation on management performance shall be organized and implemented on the basis of the work for quantitive evaluation on financial performance by engaging senior experts in the departments of supervision, industrial associations, research institutions, and social agencies. The experts of management performance evaluation shall undertake the following work functions:

1. Issuing expert opinions on the result of quantitive evaluation on financial performance of enterprises;

2. Making analysis and judgment on the actual conditions of the management performance of enterprises;

3. Making review on the management performance conditions of enterprises and issuing consultation and advisory opinions; and

4. Determining the score of qualitative evaluation index of management performance of enterprises.

Article 26 An enterprise shall undertake the following functions in the work for comprehensive performance evaluation:

1. Providing the relevant annual final statements and audit report;

2. Providing the relevant materials needed for qualitative evaluation on management performance; and

3. Organizing to carry out the work for comprehensive performance evaluation on its subsidiaries.

Chapter V Evaluation Result and Evaluation Report

Article 27 The evaluation result shall refer to the evaluation conclusions drawn on the basis of the scores of and analysis on comprehensive performance evaluation.

Article 28 The scores of comprehensive performance evaluation shall be expressed by hundred mark system, and include such five grades as superior, good, medium, low, and bad.

Article 29 In the comprehensive performance evaluation on enterprises, comparison and analysis shall be made on the change of performance in different years, so as to evaluate the extent of improvement on the business achievement and management level of the enterprises.

1. Tenure performance evaluation uses the evaluation result in the last year during the tenure to compare with the evaluation result of the last year in the previous tenure.

2. Annual performance evaluation uses the evaluation result of the current year to compare with the evaluation result of the last year.

Article 30 Tenure performance evaluation result is an important basis for evaluating the fulfillment of duties by the person in charge of an enterprise during his tenure and for determining the tenure economic liabilities in the work for audit of economic liabilities, and

provides reference for the work of tenure examination on the person in charge of the enterprise.

Article 31 The result of annual performance evaluation is an important basis for carrying out financial supervision work, and provides reference for the work of annual examination on the persons in charge of the enterprises.

Article 32 The report of comprehensive performance evaluation on enterprises is the document which is compiled on the basis of evaluation result, and reflects the performance status of the enterprises under evaluation, and consists of the main body of the report and the attachment.

1. The main body of the report of comprehensive performance evaluation on enterprises shall specify the basis of evaluation, process of evaluation, evaluation result, and the major matters need to be stated.

2. The attachment of the report of comprehensive performance evaluation on enterprises shall include: analysis report on management performance, evaluation scoring form, analysis on the result of questionnaire, expert consultation and advisory opinions, and etc., of which: the analysis report on management performance shall make analysis and diagnosis on the management performance status of enterprises, factors affecting management performance thereof, and the existing problems, and bring forward relevant management suggestions.

Article 33 The problems revealed and reflected in the comprehensive performance evaluation on enterprises shall be fed back to enterprises in a timely manner, and the enterprises shall be required to pay attention to them.

1. Any problem reflected in the tenure performance evaluation shall be clarified in the handling opinions on the audit of economic liabilities transferred to the enterprises, and the enterprises shall be required to pay attention to it and make correction.

2. Any problem reflected in the annual performance evaluation shall be clarified in the reply of annual final statements, and the enterprises shall be required to pay attention to it and make correction.

Chapter VI Work Liabilities

Article 34 An enterprise shall provide real and overall basic data materials of performance evaluation, and the main person in charge of the enterprise, the general accountant, or the person in charge of financial and accounting work shall be responsible for the truthfulness of the annual financial statements and the relevant basic evaluation materials.

Article 35 The institutions that carry out the business of comprehensive performance evaluation on enterprises upon entrustment and the relevant working staff thereof shall strictly implement the provisions on the work of comprehensive performance evaluation on enterprises, regulate technical operations, ensure the independence, objectiveness and justness of evaluation process, and the properness of evaluation conclusions, and shall strictly keep business secrets of the enterprises. If any institution or personnel participate in making false evaluation, violating procedures and work rules, and resulting in the inconsistency of the evaluation conclusions with the facts and revealing of business secrets of enterprises, SASAC shall no longer entrust it/him to undertake the business of comprehensive performance evaluation on enterprises, and shall

circulate a report on the relevant information to the organ in charge of the industry, and suggest giving it/him corresponding punishment.

Article 36 The relevant staff members of the SASAC shall, when organizing to carry out the work for comprehensive performance evaluation on enterprises, earnestly abide by their duties, regulate the procedures, and strengthen guidance. Any of them who fails to fulfill his duty or plays favoritism and commits irregularities during the process of comprehensive performance evaluation, which results in grave negligence in the work shall be given disciplinary punishment.

Article 37 The engaged review experts shall know of and analyze the management performance conditions of the enterprises carefully, and make review and scoring objectively and justly, and bring forward reasonable consulting opinions. If any expert is careless and unjust in the process of management performance evaluation, which results in the inconsistency of the evaluation result or consulting opinions with the actual conditions of the enterprises, and has a detrimental impact on the evaluation work, SASAC shall no longer engage him as the review expert.

Chapter VII Supplementary Provisions

Article 38 The Detailed Rules for the Implementation of Comprehensive Performance Evaluation on Central Enterprises and the evaluation standards formulated in accordance with the present Measures shall be promulgated additionally.

Article 39 An enterprise may formulate concrete working rules on the basis of the present Measures for carrying out the work for internal comprehensive performance evaluation.

Article 40 The present Measures shall be referred to for carrying out the work of comprehensive performance evaluation by state-owned assets supervision and administration organs at each locality.

Article 41 The present Measures shall be implemented as of May 7, 2006.

国务院国有资产监督管理委员会令

第 14 号

《中央企业综合绩效评价管理暂行办法》已经国务院国有资产监督管理委员会第 38 次主任办公会议审议通过，现予公布，自 2006 年 5 月 7 日起施行。

国务院国有资产监督管理委员会主任　李荣融

二ＯＯ六年四月七日

中央企业综合绩效评价管理暂行办法

第一章　总 则

第一条　为加强对国务院国有资产监督管理委员会（以下简称国资委）履行出资人职责企业（以下简称企业）的财务监督，规范企业综合绩效评价工作，综合反映企业资产运营质量，促进提高资本回报水平，正确引导企业经营行为，根据《企业国有资产监督管理暂行条例》和国家有关规定，制定本办法。

第二条　本办法所称综合绩效评价，是指以投入产出分析为基本方法，通过建立综合评价指标体系，对照相应行业评价标准，对企业特定经营期间的盈利能力、资产质量、债务风险、经营增长以及管理状况等进行的综合评判。

第三条　企业综合绩效评价根据经济责任审计及财务监督工作需要，分为任期绩效评价和年度绩效评价。

（一）任期绩效评价是指对企业负责人任职期间的经营成果及管理状况进行综合评判。

（二）年度绩效评价是指对企业一个会计年度的经营成果进行综合评判。

第四条　为确保综合绩效评价工作的客观、公正与公平，有效发挥对企业的全面评判、管理诊断和行为引导作用，开展综合绩效评价工作应当以经社会中介机构审计后的财务会计报告为基础。

按规定不进行社会中介机构审计的企业，其综合绩效评价工作以经企业内部审计机构审计后的财务会计报告为基础。

第五条　开展企业综合绩效评价工作应当遵循以下原则：

（一）全面性原则。企业综合绩效评价应当通过建立综合的指标体系，对影响企业绩效水平的各种因素进行多层次、多角度的分析和综合评判。

（二）客观性原则。企业综合绩效评价应当充分体现市场竞争环境特征，依据统一测算的、同一期间的国内行业标准或者国际行业标准，客观公正地评判企业经营成果及管理状况。

（三）效益性原则。企业综合绩效评价应当以考察投资回报水平为重点，运用投入产出分析基本方法，真实反映企业资产运营效率和资本保值增值水平。

（四）发展性原则。企业综合绩效评价应当在综合反映企业年度财务状况和经营成果的基础上，客观分析企业年度之间的增长状况及发展水平，科学预测企业的未来发展能力。

第六条　国资委依据本办法组织实施企业综合绩效评价工作，并对企业内部绩效评价工作进行指导和监督。

第二章　评价内容与评价指标

第七条　企业综合绩效评价由财务绩效定量评价和管理绩效定性评价两部分组成。

第八条　财务绩效定量评价是指对企业一定期间的盈利能力、资产质量、债务风险和经营增长四个方面进行定量对比分析和评判。

（一）企业盈利能力分析与评判主要通过资本及资产报酬水平、成本费用控制水平和经营现金流量状况等方面的财务指标，综合反映企业的投入产出水平以及盈利质量和现金保障

状况。

（二）企业资产质量分析与评判主要通过资产周转速度、资产运行状态、资产结构以及资产有效性等方面的财务指标，综合反映企业所占用经济资源的利用效率、资产管理水平与资产的安全性。

（三）企业债务风险分析与评判主要通过债务负担水平、资产负债结构、或有负债情况、现金偿债能力等方面的财务指标，综合反映企业的债务水平、偿债能力及其面临的债务风险。

（四）企业经营增长分析与评判主要通过销售增长、资本积累、效益变化以及技术投入等方面的财务指标，综合反映企业的经营增长水平及发展后劲。

第九条　财务绩效定量评价指标依据各项指标的功能作用划分为基本指标和修正指标。

（一）基本指标反映企业一定期间财务绩效的主要方面，并得出企业财务绩效定量评价的基本结果。

（二）修正指标是根据财务指标的差异性和互补性，对基本指标的评价结果作进一步的补充和矫正。

第十条　管理绩效定性评价是指在企业财务绩效定量评价的基础上，通过采取专家评议的方式，对企业一定期间的经营管理水平进行定性分析与综合评判。

第十一条　管理绩效定性评价指标包括企业发展战略的确立与执行、经营决策、发展创新、风险控制、基础管理、人力资源、行业影响、社会贡献等方面。

第十二条　企业财务绩效定量评价指标和管理绩效定性评价指标构成企业综合绩效评价指标体系。各指标的权重，依据评价指标的重要性和各指标的引导功能，通过参照咨询专家意见和组织必要测试进行确定。

第三章　评价标准与评价方法

第十三条　企业综合绩效评价标准分为财务绩效定量评价标准和管理绩效定性评价标

准。

第十四条　财务绩效定量评价标准包括国内行业标准和国际行业标准。

（一）国内行业标准根据国内企业年度财务和经营管理统计数据，运用数理统计方法，分年度、分行业、分规模统一测算并发布。

（二）国际行业标准根据居于行业国际领先地位的大型企业相关财务指标实际值，或者根据同类型企业组相关财务指标的先进值，在剔除会计核算差异后统一测算并发布。

第十五条　财务绩效定量评价标准的行业分类，按照国家统一颁布的国民经济行业分类标准结合企业实际情况进行划分。

第十六条 财务绩效定量评价标准按照不同行业、不同规模及指标类别，分别测算出优秀值、良好值、平均值、较低值和较差值五个档次。

第十七条　大型企业集团在采取国内标准进行评价的同时，应当积极采用国际标准进行评价，开展国际先进水平的对标活动。

第十八条　管理绩效定性评价标准根据评价内容，结合企业经营管理的实际水平和出资人监管要求，统一制定和发布，并划分为优、良、中、低、差五个档次。管理绩效定性评价标准不进行行业划分，仅提供给评议专家参考。

第十九条　企业财务绩效定量评价有关财务指标实际值应当以经审计的企业财务会计报告为依据，并按照规定对会计政策差异、企业并购重组等客观因素进行合理剔除，以保证评价结果的可比性。

第二十条　财务绩效定量评价计分以企业评价指标实际值对照企业所处行业、规模标准，运用规定的计分模型进行定量测算。

管理绩效定性评价计分由专家组根据评价期间企业管理绩效相关因素的实际情况，参考管理绩效定性评价标准，确定分值。

第二十一条　对企业任期财务绩效定量评价计分应当依据经济责任财务审计结果，运用各年度评价标准对任期各年度的财务绩效进行分别评价，并运用算术平均法计算出企业任期财务绩效定量评价分数。

第四章　评价工作组织

第二十二条　企业综合绩效评价工作按照“统一方法、统一标准、分类实施”的原则组织实施。

（一）任期绩效评价工作，是企业经济责任审计工作的重要组成部分，依据国资委经济责任审计工作程序和要求组织实施。

（二）年度绩效评价工作，是国资委开展企业年度财务监督工作的重要内容，依据国资委年度财务决算工作程序和财务监督工作要求组织实施。

第二十三条　国资委在企业综合绩效评价工作中承担以下职责：

（一）制定企业综合绩效评价制度与政策；

（二）建立和完善企业综合绩效评价指标体系与评价方法；

（三）制定和公布企业综合绩效评价标准；

（四）组织实施企业任期和年度综合绩效评价工作，通报评价结果；

（五）对企业内部绩效评价工作进行指导和监督。

第二十四条　任期绩效评价工作可以根据企业经济责任审计工作需要，聘请社会中介机构协助配合开展。受托配合的社会中介机构在企业综合绩效评价工作中承担以下职责：

（一）受托开展任期各年度财务基础审计工作；

（二）协助审核调整任期各年度评价基础数据；

（三）协助测算任期财务绩效定量评价结果；

（四）协助收集整理管理绩效定性评价资料；

（五）协助实施管理绩效定性评价工作。

第二十五条　管理绩效定性评价工作应当在财务绩效定量评价工作的基础上，聘请监管部门、行业协会、研究机构、社会中介等方面的资深专家组织实施。管理绩效评价专家承担以下工作职责：

（一）对企业财务绩效定量评价结果发表专家意见；

（二）对企业管理绩效实际状况进行分析和判断；

（三）对企业管理绩效状况进行评议，并发表咨询意见；

（四）确定企业管理绩效定性评价指标分值。

第二十六条　企业在综合绩效评价工作中承担以下职责：

（一）提供有关年度财务决算报表和审计报告；

（二）提供管理绩效定性评价所需的有关资料；

（三）组织开展子企业的综合绩效评价工作。

第五章　评价结果与评价报告

第二十七条　评价结果是指根据综合绩效评价分数及分析得出的评价结论。

第二十八条　综合绩效评价分数用百分制表示，并分为优、良、中、低、差五个等级。

第二十九条　企业综合绩效评价应当进行年度之间绩效变化的比较分析，客观评价企业经营成果与管理水平的提高程度。

（一）任期绩效评价运用任期最后年度评价结果与上一任期最后年度评价结果进行对比。

（二）年度绩效评价运用当年评价结果与上年评价结果进行对比。

第三十条　任期绩效评价结果是经济责任审计工作中评估企业负责人任期履行职责情况和认定任期经济责任的重要依据，并为企业负责人任期考核工作提供参考。

第三十一条　年度绩效评价结果是开展财务监督工作的重要依据，并为企业负责人年度考核工作提供参考。

第三十二条　企业综合绩效评价报告是根据评价结果编制、反映被评价企业绩效状况的文件，由报告正文和附件构成。

（一）企业综合绩效评价报告正文应当说明评价依据、评价过程、评价结果，以及需要说明的重大事项。

（二）企业综合绩效评价报告附件包括经营绩效分析报告、评价计分表、问卷调查结果分析、专家咨询意见等，其中：经营绩效分析报告应当对企业经营绩效状况、影响因素、存在的问题等进行分析和诊断，并提出相关管理建议。

第三十三条　对企业综合绩效评价揭示和反映的问题，应当及时反馈企业，并要求企业予以关注。

（一）对于任期绩效评价反映的问题，应当在下达企业的经济责任审计处理意见书中明确指出，并要求企业予以关注和整改。

（二）对于年度绩效评价结果反映的问题，应当在年度财务决算批复中明确指出，并要求企业予以关注和整改。

第六章　工作责任

第三十四条　企业应当提供真实、全面的绩效评价基础数据资料，企业主要负责人、总会计师或主管财务会计工作的负责人应当对提供的年度财务会计报表和相关评价基础资料的真实性负责。

第三十五条　受托开展企业综合绩效评价业务的机构及其相关工作人员应严格执行企业综合绩效评价工作的规定，规范技术操作，确保评价过程独立、客观、公正，评价结论适当，并严守企业的商业秘密。对参与造假、违反程序和工作规定，导致评价结论失实以及泄露企业商业秘密的，国资委将不再委托其承担企业综合绩效评价业务，并将有关情况通报其行业主管机关，建议给予相应处罚。

第三十六条　国资委的相关工作人员组织开展企业综合绩效评价工作应当恪尽职守、规范程序、加强指导。对于在综合绩效评价过程中不尽职或者徇私舞弊，造成重大工作过失的，给予纪律处分。

第三十七条　所聘请的评议专家应当认真了解和分析企业的管理绩效状况，客观公正地进行评议打分，并提出合理的咨询意见。对于在管理绩效评价过程中不认真、不公正，出现评议结果或者咨询意见不符合企业实际情况，对评价工作造成不利影响的，国资委将不再继续聘请其为评议专家。

第七章　附 则

第三十八条　根据本办法制定的《中央企业综合绩效评价实施细则》和评价标准另行公布。

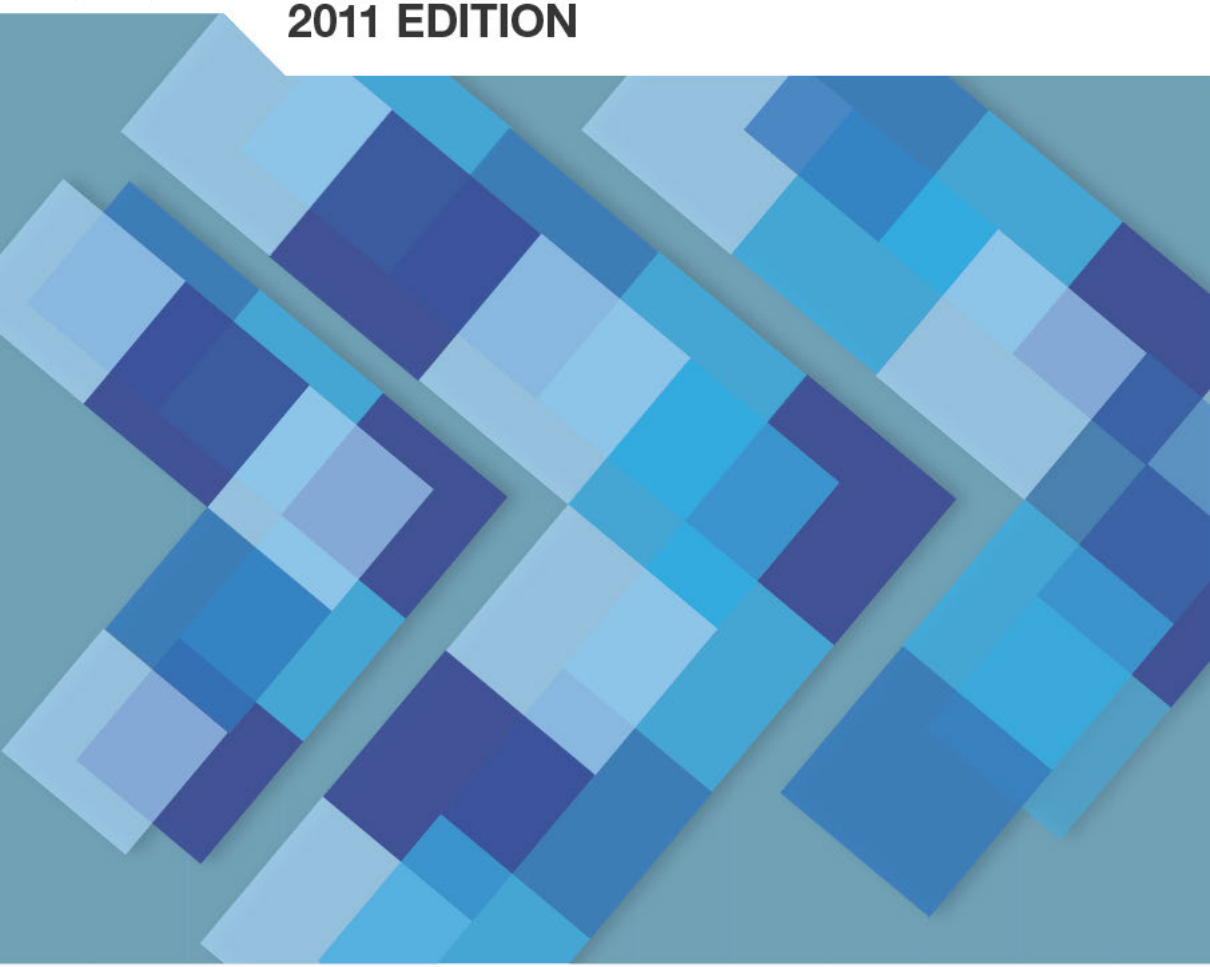
第三十九条　企业开展内部综合绩效评价工作，可依据本办法制定具体的工作规范。

第四十条　各地区国有资产监督管理机构开展综合绩效评价工作，可参照本办法执行。

第四十一条　本办法自 2006 年 5 月 7 日起施行。

OECD Guidelines for Multinational Enterprises

2011 EDITION



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Foreword

The *OECD Guidelines for Multinational Enterprises* are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The *Guidelines* are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

The *Guidelines'* recommendations express the shared values of the governments of countries from which a large share of international direct investment originates and which are home to many of the largest multinational enterprises. The *Guidelines* aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.

The *Guidelines* are supported by a unique implementation mechanism of National Contact Points (NCPs), agencies established by adhering governments to promote and implement the *Guidelines*. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the *Guidelines*. They also provide a mediation and conciliation platform for resolving practical issues that may arise.

On 4 May 2010, the governments of the 42 OECD and non-OECD countries adhering to the OECD Declaration on International Investment and Multinational Enterprises and related Decision started work on updating the *Guidelines* to reflect changes in the landscape for international investment and multinational enterprises since the last review in 2000. The changes agreed aim to ensure the continued role of the *Guidelines* as a leading international instrument for the promotion of responsible business conduct.

The updated *Guidelines* and the related Decision were adopted by the 42 adhering governments on 25 May 2011 at the OECD's 50th Anniversary Ministerial Meeting.

Changes to the *Guidelines* include:

- A new human rights chapter, which is consistent with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

- A new and comprehensive approach to due diligence and responsible supply chain management representing significant progress relative to earlier approaches.
- Important changes in many specialised chapters, such as on Employment and Industrial Relations; Combating Bribery, Bribe Solicitation and Extortion, Environment, Consumer Interests, Disclosure and Taxation.
- Clearer and reinforced procedural guidance to strengthen the role of the NCPs, improve their performance and foster functional equivalence.
- A pro-active implementation agenda to assist enterprises in meeting their responsibilities as new challenges arise.

The Update of the *Guidelines* was conducted by the adhering governments and included intensive consultations with a wide range of stakeholders and partners. All non-adhering G20 countries were invited to participate on an equal footing; they made important contributions, as did participants in the regional consultations in Asia, Africa, Latin America and the Middle East and North Africa. The OECD Business and Industry Advisory Committee, the OECD Trade Union Advisory Committee and OECD Watch represented the views of business, workers' organisations and non-governmental organisations (NGOs) through regular consultation meetings and their active participation in the Advisory Group of the Chair of the Working Party responsible for the Update of the *Guidelines*. The UN Secretary-General's Special Representative on Business and Human Rights, Professor John Ruggie, the International Labour Organisation together with other international organisations, also provided extensive input on the Update.

OECD committees on Competition; Consumer Policy; Corporate Governance; Employment, Labour and Social Affairs; Environment Policy; Fiscal Affairs; and the Working Group on Bribery in International Business Transactions contributed to the revisions of the relevant specialised chapters of the *Guidelines*.

The work on the Update was supported by the Investment Division as Secretariat of the OECD Investment Committee, in close collaboration with the Legal Directorate; the Centre for Tax Policy and Administration; the Anti-Corruption Division; the Competition Division; the Corporate Affairs Division; the Division for Employment Analysis and Policy; the Environment and Economy Integration Division; and the Information, Communications and Consumer Policy Division.

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DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

25 May 2011

ADHERING GOVERNMENTS[1]

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;

- That multinational enterprises play an important role in this investment process;

- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;

- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

1. As at 25 May 2011 adhering governments are those of all OECD members, as well as Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.

DECLARE:

Guidelines for Multinational Enterprises

I. That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto[2], having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;"

National Treatment

II. 1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");

2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;

3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";

4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises;

2. The text of the *Guidelines for Multinational Enterprises* is reproduced in Part I of this publication.

Conflicting Requirements	III.	That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto[3].
International Investment Incentives and Disincentives	IV. 1.	That they recognise the need to strengthen their co-operation in the field of international direct investment;
	2.	That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;
	3.	That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;
Consultation Procedures	V.	That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;
Review	VI.	That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Website *www.oecd.org/daf/investment.*

Part I

OECD Guidelines for Multinational Enterprises

Recommendations for responsible business conduct in a global context

Text and Commentary

Note by the Secretariat: The commentaries on the *OECD Guidelines for Multinational Enterprises* have been adopted by the Investment Committee in enlarged session, including the eight non-Member adherents* to the *Declaration on International Investment and Multinational Enterprises*, to provide information on and explanation of the text of the *Guidelines for Multinational Enterprises* and of the Council Decision on the *OECD Guidelines for Multinational Enterprises*. They are not part of the *Declaration on International Investment and Multinational Enterprises* or of the Council Decision on the *OECD Guidelines for Multinational Enterprises*.

In this publication, the commentaries are placed after the chapter they refer to and are numbered consecutively from 1 to 106.

* Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania.

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives. The *Guidelines* provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the *Guidelines* make a binding commitment to implement them in accordance with the *Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises*. Furthermore, matters covered by the *Guidelines* may also be the subject of national law and international commitments.

2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries and the expansion of the Internet economy, service and technology enterprises are playing an increasingly important role in the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services. Another key development is the emergence of multinational enterprises based in developing countries as major international investors.

4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join the countries and regions of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital and creating employment opportunities in host countries.

5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between economic, environmental and social objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.

6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate principles and standards of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.

7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have

called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. Enterprises have also promoted social dialogue on what constitutes responsible business conduct and have worked with stakeholders, including in the context of multi-stakeholder initiatives, to develop guidance for responsible business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises and for other stakeholders. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The start of this process can be dated to the work of the International Labour Organisation in the early twentieth century. The adoption by the United Nations in 1948 of the Universal Declaration of Human Rights was another landmark event. It was followed by the ongoing development of standards relevant for many areas of responsible business conduct – a process that continues to this day. The OECD has contributed in important ways to this process through the development of standards covering such areas as the environment, the fight against corruption, consumer interests, corporate governance and taxation.

9. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable**.** Nevertheless, some matters covered by the *Guidelines* may also be regulated by national law or international commitments.

2. Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the *Guidelines*, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.

3. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.

4. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among

them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

5. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.

6. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines'* recommendations to the fullest extent possible.

7. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.

8. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries or third countries, the governments concerned are encouraged to co-operate in good faith with a view to resolving problems that may arise.

9. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.

10. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.

11. Governments adhering to the *Guidelines* will implement them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.
2. Respect the internationally recognised human rights of those affected by their activities.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.

9. Refrain from discriminatory or disciplinary action against workers who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.

14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

15. Abstain from any improper involvement in local political activities.

B. Enterprises are encouraged to:

1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.

2. Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

Commentary on General Policies

1. The General Policies chapter of the *Guidelines* is the first to contain specific recommendations to enterprises. As such it is important for setting the tone and establishing common fundamental principles for the specific recommendations in subsequent chapters.

2. Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the *Guidelines* are one element) to policies affecting them.

3. There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the *Guidelines* are meant to foster complementarities in this regard. Indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development.[4]

4. Chapter IV elaborates on the general human rights recommendation in paragraph A.2.

5. The *Guidelines* also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training.

6. The *Guidelines* recommend that, in general, enterprises avoid making efforts to secure exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation and financial incentives among other issues, without infringing on an enterprise's right to seek changes in the

4. One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

statutory or regulatory framework. The words "or accepting" also draw attention to the role of the State in offering these exemptions. While this sort of provision has been traditionally directed at governments, it is also of direct relevance to MNEs. Importantly, however, there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons. The environment and competition policy chapters provide examples.

7. The *Guidelines* recommend that enterprises apply good corporate governance practices drawn from the OECD Principles of Corporate Governance. The Principles call for the protection and facilitation of the exercise of shareholder rights, including the equitable treatment of shareholders. Enterprise should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation with stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

8. The Principles call on the board of the parent entity to ensure the strategic guidance of the enterprise, the effective monitoring of management and to be accountable to the enterprise and to the shareholders, while taking into account the interests of stakeholders. In undertaking these responsibilities, the board needs to ensure the integrity of the enterprise's accounting and financial reporting systems, including independent audit, appropriate control systems, in particular, risk management, and financial and operational control, and compliance with the law and relevant standards.

9. The Principles extend to enterprise groups, although boards of subsidiary enterprises might have obligations under the law of their jurisdiction of incorporation. Compliance and control systems should extend where possible to these subsidiaries. Furthermore, the board's monitoring of governance includes continuous review of internal structures to ensure clear lines of management accountability throughout the group.

10. State-owned multinational enterprises are subject to the same recommendations as privately-owned enterprises, but public scrutiny is often magnified when a State is the final owner. The OECD *Guidelines on Corporate Governance of State-Owned Enterprises* are a useful and specifically tailored guide for these enterprises and the recommendations they offer could significantly improve governance.

11. Although primary responsibility for improving the legal and institutional regulatory framework lies with governments, there is a strong business case for enterprises to implement good corporate governance.

12. An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behaviour and the relationships between business and society. Interesting developments in this regard are being undertaken in the financial sector. Enterprises recognise that their activities often have social and environmental implications. The institution of self-regulatory practices and management systems by enterprises sensitive to reaching these goals – thereby contributing to sustainable development – is an illustration of this. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate.

13. Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect bona fide "whistle-blowing" activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the *Guidelines*.

14. For the purposes of the *Guidelines*, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the *Guidelines*. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The *Guidelines* concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship, as described in paragraphs A.11 and A.12. Due diligence can help enterprises avoid the risk of such adverse impacts. For the purposes of this recommendation, 'contributing to' an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. The term 'business relationship' includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. The recommendation in paragraph A.10 applies to those matters covered by the *Guidelines* that are related

to adverse impacts. It does not apply to the chapters on Science and Technology, Competition and Taxation.

15. The nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the enterprise, context of its operations, the specific recommendations in the *Guidelines*, and the severity of its adverse impacts. Specific recommendations for human rights due diligence are provided in Chapter IV.

16. Where enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence.

17. To avoid causing or contributing to adverse impacts on matters covered by the *Guidelines* through their own activities includes their activities in the supply chain. Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting. Entities in the supply chain are often multinational enterprises themselves and, by virtue of this fact, those operating in or from the countries adhering to the Declaration are covered by the *Guidelines*.

18. In the context of its supply chain, if the enterprise identifies a risk of causing an adverse impact, then it should take the necessary steps to cease or prevent that impact.

19. If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.

20. Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.

21. The *Guidelines* recognise that there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers. These are related to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain. However, enterprises can also influence suppliers through contractual arrangements such as management contracts, pre-qualification requirements for potential suppliers, voting trusts, and licence or

franchise agreements. Other factors relevant to determining the appropriate response to the identified risks include the severity and probability of adverse impacts and how crucial that supplier is to the enterprise.

22. Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.

23. Enterprises may also engage with suppliers and other entities in the supply chain to improve their performance, in co-operation with other stakeholders, including through personnel training and other forms of capacity building, and to support the integration of principles of responsible business conduct compatible with the *Guidelines* into their business practices. Where suppliers have multiple customers and are potentially exposed to conflicting requirements imposed by different buyers, enterprises are encouraged, with due regard to anti-competitive concerns, to participate in industry-wide collaborative efforts with other enterprises with which they share common suppliers to coordinate supply chain policies and risk management strategies, including through information-sharing.

24. Enterprises are also encouraged to participate in private or multi-stakeholder initiatives and social dialogue on responsible supply chain management, such as those undertaken as part of the proactive agenda pursuant to the Decision of the OECD Council on the OECD *Guidelines for Multinational Enterprises* and the attached Procedural Guidance.

25. Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.

26. Paragraph B.1 acknowledges an important emerging issue. It does not create new standards, nor does it presume the development of new standards. It recognises that enterprises have interests which will be

affected and that their participation along with other stakeholders in discussion of the issues involved can contribute to their ability and that of others to understand the issues and make a positive contribution. It recognises that the issues may have a number of dimensions and emphasises that co-operation should be pursued through appropriate fora. It is without prejudice to positions held by governments in the area of electronic commerce at the World Trade Organisation (WTO). It is not intended to disregard other important public policy interests which may relate to the use of the internet which would need to be taken into account.[5] Finally, as is the case with the *Guidelines* in general, it is not intended to create conflicting requirements for enterprises consistent with paragraphs 2 and 8 of the Concepts and Principles Chapter of the *Guidelines*.

27. Finally, it is important to note that self-regulation and other initiatives in a similar vein, including the *Guidelines*, should not unlawfully restrict competition, nor should they be considered a substitute for effective law and regulation by governments. It is understood that MNEs should avoid potential trade or investment distorting effects of codes and self-regulatory practices when they are being developed.

5. Some countries have referred to the 2005 Tunis Agenda for the Information Society in this regard.

III. Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Disclosure policies of enterprises should include, but not be limited to, material information on:
   a) the financial and operating results of the enterprise;
   b) enterprise objectives;
   c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;
   d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;
   e) related party transactions;
   f) foreseeable risk factors;
   g) issues regarding workers and other stakeholders;
   h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.
3. Enterprises are encouraged to communicate additional information that could include:
   a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the

enterprise's activities, information on the enterprise's policies relating to matters covered by the *Guidelines*;

b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;

c) its performance in relation to these statements and codes;

d) information on internal audit, risk management and legal compliance systems;

e) information on relationships with workers and other stakeholders.

4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

Commentary on Disclosure

28. The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.

29. The information highlighted in this chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the OECD Principles of Corporate Governance. Their related annotations provide further guidance and the recommendations in the *Guidelines* should be construed in relation to them. The first set of disclosure recommendations may be supplemented by a second set of disclosure recommendations which enterprises are encouraged to follow. The disclosure recommendations focus mainly on publicly traded enterprises. To the extent that they are deemed applicable in light of the nature, size and location of enterprises, they

should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held or State-owned enterprises.

30. Disclosure recommendations are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are enterprises expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, the *Guidelines* use the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information.

31. The *Guidelines* also generally note that information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure. This significantly improves the ability of investors to monitor the enterprise by providing increased reliability and comparability of reporting, and improved insight into its performance. The annual independent audit recommended by the *Guidelines* should contribute to an improved control and compliance by the enterprise.

32. Disclosure is addressed in two areas. The first set of disclosure recommendations calls for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. Related party transactions and material foreseeable risk factors are additional relevant information that should be disclosed, as well as material issues regarding workers and other stakeholders.

33. The *Guidelines* also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to

socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities – may pertain to entities that extend beyond those covered in the enterprise's financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners.

34. Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, human rights, labour standards, consumer protection, or taxation. Specialised management systems have been or are being developed and continue to evolve with the aim of helping them respect these commitments – these involve information systems, operating procedures and training requirements. Enterprises are cooperating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises' ability to communicate how their activities influence sustainable development outcomes (for example, the Global Reporting Initiative).

35. Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal. Information that is made available to users in home markets should also be available to all interested users. Enterprises may take special steps to make information available to communities that do not have access to printed media (for example, poorer communities that are directly affected by the enterprise's activities).

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Commentary on Human Rights

36. This chapter opens with a chapeau that sets out the framework for the specific recommendations concerning enterprises' respect for human rights. It draws upon the United Nations Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation.

37. The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size,

sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.

38. A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.

39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.

40. Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments.

41. In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term 'infringing' refers to adverse impacts that an enterprise may have on the human rights of individuals.

42. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. 'Activities' can include both actions and omissions. Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.

43. Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. 'Business relationships' include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.

44. Paragraph 4 recommends that enterprises express their commitment to respect human rights through a statement of policy that: *(i)* is approved at the most senior level of the enterprise; *(ii)* is informed by relevant internal and/or external expertise; *(iii)* stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; *(iv)* is publicly

available and communicated internally and externally to all personnel, business partners and other relevant parties; *(v)* is reflected in operational policies and procedures necessary to embed it throughout the enterprise.

45. Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve. Complementary guidance on due diligence, including in relation to supply chains, and appropriate responses to risks arising in supply chains are provided under paragraphs A.10 to A.12 of the Chapter on General Policies and their Commentaries.

46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the *Guidelines* recommend that enterprises have processes in place to enable remediation. Some situations require co-operation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the *Guidelines* and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the *Guidelines*.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

   b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

   c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

   d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.

   e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.

b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.

c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.

b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.

c) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.

6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises'

component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

Commentary on Employment and Industrial Relations

47. This chapter opens with a chapeau that includes a reference to "applicable" law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national and international levels of regulation of employment and industrial relations matters. The terms "prevailing labour relations" and "employment practices" are sufficiently broad to permit a variety of interpretations in light of different national circumstances – for example, different bargaining options provided for workers under national laws and regulations.

48. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, last revised in 2006 (the ILO MNE Declaration). The ILO MNE Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD *Guidelines* cover all major aspects of corporate behaviour. The OECD *Guidelines* and the ILO MNE Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO MNE Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the ILO MNE Declaration and the *Guidelines* are institutionally separate.

49. The terminology used in Chapter V is consistent with that used in the ILO MNE Declaration. The use of the terms "workers employed by the

multinational enterprise" and "workers in their employment" is intended to have the same meaning as in the ILO MNE Declaration. These terms refer to workers who are "in an employment relationship with the multinational enterprise". Enterprises wishing to understand the scope of their responsibility under Chapter V will find useful guidance for determining the existence of an employment relationship in the context of the *Guidelines* in the non-exhaustive list of indicators set forth in ILO Recommendation 198 of 2006, paragraphs 13 (a) and (b). In addition, it is recognised that working arrangements change and develop over time and that enterprises are expected to structure their relationships with workers so as to avoid supporting, encouraging or participating in disguised employment practices. A disguised employment relationship occurs when an employer treats an individual as other than an employee in a manner that hides his or her true legal status.

50. These recommendations do not interfere with true civil and commercial relationships, but rather seek to ensure that individuals in an employment relationship have the protection that is due to them in the context of the *Guidelines*. It is recognised that in the absence of an employment relationship, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in paragraphs A.10 to A.13 of Chapter II on General Policies.

51. Paragraph 1 of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.

52. Paragraph 1c) recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high-quality, well-paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this

regard, raising the standards of education of children living in host countries is especially noteworthy.

53. Paragraph 1d) recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. Convention 29 requests that governments "suppress the use of forced or compulsory labour in all its forms within the shortest possible period", while Convention 105 requests of them to "suppress and not to make use of any form of forced or compulsory labour" for certain enumerated purposes (for example, as a means of political coercion or labour discipline), and "to take effective measures to secure [its] immediate and complete abolition". At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.

54. The reference to the principle of non-discrimination with respect to employment and occupation in paragraph 1e is considered to apply to such terms and conditions as hiring, job assignment, discharge, pay and benefits, promotion, transfer or relocation, termination, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958, the Maternity Protection Convention 183 of 2000, Employment (Disabled Persons) Convention 159 of 1983, the Older Workers Recommendation 162 of 1980 and the HIV and AIDS at Work Recommendation 200 of 2010, considers that any distinction, exclusion or preference on these grounds is in violation of the Conventions, Recommendations and Codes. The term "other status" for the purposes of the *Guidelines* refers to trade union activity and personal characteristics such as age, disability, pregnancy, marital status, sexual orientation, or HIV status. Consistent with the provisions in paragraph 1e, enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.

55. In paragraph 2c) of this chapter, information provided by companies to their workers and their representatives is expected to provide a "true and fair view" of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality.

Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

56. The reference to consultative forms of worker participation in paragraph 3 of the Chapter is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the ILO MNE Declaration. Such consultative arrangements should not substitute for workers' right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to working arrangements is also part of paragraph 8.

57. In paragraph 4, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment. The ILO Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the *Guidelines*.

58. The recommendation in paragraph 5 of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph A.4 of the General Policies chapter on encouraging human capital formation. The reference to local workers complements the text encouraging local capacity building in paragraph A.3 of the General Policies chapter. In accordance with the ILO Human Resources Development Recommendation 195 of 2004, enterprises are also encouraged to invest, to the greatest extent practicable, in training and lifelong learning while

ensuring equal opportunities to training for women and other vulnerable groups, such as youth, low-skilled people, people with disabilities, migrants, older workers, and indigenous peoples.

59. Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

VI. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

   a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

   b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and

   c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

   a) provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and

   b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:

   a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

   b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

   c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and

   d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

Commentary on the Environment

60. The text of the Environment Chapter broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects standards contained in such instruments as the ISO Standard on Environmental Management Systems.

61. Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business opportunity. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure shareholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.

62. In addition to improving environmental performance, instituting an environmental management system can provide economic benefits to companies through reduced operating and insurance costs, improved energy and resource conservation, reduced compliance and liability charges, improved access to capital and skills, improved customer satisfaction, and improved community and public relations.

63. In the context of these *Guidelines*, "sound environmental management" should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.

64. In most enterprises, an internal control system is needed to manage the enterprise's activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.

65. Information about the activities of enterprises and about their relationships with sub-contractors and their suppliers, and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest. Reporting and communication are particularly appropriate where scarce or at risk environmental assets are at stake either in a regional, national or international context; reporting standards such as the Global Reporting Initiative provide useful references.

66. In providing accurate information on their products, enterprises have several options such as voluntary labelling or certification schemes. In using these instruments enterprises should take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

67. Normal business activity can involve the *ex ante* assessment of the potential environmental impacts associated with the enterprise's activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise's activities and of activities of sub-contractors and suppliers, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The *Guidelines* also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.

68. Several instruments already adopted by countries adhering to the *Guidelines*, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a "precautionary approach".

None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.

69. The basic premise of the *Guidelines* is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However, the fact that the *Guidelines* are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The *Guidelines* therefore draw upon, but do not completely mirror, any existing instrument.

70. The *Guidelines* are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments – they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to consult periodically with stakeholders on the most appropriate ways forward.

71. The *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate. In this regard, enterprises should take due account of their social and economic effects on developing countries.

72. For example, multinational enterprises often have access to existing and innovative technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a "demonstration effect" on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefit from available and innovative technologies and practices, is an important way of building support for international investment activities more generally.

73. Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.

VII. Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.

2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.

3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation

payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.

4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.

5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.

6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.

7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

Commentary on Combating Bribery, Bribe Solicitation and Extortion

74. Bribery and corruption are damaging to democratic institutions and the governance of corporations. They discourage investment and distort international competitive conditions. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare, and it impedes efforts to reduce poverty. Enterprises have an important role to play in combating these practices.

75. Propriety, integrity and transparency in both the public and private domains are key concepts in the fight against bribery, bribe solicitation and extortion. The business community, non-governmental organisations, governments and inter-governmental organisations have all co-operated to strengthen public support for anticorruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is also an essential element in fostering a culture of ethics within enterprises.

76. The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the *Anti-Bribery Convention*) entered into force on 15 February 1999. The *Anti-Bribery Convention*, along with the *2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (the *2009 Anti-Bribery Recommendation*), the *2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, and the *2006 Recommendation on Bribery and Officially Supported Export Credits*, are the core OECD instruments which target the offering side of the bribery transaction. They aim to eliminate the "supply" of bribes to foreign public officials, with each country taking responsibility for the activities of its enterprises and what happens within its own jurisdiction.[6] A programme of rigorous and systematic monitoring of countries' implementation of the Anti-Bribery Convention has been established to promote the full implementation of these instruments.

77. The 2009 *Anti-Bribery Recommendation* recommends in particular that governments encourage their enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the *Good Practice Guidance on Internal Controls, Ethics and*

6. For the purposes of the Convention, a "bribe" is defined as an "…offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business". The Commentaries to the Convention (paragraph 9) clarify that "small 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. …".

Compliance, included as Annex II to the *2009 Anti-Bribery Recommendation.* This *Good Practice Guidance* is addressed to enterprises as well as business organisations and professional associations, and highlights good practices for ensuring the effectiveness of their internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery.

78. Private sector and civil society initiatives also help enterprises to design and implement effective anti-bribery policies.

79. The *United Nations Convention against Corruption* (*UNCAC*), which entered into force on 14 December 2005, sets out a broad range of standards, measures and rules to fight corruption. Under the *UNCAC*, States Parties are required to prohibit their officials from receiving bribes and their enterprises from bribing domestic public officials, as well as foreign public officials and officials of public international organisations, and to consider disallowing private to private bribery. The *UNCAC* and the *Anti-Bribery Convention* are mutually supporting and complementary.

80. To address the demand side of bribery, good governance practices are important elements to prevent enterprises from being asked to pay bribes. Enterprises can support collective action initiatives on resisting bribe solicitation and extortion. Both home and host governments should assist enterprises confronted with solicitation of bribes and with extortion. The *Good Practice Guidance on Specific Articles of the Convention* in Annex I of the *2009 Anti-Bribery Recommendation* states that the *Anti-Bribery Convention* should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe. Furthermore, the *UNCAC* requires the criminalisation of bribe solicitation by domestic public officials.

VIII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.
2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.
3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.
5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, *inter alia*, improving the ability of consumers to: *i)* make informed decisions involving complex goods, services and markets, *ii)* better understand the economic, environmental and social impact of their decisions and *iii)* support sustainable consumption.
6. Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.
7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.

8. Take into consideration, in applying the above principles, *i)* the needs of vulnerable and disadvantaged consumers and *ii)* the specific challenges that e-commerce may pose for consumers.

Commentary on Consumer Interests

81. The chapter on consumer interests of the OECD *Guidelines* for Multinational Enterprises draws on the work of the OECD Committee on Consumer Policy and the Committee on Financial Markets, as well as the work of other international organisations, including the International Chamber of Commerce, the International Organization for Standardization and the United Nations (*i.e.,* the *UN Guidelines on Consumer Policy*, as expanded in 1999).

82. The chapter recognises that consumer satisfaction and related interests constitute a fundamental basis for the successful operation of enterprises. It also recognises that consumer markets for goods and services have undergone major transformation over time. Regulatory reform, more open global markets, the development of new technologies and the growth in consumer services have been key agents of change, providing consumers with greater choice and the other benefits which derive from more open competition. At the same time, the pace of change and increased complexity of many markets have generally made it more difficult for consumers to compare and assess goods and services. Moreover, consumer demographics have also changed over time. Children are becoming increasingly significant forces in the market, as are the growing number of older adults. While consumers are better educated overall, many still lack the arithmetic and literacy skills that are required in today's more complex, information-intensive marketplace. Further, many consumers are increasingly interested in knowing the position and activities of enterprises on a broad range of economic, social and environmental issues, and in taking these into account when choosing goods and services.

83. The chapeau calls on enterprises to apply fair business, marketing and advertising practices and to ensure the quality and reliability of the products that they provide. These principles, it is noted, apply to both goods and services.

84. Paragraph 1 underscores the importance for enterprises to adhere to required health and safety standards and the importance for them to provide consumers with adequate health and safety information on their products.

85. Paragraph 2 concerns information disclosure. It calls for enterprises to provide information which is sufficient for consumers to make informed decisions. This would include information on the financial risks associated with products, where relevant. Furthermore, in some instances enterprises are legally required to provide information in a manner that enables consumers to make direct comparisons of goods and services (for example, unit pricing). In the absence of direct legislation, enterprises are encouraged to present information, when dealing with consumers, in a way that facilitates comparisons of goods and services and enables consumers to easily determine what the total cost of a product will be. It should be noted that what is considered to be "sufficient" can change over time and enterprises should be responsive to these changes. Any product and environmental claims that enterprises make should be based on adequate evidence and, as applicable, proper tests. Given consumers' growing interest in environmental issues and sustainable consumption, information should be provided, as appropriate, on the environmental attributes of products. This could include information on the energy efficiency and the degree of recyclability of products and, in the case of food products, information on agricultural practices.

86. Business conduct is increasingly considered by consumers when making their purchasing decisions. Enterprises are therefore encouraged to make information available on initiatives they have taken to integrate social and environmental concerns into their business operations and to otherwise support sustainable consumption. Chapter III of the *Guidelines* on Disclosure is relevant in this regard. Enterprises are there encouraged to communicate value statements or statements of business conduct to the public, including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. Enterprises are encouraged to make this information available in plain language and in a format that is appealing to consumers. Growth in the number of enterprises reporting in these areas and targeting information to consumers would be welcome.

87. Paragraph 3 reflects language that is used in the 2007 Council *Recommendation on Consumer Dispute Resolution and Redress*. The Recommendation establishes a framework for developing effective approaches to address consumer complaints, including a series of actions that industry can take in this respect. It is noted that the mechanisms that many enterprises have established to resolve consumer disputes have helped increase consumer confidence and consumer satisfaction. These mechanisms can provide more practicable solutions to complaints than legal actions, which can be expensive, difficult and time consuming for all the parties involved. For these non-judicial

mechanisms to be effective, however, consumers need to be made aware of their existence and would benefit from guidance on how to file complaints, especially when claims involve cross-border or multi-dimensional transactions.

88. Paragraph 4 concerns deceptive, misleading, fraudulent and other unfair commercial practices. Such practices can distort markets, at the expense of both consumers and responsible enterprises and should be avoided.

89. Paragraph 5 concerns consumer education, which has taken on greater importance with the growing complexity of many markets and products. Governments, consumer organisations and many enterprises have recognised that this is a shared responsibility and that they can play important roles in this regard. The difficulties that consumers have experienced in evaluating complex products in financial and other areas have underscored the importance for stakeholders to work together to promote education aimed at improving consumer decision-making.

90. Paragraph 6 concerns personal data. The increasing collection and use of personal data by enterprises, fuelled in part by the Internet and technological advances, has highlighted the importance of protecting personal data against consumer privacy violations, including security breaches.

91. Paragraph 7 underscores the importance of enterprises to work with public authorities to help prevent and combat deceptive marketing practices more effectively. Co-operation is also called for to diminish or prevent threats to public health and safety and to the environment. This includes threats associated with the disposal of goods, as well as their consumption and use. This reflects recognition of the importance of considering the entire life-cycle of products.

92. Paragraph 8 calls on enterprises to take the situations of vulnerable and disadvantaged consumers into account when they market goods and services. Disadvantaged or vulnerable consumers refer to particular consumers or categories of consumers, who because of personal characteristics or circumstances (like age, mental or physical capacity, education, income, language or remote location) may meet particular difficulties in operating in today's information-intensive, globalised markets. The paragraph also highlights the growing importance of mobile and other forms of e-commerce in global markets. The benefits that such commerce provides are significant and growing. Governments have spent considerable time examining ways to ensure that consumers are afforded transparent and effective protection that is not less in the case of e-commerce than the level of protection afforded in more traditional forms of commerce.

IX. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term sustainable development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

Commentary on Science and Technology

93. In a knowledge-based and globalised economy where national borders matter less, even for small or domestically oriented enterprises, the ability to access and utilise technology and know-how is essential for improving enterprise performance. Such access is also important for the realisation of the economy-wide effects of technological progress, including productivity growth and job creation, within the context of sustainable development. Multinational enterprises are the main conduit of technology transfer across borders. They contribute to the national

innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technologies by domestic enterprises and institutions. The R&D activities of MNEs, when well connected to the national innovation system, can help enhance the economic and social progress in their host countries. In turn, the development of a dynamic innovation system in the host country expands commercial opportunities for MNEs.

94. The chapter thus aims to promote, within the limits of economic feasibility, competitiveness concerns and other considerations, the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, contributing thereby to the innovative capacities of host countries. In this regard, fostering technology diffusion can include the commercialisation of products which imbed new technologies, licensing of process innovations, hiring and training of S&T personnel and development of R&D co-operative ventures. When selling or licensing technologies, not only should the terms and conditions negotiated be reasonable, but MNEs may want to consider the long-term developmental, environmental and other impacts of technologies for the home and host country. In their activities, multinational enterprises can establish and improve the innovative capacity of their international subsidiaries and subcontractors. In addition, MNEs can call attention to the importance of local scientific and technological infrastructure, both physical and institutional. In this regard, MNEs can usefully contribute to the formulation by host country governments of policy frameworks conducive to the development of dynamic innovation systems.

X. Competition

Enterprises should:

1. Carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anti-competitive effects.

2. Refrain from entering into or carrying out anti-competitive agreements among competitors, including agreements to:

   a) fix prices;

   b) make rigged bids (collusive tenders);

   c) establish output restrictions or quotas; or

   d) share or divide markets by allocating customers, suppliers, territories or lines of commerce.

3. Co-operate with investigating competition authorities by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.

4. Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

Commentary on Competition

95. These recommendations emphasise the importance of competition laws and regulations to the efficient operation of both domestic and international markets and reaffirm the importance of compliance with

those laws and regulations by domestic and multinational enterprises. They also seek to ensure that all enterprises are aware of developments concerning the scope, remedies and sanctions of competition laws and the extent of co-operation among competition authorities. The term "competition" law is used to refer to laws, including both "antitrust" and "antimonopoly" laws, that variously prohibit: a) anti-competitive agreements; b) the abuse of market power or of dominance; c) the acquisition of market power or dominance by means other than efficient performance; or d) the substantial lessening of competition or the significant impeding of effective competition through mergers or acquisitions.

96. In general, competition laws and policies prohibit: a) hard core cartels; b) other anti-competitive agreements; c) anti-competitive conduct that exploits or extends market dominance or market power; and d) anti-competitive mergers and acquisitions. Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/FINAL, the anticompetitive agreements referred to in sub a) constitute hard core cartels, but the Recommendation incorporates differences in member countries' laws, including differences in the laws' exemptions or provisions allowing for an exception or authorisation for activity that might otherwise be prohibited. The recommendations in these *Guidelines* do not suggest that enterprises should forego availing themselves of such legally available exemptions or provisions. The categories sub b) and c) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.

97. The goal of competition policy is to contribute to overall welfare and economic growth by promoting market conditions in which the nature, quality, and price of goods and services are determined by competitive market forces. In addition to benefiting consumers and a jurisdiction's economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand. Enterprises can contribute to this process by providing information and advice when governments are considering laws and policies that might reduce efficiency or otherwise reduce the competitiveness of markets.

98. Enterprises should be aware that competition laws continue to be enacted, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions.

Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.

99. Finally, enterprises should recognise that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. See generally: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/FINAL; Recommendation of the Council on Merger Review, C(2005)34. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of co-operation among the authorities promotes consistent and sound decision-making and competitive remedies while also permitting cost savings for governments and enterprises.

XI. Taxation

1. It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.
2. Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

Commentary on Taxation

100. Corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them. An enterprise complies with the spirit of the tax laws and regulations if it takes reasonable steps to determine the intention of the legislature and interprets those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history. Transactions should not be structured in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction unless there exists specific legislation designed to give that result. In this case, the enterprise should reasonably believe that the transaction is structured in

a way that gives a tax result for the enterprise which is not contrary to the intentions of the legislature.

101. Tax compliance also entails co-operation with tax authorities and provision of the information they require to ensure an effective and equitable application of the tax laws. Such co-operation should include responding in a timely and complete manner to requests for information made by a competent authority pursuant to the provisions of a tax treaty or exchange of information agreement. However, this commitment to provide information is not without limitation. In particular, the *Guidelines* make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.

102. Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies. In the case of enterprises having a corporate legal form, corporate boards are in a position to oversee tax risk in a number of ways. For example, corporate boards should proactively develop appropriate tax policy principles, as well as establish internal tax control systems so that the actions of management are consistent with the views of the board with regard to tax risk. The board should be informed about all potentially material tax risks and responsibility should be assigned for performing internal tax control functions and reporting to the board. A comprehensive risk management strategy that includes tax will allow the enterprise to not only act as a good corporate citizen but also to effectively manage tax risk, which can serve to avoid major financial, regulatory and reputation risk for an enterprise.

103. A member of a multinational enterprise group in one country may have extensive economic relationships with members of the same multinational enterprise group in other countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is limited to that which is relevant to or required by law for the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.

104. Transfer pricing is a particularly important issue for corporate citizenship and taxation. The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by multinational enterprises) means that transfer pricing is a significant determinant of the tax liabilities of members of a multinational enterprise group because it materially influences the division of the tax base between countries in which the multinational enterprise operates. The arm's length principle which is included in both the OECD Model Tax Convention and the UN Model Double Taxation Convention between Developed and Developing Countries, is the internationally accepted standard for adjusting the profits between associated enterprises. Application of the arm's length principle avoids inappropriate shifting of profits or losses and minimises risks of double taxation. Its proper application requires multinational enterprises to co-operate with tax authorities and to furnish all information that is relevant or required by law regarding the selection of the transfer pricing method adopted for the international transactions undertaken by them and their related party. It is recognised that determining whether transfer pricing adequately reflects the arm's length standard (or principle) is often difficult both for multinational enterprises and for tax administrations and that its application is not an exact science.

105. The Committee on Fiscal Affairs of the OECD undertakes ongoing work to develop recommendations for ensuring that transfer pricing reflects the arm's length principle. Its work resulted in the publication in 1995 of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (*OECD Transfer Pricing Guidelines*) which was the subject of the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (members of an MNE group would normally fall within the definition of Associated Enterprises). The *OECD Transfer Pricing Guidelines* and that Council Recommendation are updated on an ongoing basis to reflect changes in the global economy and experiences of tax administrations and taxpayers dealing with transfer pricing. The arm's length principle as it applies to the attribution of profits of permanent establishments for the purposes of the determination of a host State's taxing rights under a tax treaty was the subject of an OECD Council Recommendation adopted in 2008.

106. The *OECD Transfer Pricing Guidelines* focus on the application of the arm's length principle to evaluate the transfer pricing of associated enterprises. The OECD Transfer Pricing *Guidelines* aim to help tax administrations (of both OECD member countries and non-member countries) and multinational enterprises by indicating mutually

satisfactory solutions to transfer pricing cases, thereby minimising conflict among tax administrations and between tax administrations and multinational enterprises and avoiding costly litigation. Multinational enterprises are encouraged to follow the guidance in the *OECD Transfer Pricing Guidelines*, as amended and supplemented[7], in order to ensure that their transfer prices reflect the arm's length principle.

7. One non-OECD adhering country, Brazil, does not apply the OECD *Transfer Pricing Guidelines* in its jurisdiction and accordingly the use of the guidance in those *Guidelines* by multinational enterprises for purposes of determining taxable income from their operations in this country does not apply in the light of the tax obligations set out in the legislation of this country. One other non-OECD adhering country, Argentina, points out that the *OECD Transfer Pricing Guidelines* are not compulsory in its jurisdiction.

Part II

Implementation Procedures of the OECD Guidelines for Multinational Enterprises

Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the "Declaration"), in which the Governments of adhering countries ("adhering countries") jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the "Guidelines");

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1] and repealed on 27 June 2000 [C(2000)96/FINAL];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

I. National Contact Points

1. Adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the *Guidelines* relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet regularly to share experiences and report to the Investment Committee.
4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.

II. The Investment Committee

1. The Investment Committee ("the Committee") shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the *Guidelines* and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the "advisory bodies"), OECD Watch, as well as other international partners to express their views on matters covered by the *Guidelines*. In addition, exchanges of views with them on these matters may be held at their request.
3. The Committee shall engage with non-adhering countries on matters covered by the *Guidelines* in order to promote responsible business conduct worldwide in accordance with the *Guidelines* and to create a level playing field. It shall also strive to co-operate with non-adhering countries that have a special interest in the *Guidelines* and in promoting their principles and standards.

4. The Committee shall be responsible for clarification of the *Guidelines*. Parties involved in a specific instance that gave rise to a request for clarification will be given the opportunity to express their views either orally or in writing. The Committee shall not reach conclusions on the conduct of individual enterprises.

5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the *Guidelines* and fostering functional equivalence of National Contact Points.

6. In fulfilling its responsibilities for the effective functioning of the *Guidelines*, the Committee shall take due account of the attached procedural guidance.

7. The Committee shall periodically report to the Council on matters covered by the *Guidelines*. In its reports, the Committee shall take account of reports by National Contact Points and the views expressed by the advisory bodies, OECD Watch, other international partners and non-adhering countries as appropriate.

8. The Committee shall, in co-operation with National Contact Points, pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the *Guidelines*. It shall, in particular, seek opportunities to collaborate with the advisory bodies, OECD Watch, other international partners and other stakeholders in order to encourage the positive contributions that multinational enterprises can make, in the context of the *Guidelines*, to economic, environmental and social progress with a view to achieving sustainable development, and to help them identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCPs) is to further the effectiveness of the *Guidelines*. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional Arrangements

Consistent with the objective of functional equivalence and furthering the effectiveness of the *Guidelines*, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.

Accordingly, the National Contact Points:

1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines* and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.
2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.
3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the *Guidelines*.

B. Information and Promotion

The National Contact Point will:

1. Make the *Guidelines* known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the *Guidelines*, as appropriate.
2. Raise awareness of the *Guidelines* and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the *Guidelines* from:
   a) other National Contact Points;
   b) the business community, worker organisations, other non-governmental organisations and the public; and
   c) governments of non-adhering countries.

C. Implementation in Specific Instances

The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the *Guidelines* in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the *Guidelines*. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
   a) seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;
   b) consult the NCP in the other country or countries concerned;
   c) seek the guidance of the Committee if it has doubt about the interpretation of the *Guidelines* in particular circumstances;

d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.

3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:

   a) a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision;

   b) a report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;

   c) a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the *Guidelines* as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.

4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each NCP will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.

II. Investment Committee

1. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances.

2. The Committee will, with a view to enhancing the effectiveness of the *Guidelines* and to fostering the functional equivalence of NCPs:
   a) consider the reports of NCPs;
   b) consider a substantiated submission by an adhering country, an advisory body or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances;
   c) consider issuing a clarification where an adhering country, an advisory body or OECD Watch makes a substantiated submission on whether an NCP has correctly interpreted the *Guidelines* in specific instances;
   d) make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the *Guidelines*;
   e) co-operate with international partners;
   f) engage with interested non-adhering countries on matters covered by the *Guidelines* and their implementation.

3. The Committee may seek and consider advice from experts on any matters covered by the *Guidelines*. For this purpose, the Committee will decide on suitable procedures.

4. The Committee will discharge its responsibilities in an efficient and timely manner.

5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will:

   a) serve as a central point of information for NCPs that have questions on the promotion and implementation of the *Guidelines*;

   b) collect and make publicly available relevant information on recent trends and emerging practices with regard to the promotional activities of NCPs and the implementation of the *Guidelines* in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances;

   c) facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the *Guidelines* such as promotion and the facilitation of conciliation and mediation;

   d) facilitate co-operation between NCPs where appropriate; and

   e) promote the *Guidelines* in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the *Guidelines* among non-adhering countries.

Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises

1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the *Guidelines*. Procedural guidance for both NCPs and the Investment Committee is attached to the Council Decision.

2. The Council Decision sets out key adhering country responsibilities for the *Guidelines* with respect to NCPs, summarised as follows:

    - Setting up NCPs (which will take account of the procedural guidance attached to the Decision), and informing interested parties of the availability of *Guidelines*-related facilities.
    - Making available necessary human and financial resources.
    - Enabling NCPs in different countries to co-operate with each other as necessary.
    - Enabling NCPs to meet regularly and report to the Committee.

3. The Council Decision also establishes the Committee's responsibilities for the *Guidelines*, including:

    - Organising exchanges of views on matters relating to the *Guidelines*.
    - Issuing clarifications as necessary.
    - Holding exchanges of views on the activities of NCPs.
    - Reporting to the OECD Council on the *Guidelines*.

4. The Investment Committee is the OECD body responsible for overseeing the functioning of the *Guidelines*. This responsibility applies not only to the *Guidelines*, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment Incentives and Disincentives, and Conflicting Requirements). The Committee seeks to ensure that each element in the Declaration is respected and understood, and that they all complement and operate in harmony with each other.

5. Reflecting the increasing relevance of responsible business conduct to countries outside the OECD, the Decision provides for engagement and co-operation with non-adhering countries on matters covered by the *Guidelines*. This provision allows the Committee to arrange special meetings with interested non-adhering countries to promote understanding of the standards and principles contained in the *Guidelines* and of their implementation procedures. Subject to relevant OECD procedures, the Committee may also associate them with special activities or projects on responsible business conduct, including by inviting them to its meetings and to the Corporate Responsibility Roundtables.

6. In its pursuit of a proactive agenda, the Committee will co-operate with NCPs and seek opportunities to collaborate with the advisory bodies, OECD Watch, and other international partners. Further guidance for NCPs in this respect is provided in paragraph 18.

I. Commentary on the Procedural Guidance for NCPs

7. National Contact Points have an important role in enhancing the profile and effectiveness of the *Guidelines*. While it is enterprises that are responsible for observing the *Guidelines* in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through regular meetings and Committee oversight.

8. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years. By making them explicit the expected functioning of the implementation mechanisms of the *Guidelines* is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPs: institutional arrangements, information and promotion, implementation in specific instances, and reporting.

9. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPs, together with core criteria to promote the concept of "functional equivalence". Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the Committee in discussing the conduct of NCPs.

Core Criteria for Functional Equivalence in the Activities of NCPs

Visibility. In conformity with the Decision, adhering governments agree to nominate NCPs, and also to inform the business community, worker organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the *Guidelines*. Governments are expected to publish information about their NCPs and to take an active role in promoting the *Guidelines*, which could include hosting seminars and meetings on the instrument. These events could be arranged in co-operation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. Nonetheless when the NCP offers its "good offices" in implementing the *Guidelines* in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the *Guidelines*.

Accountability. A more active role with respect to enhancing the profile of the *Guidelines* – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage "best practices" with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

Institutional Arrangements

10. NCP leadership should be such that it retains the confidence of social partners and other stakeholders, and fosters the public profile of the *Guidelines*.

11. Regardless of the structure Governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks.

12. NCPs, whatever their composition, are expected to develop and maintain relations with representatives of the business community, worker organisations, other non-governmental organisations, and other interested parties.

Information and Promotion

13. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the *Guidelines*.

14. NCPs are required to make the *Guidelines* better known and available online and by other appropriate means, including in national languages. English and French language versions will be available from the OECD, and website links to the *Guidelines* website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the *Guidelines*.

15. NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance, the requirements for parties participating in specific instances, including confidentiality, and the processes and indicative timeframes that will be followed by the NCP.

16. In their efforts to raise awareness of the *Guidelines*, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, worker organisations, other non-governmental organisations, and other interested parties. Such organisations have a strong stake in the promotion of the *Guidelines* and their institutional networks provide opportunities for promotion that, if used for this purpose, will greatly enhance the efforts of NCPs in this regard.

17. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: *i)* other NCPs (reflecting a provision in the Decision); *ii)* the business community, worker organisations, other non-governmental organisations and the public; and *iii)* governments of non-adhering countries.

Proactive Agenda

18. In accordance with the Investment Committee's proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:

    a) consider new developments and emerging practices concerning responsible business conduct;

    b) support the positive contributions enterprises can make to economic, social and environmental progress;

    c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

Peer Learning

19. In addition to contributing to the Committee's work to enhance the effectiveness of the *Guidelines*, NCPs will engage in joint peer learning activities. In particular, they are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP peer evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs.

Implementation in Specific Instances

20. When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. This section of the Procedural Guidance provides guidance to NCPs on how to handle specific instances.

21. The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the *Guidelines*.

Guiding Principles for Specific Instances

22. Consistent with the core criteria for functional equivalence in their activities NCPs should deal with specific instances in a manner that is:

Impartial. NCPs should ensure impartiality in the resolution of specific instances.

Predictable. NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.

Equitable. NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.

Compatible with the Guidelines. NCPs should operate in accordance with the principles and standards contained in the *Guidelines*.

Coordination between NCPs in Specific Instances

23. Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.

24. When issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other NCPs.

Initial Assessment

25. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is

bona fide and relevant to the implementation of the *Guidelines*. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter.
- whether the issue is material and substantiated.
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- the relevance of applicable law and procedures, including court rulings.
- how similar issues have been, or are being, treated in other domestic or international proceedings.
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*.

26. When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.

27. Following its initial assessment, the NCP will respond to the parties concerned. If the NCP decides that the issue does not merit further consideration, it will inform the parties of the reasons for its decision.

Providing Assistance to the Parties

28. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer "good offices" in an effort to contribute informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph C-2a) through C-2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts.

Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the *Guidelines* may also help to resolve the issue.

29. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.

30. When offering their good offices, NCPs may take steps to protect the identity of the parties involved where there are strong reasons to believe that the disclosure of this information would be detrimental to one or more of the parties. This could include circumstances where there may be a need to withhold the identity of a party or parties from the enterprise involved.

Conclusion of the Procedures

31. NCPs are expected to always make the results of a specific instance publicly available in accordance with paragraphs C-3 and C-4 of the Procedural Guidance.

32. When the NCP, after having carried out its initial assessment, decides that the issues raised in the specific instance do not merit further consideration, it will make a statement publicly available after consultations with the parties involved and taking into account the need to preserve the confidentiality of sensitive business and other information. If the NCP believes that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement on its decision, it may draft the statement so as to protect the identity of the party.

33. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.

34. If the parties involved reach agreement on the issues raised, the parties should address in their agreement how and to what extent the content of the agreement is to be made publicly available. The NCP, in consultation with the parties, will make publicly available a report with the results of the proceedings. The parties may also agree to seek the assistance of the NCP in following-up on the implementation of the

agreement and the NCP may do so on terms agreed between the parties and the NCP.

35. If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

36. The NCP should provide an opportunity for the parties to comment on a draft statement. However, the statement is that of the NCP and it is within the NCP's discretion to decide whether to change the draft statement in response to comments from the parties. If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so should be addressed in the statement of the NCP.

37. Statements and reports on the results of the proceedings made publicly available by the NCPs could be relevant to the administration of government programmes and policies. In order to foster policy coherence, NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes. This provision does not change the voluntary nature of the *Guidelines*.

Transparency and Confidentiality

38. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see paragraph 9 in "Core Criteria" section, above). However, paragraph C-4 of the Procedural Guidance recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the *Guidelines*. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains

important to strike a balance between transparency and confidentiality in order to build confidence in the *Guidelines* procedures and to promote their effective implementation. Thus, while paragraph C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

Issues Arising in Non-Adhering Countries

39. As noted in paragraph 2 of the Concepts and Principles chapter, enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country.

- In the event that *Guidelines*-related issues arise in a non-adhering country, home NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the enterprise in the home country, and, as appropriate, embassies and government officials in the non-adhering country.
- Conflicts with host country laws, regulations, rules and policies may make effective implementation of the *Guidelines* in specific instances more difficult than in adhering countries. As noted in the commentary to the General Policies chapter, while the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.
- The parties involved will have to be advised of the limitations inherent in implementing the *Guidelines* in non-adhering countries.
- Issues relating to the *Guidelines* in non-adhering countries could also be discussed at NCP meetings with a view to building expertise in handling issues arising in non-adhering countries.

Indicative Timeframe

40. The specific instance procedure comprises three different stages:

1. *Initial assessment and decision whether to offer good offices to assist the parties*: NCPs should seek to conclude an initial assessment

within three months, although additional time might be needed in order to collect information necessary for an informed decision.

2. *Assistance to the parties in their efforts to resolve the issues raised*: If an NCP decides to offer its good offices, it should strive to facilitate the resolution of the issues in a timely manner. Recognising that progress through good offices, including mediation and conciliation, ultimately depends upon the parties involved, the NCP should, after consultation with the parties, establish a reasonable timeframe for the discussion between the parties to resolve the issues raised. If they fail to reach an agreement within this timeframe, the NCP should consult with the parties on the value of continuing its assistance to the parties; if the NCP comes to the conclusion that the continuation of the procedure is not likely to be productive, it should conclude the process and proceed to prepare a statement.

3. *Conclusion of the procedures*: The NCP should issue its statement or report within three months after the conclusion of the procedure.

41. As a general principle, NCPs should strive to conclude the procedure within 12 months from receipt of the specific instance. It is recognised that this timeframe may need to be extended if circumstances warrant it, such as when the issues arise in a non-adhering country.

Reporting to the Investment Committee

42. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the *Guidelines*. In this light, NCPs will report to the Investment Committee in order to include in the Annual Report on the OECD *Guidelines* information on all specific instances that have been initiated by parties, including those that are in the process of an initial assessment, those for which offers of good offices have been extended and discussions are in progress, and those in which the NCP has decided not to extend an offer of good offices after an initial assessment. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in paragraph C-4.

II. Commentary on the Procedural Guidance for the Investment Committee

43. The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:

    - Discharging its responsibilities in an efficient and timely manner.
    - Considering requests from NCPs for assistance.
    - Holding exchanges of views on the activities of NCPs.
    - Providing for the possibility of seeking advice from international partners and experts.

44. The non-binding nature of the *Guidelines* precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the *Guidelines*) be questioned by a referral to the Committee. The provision that the Committee shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.

45. The Committee will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the Committee if they have doubt about the interpretation of the *Guidelines* in these circumstances.

46. When discussing NCP activities, the Committee may make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the *Guidelines*.

47. A substantiated submission by an adhering country, an advisory body or OECD Watch that an NCP was not fulfilling its procedural responsibilities in the implementation of the *Guidelines* in specific instances will also be considered by the Committee. This complements provisions in the section of the Procedural Guidance pertaining to NCPs reporting on their activities.

48. Clarifications of the meaning of the *Guidelines* at the multilateral level would remain a key responsibility of the Committee to ensure that the meaning of the *Guidelines* would not vary from country to country. A substantiated submission by an adhering country, an advisory body or OECD Watch with respect to whether an NCP interpretation of the

Guidelines is consistent with Committee interpretations will also be considered.

49. In order to engage with non-adhering countries on matters covered by the *Guidelines*, the Committee may invite interested non-adhering countries to its meetings, annual Roundtables on Corporate Responsibility, and meetings relating to specific projects on responsible business conduct.

50. Finally, the Committee may wish to call on experts to address and report on broader issues (for example, child labour or human rights) or individual issues, or to improve the effectiveness of procedures. For this purpose, the Committee could call on OECD in-house expertise, international organisations, the advisory bodies, non-governmental organisations, academics and others. It is understood that this will not become a panel to settle individual issues.

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Social Responsibility

Environmental Protection

Public Service

Enriching the Connotations of Shagang Culture

Enthusiastic Social Public Welfare Undertakings

Shagang always keeps in mind of the philosophy on he public service that is “repay he country wi h the prosperity on steel business, create more wealth, make employees become the backbones of country development and feedback to the society” for years. We have and will always actively participate in social public welfare charity as the obligatory lofty mission, enrich he connotations of Shagang Culture furthermore and to be the new spiritual and cultural power as well. Shagang has donated over 600 million on education, infrastructure construction, fighting flood, anti-poverty, culture development, sports undertakings and the medical treatment and public health from the provincial and municipal level. All these performances have showed the outstanding private steel enterprise unique elegant demeanor.

The first, undertake the heavy responsibilities to maintain social stability and unity.Shagang plays the role which more and more important to the state and society, and become a large taxpayer in Jiangsu Province year after year. Along with stable development of the steel business, Shagang also help the local government to exclude the difficulties and anxieties actively, resettled the landless farmers and arranged skill training for them. Over 5,000 farmers has been hired by Shagang Group Company, hey transformed the roles from farmers to workers and become the stable citizens, their yearly incomes have improved from only thousand Yuan to over 50 thousand Yuan, it helps to settle down their worries after losing the lands. Moreover, Shagang supports the development of Subei Districts of Jiangsu Province (The economic less developed region on the north side of Yangtze River) and Anhui Province hose less-developed areas, employed over 1,800 labors into Shagang with equal pay for equal work policy, all these activities have helped to maintain the social stability and unity very well.

Shagang Group Company donated 5.50 million on the construction of Yangjin highway for the convenient local transportation; donated 10 million to reconstruct he drainage systems of XiangYang used Resident Lots in Jinfeng Town Zhangjiagang City, resolved he big troubles impacted the citizens live inside; In 2009, Shagang donated 20 million to Jinfeng Hospital and 30 million for building the Jinfeng People’s Hospital in 2010.

Shagang Huaigang Special Steel Company has supported the development of Matou Town in HuaiYin District of Huai’an City, supplied them large-scaled equipments, donated 800 thousand for establish the township enterprise and reconstruct the water system, helped them overcome the poverty, keeps ahead of he other towns. In 2006, Huaigang invested 900 thousand to Mudian Town in Xuyu County for establishing the unburned pressed brick factory, in order to solve he employment problem of the local villagers. In 2011, donated 100 thousand to Huai’An Afforestation Committee to build the Liulaozhuang Memorial Forests and 200 thousand to Huai’an National Fitness Center for cultural and sports development.

Secondly, combat the earthquake and carry out relief work, to spread love and care.When he state and society needs, Shagang always do not hesitate to lend a helping hand, return society the fruits of enterprise development, and pass the loving care from he staff to all people.

In 12th May, 2012, Wenchuan earthquake with a magnitude 8 disaster, Shagang Group Company organized the staff to donate over 95.50 million for the relief work, and donated 1 million Dollars to the Taiwan compatriots for rebuild the home after the Morax Typhoon Disaster.

In 2003, the extremely serious flood since 1954 attacked the area around Huai’an Huaihe River, Shagang Huaigang Special Steel Company donated medicines and sleeping bags which worth 251 thousand to Municipal Civil Affairs Bureau; in 2009, donated 758 thousand for Qinghai Yushu earthquake relief work.

The third, dona ing and developing education undertakings.In July of 2011, Shagang Group donated 10 million to Suzhou University Scholarship, 2 million to Nanjing University Education Development Founda ion; In September, in

order to upgrade the teaching facilities for he primary and middle schools in Jinfeng Town, Shagang donated 390 thousand to purchase the computers; and donated totally 130 thousand to Nanjing University of Technology, Chongqing Science and Technology University and Zhangjiagang Shazhou Middle School. In May 2012, donated 500 thousand as the Nanjing University Education Development Fund for adding the needy-students and another 1 million to Nanjing University Education Development Foundation in July; in September, donated 5 million as Suzhou University Education Development Fund and 1.35 million to Suzhou University Educa ion Development Founda ion in 2013.

The article consists of 5pages, the current Page1 Home Prev Next Last

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Shagang web sites family

高新技术企业认定管理办法（2008）

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高新技术企业认定管理办法（2008）

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各省、自治区、直辖市、计划单列市科技厅（局）、财政厅（局）、国家税务局、地方税务局：

根据《中华人民共和国企业所得税法》、《中华人民共和国企业所得税法实施条例》的有关规定，经国务院批准，现将《高新技术企业认定管理办法》及其附件《国家重点支持的高新技术领域》印发给你们，请遵照执行。

科技部 财政部 国家税务总局

二 00 八年四月十四日

高新技术企业认定管理办法

第一章 总则

第一条 为扶持和鼓励高新技术企业的发展，根据《中华人民共和国企业所得税法》（以下称《企业所得税法》）、《中华人民共和国企业所得税法实施条例》（以下称《实施条例》）有关规定，特制定本办法。

第二条 本办法所称的高新技术企业是指：在《国家重点支持的高新技术领域》（见附件）内，持续进行研究开发与技术成果转化，形成企业核心自主知识产权，并以此为基础开展经营活动，在中国境内（不包括港、澳、台地区）注册一年以上的居民企业。

第三条 高新技术企业认定管理工作应遵循突出企业主体、鼓励技术创新、实施动态管理、坚持公平公正的原则。

第四条 依据本办法认定的高新技术企业，可依照《企业所得税法》及其《实施条例》、《中华人民共和国税收征收管理法》（以下称《税收征管法》）及《中华人民共和国税收征收管理法实施细则》（以下称《实施细则》）等有关规定，申请享受税收优惠政策。

第五条 科技部、财政部、税务总局负责指导、管理和监督全国高新技术企业认定工作。

第二章 组织与实施

第六条 科技部、财政部、税务总局组成全国高新技术企业认定管理工作领导小组（以下称“领导小组”），其主要职责为：

（一）确定全国高新技术企业认定管理工作方向，审议高新技术企业认定管理工作报告；

（二）协调、解决认定及相关政策落实中的重大问题；

（三）裁决高新技术企业认定事项中的重大争议，监督、检查各地区认定工作；

（四）对高新技术企业认定工作出现重大问题的地区，提出整改意见。

第七条 领导小组下设办公室。办公室设在科技部，其主要职责为：

（一）提交高新技术企业认定管理工作报告；

（二）组织实施对高新技术企业认定管理工作的检查；

（三）负责高新技术企业认定工作的专家资格的备案管理；

（四）建立并管理“高新技术企业认定管理工作网”；

（五）领导小组交办的其他工作。

第八条 各省、自治区、直辖市、计划单列市科技行政管理部门同本级财政、税务部门组成本地区高新技术企业认定管理机构（以下称“认定机构”），根据本办法开展下列工作：

（一）负责本行政区域内的高新技术企业认定工作；

（二）接受企业提出的高新技术企业资格复审；

（三）负责对已认定企业进行监督检查，受理、核实并处理有关举报；

（四）选择参与高新技术企业认定工作的专家并报领导小组办公室备案。

第九条 企业取得高新技术企业资格后，应依照本办法第四条的规定到主管税务机关办理减税、免税手续。

享受减税、免税优惠的高新技术企业，减税、免税条件发生变化的，应当自发生变化之日起 15 日内向主管税务机关报告；不再符合减税、免税条件的，应当依法履行纳税义务；未依法纳税的，主管税务机关应当予以追缴。同时，主管税务机关在执行税收优惠政策过程中，发现企业不具备高新技术企业资格的，应提请认定机构复核。复核期间，可暂停企业享受减免税优惠。

第三章 条件与程序

第十条 高新技术企业认定须同时满足以下条件：

（一）在中国境内（不含港、澳、台地区）注册的企业，近三年内通过自主研发、受让、受赠、并购等方式，或通过 5 年以上的独占许可方式，对其主要产品（服务）的核心技术拥有自主知识产权；

（二）产品（服务）属于《国家重点支持的高新技术领域》规定的范围；

（三）具有大学专科以上学历的科技人员占企业当年职工总数的 30%以上，其中研发人员占企业当年职工总数的 10%以上；

（四）企业为获得科学技术（不包括人文、社会科学）新知识，创造性运用科学技术新知识，或实质性改进技术、产品（服务）而持续进行了研究开发活动，且近三个会计年度的研究开发费用总额占销售收入总额的比例符合如下要求：

1. 最近一年销售收入小于 5,000 万元的企业，比例不低于 6%；

2. 最近一年销售收入在 5,000 万元至 20,000 万元的企业，比例不低于 4%；

3. 最近一年销售收入在 20,000 万元以上的企业，比例不低于 3%。

其中，企业在中国境内发生的研究开发费用总额占全部研究开发费用总额的比例不低于 60%。企业注册成立时间不足三年的，按实际经营年限计算；

（五）高新技术产品（服务）收入占企业当年总收入的 60%以上；

（六）企业研究开发组织管理水平、科技成果转化能力、自主知识产权数量、销售与总资产成长性等指标符合《高新技术企业认定管理工作指引》（另行制定）的要求。

第十一条 高新技术企业认定的程序如下：

（一）企业自我评价及申请

企业登录“高新技术企业认定管理工作网”，对照本办法第十条规定条件，进行自我评价。认为符合认定条件的，企业可向认定机构提出认定申请。

（二）提交下列申请材料

1. 高新技术企业认定申请书；

2. 企业营业执照副本、税务登记证（复印件）；

3. 知识产权证书（独占许可合同）、生产批文，新产品或新技术证明（查新）材料、产品质量检验报告、省级以上科技计划立项证明，以及其他相关证明材料；

4. 企业职工人数、学历结构以及研发人员占企业职工的比例说明；

5. 经具有资质的中介机构鉴证的企业近三个会计年度研究开发费用情况表（实际年限不足三年的按实际经营年限），并附研究开发活动说明材料；

6. 经具有资质的中介机构鉴证的企业近三个会计年度的财务报表（含资产负债表、损益表、现金流量表，实际年限不足三年的按实际经营年限）以及技术性收入的情况表。

（三）合规性审查

认定机构应建立高新技术企业认定评审专家库；依据企业的申请材料，抽取专家库内专家对申报企业进行审查，提出认定意见。

（四）认定、公示与备案

认定机构对企业进行认定。经认定的高新技术企业在“高新技术企业认定管理工作网”上公示 15 个工作日，没有异议的，报送领导小组办公室备案，在“高新技术企业认定管理工作网”上公告认定结果，并向企业颁发统一印制的“高新技术企业证书”。

第十二条 高新技术企业资格自颁发证书之日起有效期为三年。企业应在期满前三个月内提出复审申请，不提出复审申请或复审不合格的，其高新技术企业资格到期自动失效。

第十三条 高新技术企业复审须提交近三年开展研究开发等技术创新活动的报告。

复审时应重点审查第十条（四）款，对符合条件的，按照第十一条（四）款进行公示与备案。

通过复审的高新技术企业资格有效期为三年。期满后，企业再次提出认定申请的，按本办法第十一条的规定办理。

第十四条 高新技术企业经营业务、生产技术活动等发生重大变化（如并购、重组、转业等）的，应在十五日内向认定管理机构报告；变化后不符合本办法规定条件的，应自当年起终止其高新技术企业资格；需要申请高新技术企业认定的，按本办法第十一条的规定办理。

高新技术企业更名的，由认定机构确认并经公示、备案后重新核发认定证书，编号与有效期不变。

第四章 罚则

第十五条 已认定的高新技术企业有下述情况之一的，应取消其资格：

（一）在申请认定过程中提供虚假信息的；

（二）有偷、骗税等行为的；

（三）发生重大安全、质量事故的；

（四）有环境等违法、违规行为，受到有关部门处罚的。

被取消高新技术企业资格的企业，认定机构在 5 年内不再受理该企业的认定申请。

第十六条 参与高新技术企业认定工作的各类机构和人员对所承担认定工作负有诚信以及合规义务，并对申报认定企业的有关资料信息负有保密义务。违反高新技术企业认定工作相关要求和纪律的，给予相应处理。

第五章 附则

第十七条 原《国家高新技术产业开发区外高新技术企业认定条件和办法》（国科发火字[1996]018 号）、原《国家高新技术产业开发区高新技术企业认定条件和办法》（国科发火字[2000]324 号），自本办法实施之日起停止执行。

第十八条 本办法由科技部、财政部、税务总局负责解释。

第十九条 科技部、财政部、税务总局另行制定《高新技术企业认定管理工作指引》。

第二十条 本办法自 2008 年 1 月 1 日起实施。

附：国家重点支持的高新技术领域

一、电子信息技术

（一）软件

1、系统软件

操作系统软件技术，包括实时操作系统技术；小型专用操作系统技术；数据库管理系统技术；基于 EFI 的通用或专用 BIOS 系统技术等。

2、支撑软件

测试支撑环境与平台技术；软件管理工具套件技术；数据挖掘与数据呈现、分析工具技术；虚拟现实（包括游戏类）的软件开发环境与工具技术；面向特定应用领域的软件生成环境与工具套件技术；模块封装、企业服务总线（ESB）、服务绑定等的工具软件技术；面向行业应用及基于相关封装技术的软件构件库技术等。

3、中间件软件

中间件软件包括：行业应用的关键业务控制；基于浏览器/服务器（B/S）和面向 Web 服务及 SOA 架构的应用服务器；面向业务流程再造；支持异种智能终端间数据传输的控制等。

4、嵌入式软件

嵌入式图形用户界面技术；嵌入式数据库管理技术；嵌入式网络技术；嵌入式 Java 平台技术；嵌入式软件开发环境构建技术；嵌入式支撑软件层中的其他关键软件模块研发及生成技术；面向特定应用领域的嵌入式软件支撑平台（包括：智能手机软件平台、信息家电软件平台、汽车电子软件平台等）技术；嵌入式系统整体解决方案的技术研发等。

5、计算机辅助工程管理软件

用于工程规划、工程管理/产品设计、开发、生产制造等过程中使用的软件工作平台或软件工具。包括：基于模型数字化定义（MBD）技术的计算机辅助产品设计、制造及工艺软件技术；面向行业的产品数据分析和管理软件技术；基于计算机协同工作的辅助设计软件技术；快速成型的产品设计和制造软件技术；具有行业特色的专用计算机辅助工程管理/产品开发工具技术；产品全生命周期管理（PLM）系统软件技术；计算机辅助工程（CAE）相关软件技术等。

6、中文及多语种处理软件

中文及多语种处理软件是指针对中国语言文字（包括汉语和少数民族语言文字）和外国语言文字开发的识别、编辑、翻译、印刷等方面的应用软件。包括：基于智能技术的中、外文字识别软件技术；字处理类（包括少数民族语言）文字处理软件技术；基于先进语言学理论的中文翻译软件技术；语音识别软件和语音合成软件技术；集成中文手写识别、语音识别/合成、机器翻译等多项智能中文处理技术的应用软件技术；具有多语种交叉的软件应用开发环境和平台构建技术等。

7、图形和图像软件

支持多通道输入/输出的用户界面软件技术；基于内容的图形图像检索及管理软件技术；基于海量图像数据的服务软件技术；具有交互功能与可量测计算能力的 3D 软件技术；具有真实感的 3D 模型与 3D 景观生成软件技术；遥感图像处理与分析软件技术等。

8、金融信息化软件

金融信息化软件是指面向银行、证券、保险行业等金融领域服务业务创新的软件。包括：支持网上财、税、库、行、海关等联网业务运作的软件技术；基于金融领域管理主题的数据仓库或数据集市及其应用等技术；金融行业领域的财务评估、评级软件技术；金融领域新型服务模式的软件技术等。

9、地理信息系统

网络环境下多系统运行的 GIS 软件平台构建技术；基于 3D/4D（即带有时间标识）技术的 GIS 开发平台构建技术；组件式和可移动应用的 GIS 软件包技术等。

10、电子商务软件

基于 Web 服务（Web Services）及面向服务体系架构（SOA）的电子商务应用集成环境及其生成工具软件或套件的技术；面向电子交易或事务处理服务的各类支持平台、软件工具或套件的技术；支持电子商务协同应用的软件环境、平台、或工具套件的技术；面向桌面和移动终端设备应用的信息搜索与服务软件或工具的技术；面向行业的电子商务评估软件或工具的技术；支持新的交易模式的工具软件和应用软件技术等。

11、电子政务软件

用于构建电子政务系统或平台的软件构件及工具套件技术；跨系统的电子政务协同应用软件环境、平台、工具等技术；应急事件联动系统的应用软件技术；面向电子政务应用的现场及移动监管稽核软件和工具技术；面向电子政务应用的跨业务系统工作流软件技术；异构系统下政务信息交换及共享软件技术；面向电子政务应用的决策支持软件和工具技术等。

12、企业管理软件

数据分析与决策支持的商业智能（BI）软件技术；基于 RFID 和 GPS 应用的现代物流管理软件技术；企业集群协同的供应链管理（SCM）软件技术；面向客户个性化服务的客户关系管理（CRM）软件技术等。

（二）微电子技术

1、集成电路设计技术

自主品牌 ICCAD 工具版本优化和技术提升，包括设计环境管理器、原理图编辑、版图编辑、自动版图生成、版图验证以及参数提取与反标等工具；器件模型、参数提取以及仿真工具等专用技术。

2、集成电路产品设计技术

音视频电路、电源电路等量大面广的集成电路产品设计开发；专用集成电路芯片开发；具有自主知识产权的高端通用芯片 CPU、DSP 等的开发与产业化；符合国家标准、具有自主知识产权、重点整机配套的集成电路产品，3G 移动终端电路、数字电视电路、无线局域网电路等。

3、集成电路封装技术

小外型有引线扁平封装（SOP）、四边有引线塑料扁平封装（PQFP）、有引线塑封芯片载体（PLCC）等高密度塑封的大生产技术研究，成品率达到 99%以上；新型的封装形式，包括采用薄型载带封装、塑料针栅阵列（PGA）、球栅阵列（PBGA）、多芯片组装（MCM）、芯片倒装焊（FlipChip）、WLP（Wafer Level Package），CSMP（Chip Size Module Package），3D（3 Dimension）等封装工艺技术。

4、集成电路测试技术

集成电路品种的测试软件，包括圆片（Wafer）测试及成品测试。芯片设计分析验证测试软件；提高集成电路测试系统使用效率的软/硬件工具、设计测试自动连接工具等。

5、集成电路芯片制造技术

CMOS 工艺技术、CMOS 加工技术、BiCMOS 技术、以及各种与 CMOS 兼容工艺的 SoC 产品的工业化技术；双极型工艺技术，CMOS 加工技术与 BiCMOS 加工技术；宽带隙半导体基集成电路工艺技术；电力电子集成器件工艺技术。

6、集成光电子器件技术

半导体大功率高速激光器；大功率泵浦激光器；高速 PIN-FET 模块；阵列探测器；10Gbit/s-40Gbit/s 光发射及接收模块；用于高传输速率多模光纤技术的光发射与接收器件；非线性光电器件；平面波导器件（PLC）（包括 CWDM 复用/解复用、OADM 分插复用、光开关、可调光衰减器等）。

（三）计算机及网络技术

1、计算机及终端技术

手持和移动计算机（HPC、PPC、PDA）；具有特定功能的行业应用终端，包括金融、公安、税务、教育、交通、民政等行业的应用中，集信息采集（包括条形码、RFID、视频等）、认证支付和无线连接等功能的便携式智能终端等；基于电信网络或/和计算机网络的智能终端等。

2、各类计算机外围设备技术

具有自主知识产权的计算机外围设备，包括打印机、复印机等；计算机外围设备的关键部件，包括打印机硒鼓、墨盒、色带等；计算机使用的安全存储设备，存储、移动存储设备等；基于 USB 技术、蓝牙技术、闪联技术标准的各类外部设备及器材；基于标识管理和强认证技术；基于视频、射频等识别技术。

3、网络技术

基于标准协议的（如 SNMP 和 ITSM 等）的应用于企业网和行业专网的信息服务管理和网络管理软件，包括监控软件、IP 业务管理软件等； ISP、ICP 的增值业务软件和应用平台等；用于企业和家庭的中、低端无线网络设备，包括无线接入点、无线网关、无线网桥、无线路由器、无线网卡等；以及符合蓝牙、UWB 标准的近距离（几米到十几米）无线收发技术等；向 IPv4 向 IPv6 过渡的中、低端网络设备和终端。

4、空间信息获取及综合应用集成系统

空间数据获取系统，包括低空遥感系统、基于导航定位的精密测量与检测系统、与 PDA 及移动通信部件一体化的数据获取设备等；导航定位综合应用集成系统，包括基于“北斗一号”卫星导航定位应用的主动/被动的导航、定位设备及公众服务系统；基于位置服务（LBS）技术的应用系统平台；时空数据库的构建及其应用技术等。

5、面向行业及企业信息化的应用系统

融合多种通信手段的企业信息通信集成技术；智能化的知识管理；工作流、多媒体；基于 SOA 架构建立的企业信息化集成应用。

6、传感器网络节点、软件和系统

面向特定行业的传感器网络节点、软件或应用系统；传感器网络节点的硬件平台和模块、嵌入式软件平台及协议软件等；传感器网络节点的网络接口产品模块、软件等。

（四）通信技术

1、光传输技术

可用于城域网和接入网的新型光传输设备技术，包括：中／低端新型多业务光传输设备和系统；新型光接入设备和系统；新型低成本小型化波分复用传输设备和系统；光传输设备中新型关键模块光传输系统仿真计算等专用软件。

2、小型接入设备技术

适合国内的网络状况和用户特殊应用需求的小型接入设备技术，包括：各类综合接入设备，各种互联网接入设备（IAD）；利用无线接入、电力线接入、CATV

接入等的行业专用接入设备（包括远程监控等）；其它新型中小型综合接入设备。

3、无线接入技术

调制方式多样、能适应复杂使用环境的移动通信接入技术的无线接入设备及其关键部件，包括：宽带无线接入设备，如包括基站、终端、网关等；基于 IEEE802.11 等协议的基站与无线局域网终端设备；基于 IEEE802.16 等协议的宽带无线城域网终端设备、系统和技术；各类高效率天线终端设备和特种天线技术和设备等；固定无线接入设备；各种无线城域网设备和系统，包括增强型 WLAN 基站和终端等。

4、移动通信系统的配套技术

适用于移动通信网络等的系列配套技术，包括：3G 系统的直放站（含天线）配套设备；用于各种基站间互联的各种传输设备；移动通信网络规划优化软件与工具；基站与天线的 RF 信号光纤拉远传输设备；移动通信的网络测试、监视和分析仪表等；数字集群系统的配套技术；其它基于移动通信网络的行业应用的配套技术。

5、软交换和 VoIP 系统

基于分组交换原理的下一代网络系统和设备技术，包括：中小型 IP 电话系统及设备；面向特定行业和企业应用、集成 VoIP 功能的呼叫中心系统及设备； VoIP 系统的监测和监控技术等。

6、业务运营支撑管理系统

网络和资源管理系统；结算和计费系统；业务管理和性能分析系统；经营分析与决策支持系统；客户服务管理系统；服务质量管理系统；各类通信设备的测试系统；适用于上述系统的组件产品，包括各类中间件等。

7、电信网络增值业务应用系统

固定网、2.5G / 3G 移动、互联网等网络的增值业务应用软件技术，包括：各类增值业务的综合开发平台；流媒体、手机可视电话、手机 QQ、IPTV 等的应用系统；基于电信网、互联网等的增值业务和应用系统；基于 P2P 技术的各类应用系统，包括即时通信系统等；基于现有网络技术的增值业务平台；支持网络融合和业务融合的增值业务应用平台及系统。

（五）广播电视技术

1、演播室设备技术

与数字电视系统相适应的各类数字化电子设备技术，包括：演播室数字视频服务器、数字视频切换控制台、数字音视频非线性编辑服务器；节目的电子交换、节目制播系统软件、面向数字媒体版权保护的加解密和密钥管理、数字版权保护等系统；适合我国地面电视标准的地面数字电视传输设备；地面—有线合一的数字电视传输设备；符合我国标准的具有自主知识产权的数字电视发射与转发设备；卫星数字电视调制器、有线数字电视调制器、地面数字电视调制器；广播电视监控系统及设备；用于 IP 网络、移动接收服务网络的数据网关，数据协议转发服务器；有线数字电视和卫星数字电视运营商的运营支撑系统；以电子节目指南、综合信息发布、数据广播、以及交互电视等构成的业务应用系统。

2、交互信息处理系统

能够实现交互式控制的服务端系统技术。

3、信息保护系统

能够实现各种信息媒体整体版权保护的系统技术。

4、数字地面电视技术

可提高收发机性能的技术，与单频组网、覆盖补点、专用测试等应用相关的技术，包括：数字电视单频网适配器；广播信号覆盖补点器；GB20600-2006 广播信号发生器；GB20600-2006 广播信号分析仪等。

5、地面无线数字广播电视技术

符合国家《地面数字电视广播传输标准》的设备技术，包括：数字广播电视发射机；数字广播电视复用器；数字广播电视信道编码调制器；无线地面数字广播技术。

6、专业音视频信息处理系统

公共交通、公共场所等各类专业级网络化的音视频处理系统技术。

7、光发射、接收技术

具备自主知识产权的光发射和光接收设备的技术，包括：激光器模块；光电转换模块；调幅返送光发射机；室外型宽带光接收机等。

8、电台、电视台自动化技术

适合电台、电视台开展音频及视像节目编、采、播业务的技术，包括：具备发射机单机模拟量、开关量的选择与采集，控制信号接口选择功能的设备；能对发射机工作状态实现控制、监测、记录、分析、诊断、显示、报警等功能的设备；能对全系统实现数据处理的计算机设备；能对发射机房多机系统实现自动化控制管理的设备等。

9、网络运营综合管理系统

基于卫星、有线、无线电视传输的、能实现分级网络运营管理、能实现全网传输设备的维护、设置及业务管理一体化的软件系统的技术，包括：广播影视传输覆盖网的管理系统；有线电视分配网网络管理系统等。

10、IPTV 技术

电信、计算机和广电三大网络的业务应用融合的技术，包括：IPTV 路由器和交换器；IPTV 终端设备； IPTV 监管系统和设备； IPTV 前端设备等。

11、高端个人媒体信息服务平台

移动办公软件技术，包括：个人信息综合处理平台；便携式个人信息综合处理终端等。

（六）新型电子元器件

1、半导体发光技术

半导体发光二极管用外延片制造技术，生长高效高亮度低光衰高抗静电的外延片技术，包括：采用 GaN 基外延片 / Si 基外延片 / 蓝宝石衬底外延片技术；半导体发光二极管制作技术；大功率高效高亮度低光衰高抗静电的发光二极管技术；高效高亮度低光衰高抗静电的

发光二极管技术；半导体照明用长寿命高效荧光粉、热匹配性能和密封性能好的封装树脂材料和热沉材料技术等。

2、片式和集成无源元件技术

片式复合网络、片式 EMI/EMP 复合元件和 LTCC 集成无源元件；片式高温、高频、大容量多层陶瓷电容器（MLCC）；片式 NTC、PTC 热敏电阻和片式多层压敏电阻；片式高频、高稳定、高精度频率器件等。

3、片式半导体器件技术

小型、超小型有引线及无引线产品；采用低弧度键合、超薄封装的相关产品；功率型有引线及无引线产品等。

4、中高档机电组件技术

符合工业标准的超小型高密度高传输速度的连接器；新一代通信继电器，小体积、大电流、组合式继电器和固体光 MOS 继电器；高保真、高灵敏度、低功耗电声器件；刚挠结合板和 HDI 高密度积层板等。

（七）信息安全技术

1、安全测评类

网络与系统的安全性能进行测试与评估技术；对安全产品的功能、性能进行测试与评估，能满足行业或用户对安全产品自测评需求的技术等。

2、安全管理类

具备安全集中管理、控制与审计分析等功能的综合安全管理类技术；具备安全策略、安全控制措施的统一配置、分发和审核功能的安全管理类技术等。

3、安全应用类

具有电子政务相关应用安全软件及相关技术；具有电子商务相关应用安全软件及相关技术；具有公众信息服务相关应用安全软件及相关技术等。

4、安全基础类

操作系统安全的相关支撑技术；数据库安全管理的相关支撑技术；安全路由和交换设备的研发和生产技术；安全中间件技术；可信计算和标识认证相关支撑技术等。

5、网络安全类

网络攻击防护技术；网络异常监控技术；无线与移动安全接入技术；恶意代码防护技术；网络内容安全管理技术等。

6、专用安全类

密码及其应用技术；安全隔离与交换等边界防护技术；屏蔽、抑制及干扰类电磁泄漏发射防护和检测技术；存储设备和介质中信息的防护、销毁及存储介质的使用管理技术；高速安全芯片技术；安全事件取证和证据保全技术等。

（八）智能交通技术

1、先进的交通管理和控制技术

具备可扩展性的适于中小城市信号设备和控制技术；可支持多种下端协议的上端控制系统的软件技术研发；交通应急指挥管理相关设备的技术研发和生产；网络环境下的外场交通数据综合接入设备的技术研发和生产；交通事件自动检测和事件管理的软件技术研发等。

2、交通基础信息采集、处理设备及相关软件技术

采用微波、主被动红外、激光、超声波技术（不含视频）设备，可用于采集交通量、速度、车型、占有率、车头时距等交通流参数；车辆、站场枢纽客流统计检测设备生产及分析技术； 用于公众服务的动态交通信息融合、处理软件技术研发；交通基础设施状态监测设备的软件研发和生产技术；内河船舶交通量自动检测设备技术研发等。

3、先进的公共交通管理设备和系统技术

大容量快速公交系统（BRT）运营调度管理系统（含车、路边设备）技术研发；公交（含大容量公交）自动售检票系统技术研发，要能够支持现金、信用卡、预付费卡等多种支付方式；大中城市公共交通运营组织与调度管理相关设备和系统的技术研发等。

4、车载电子设备和系统技术

具有实时接收数据能力，并可进行本地路径动态规划功能的车载导航设备的研发及生产；符合国家标准的电子不停车收费系统技术研发；车载安全驾驶辅助产品生产技术等。

二、生物与新医药技术

（一）医药生物技术

1、新型疫苗

具有自主知识产权且未曾在国内外上市销售的、预防重大疾病的新型高效基因工程疫苗，包括：预防流行性呼吸系统疾病、艾滋病、肝炎、出血热、大流行感冒、疟疾、狂犬病、钩虫病、血吸虫病等人类疾病和肿瘤的新型疫苗、联合疫苗等，疫苗生产用合格实验动物，培养细胞及菌种等。

2、基因工程药物

具有自主知识产权，用于心脑血管疾病、肿瘤、艾滋病、血友病等重大疾病以及其他单基因遗传病治疗的基因工程药物、基因治疗药物、靶向药物，重组人血白蛋白制品等。

3、重大疾病的基因治疗

用于恶性肿瘤、心血管疾病、神经性疾病的基因治疗及其关键技术和产品，具有自主知识产权的重大疾病基因治疗类产品，包括：恶性肿瘤、遗传性疾病、自身免疫性疾病、神经性疾病、心血管疾病和糖尿病等的基因治疗产品；基因治疗药物输送系统等。

4、单克隆抗体系列产品与检测试剂

用于肝炎、艾滋病、血吸虫病、人禽流感、性病等传染性疾病和肿瘤、出生缺陷及吸毒等早期检测、诊断的单克隆抗体试剂，食品中微生物、生物毒素、农药兽药残留检测用单克隆抗体及试剂盒；重大动植物疫病、转基因生物检测用单克隆抗体及试剂盒，造血干细胞移植的分离、纯化和检测所需的单克隆抗体系列产品；抗肿瘤及抗表皮生长因子单克隆抗体药物；单克隆抗体药物研究关键技术和系统；先进的单克隆抗体规模化制备集成技术、工艺和成套设备；新型基因扩增（PCR）诊断试剂及检测试剂盒和人源化/性基因工程抗体。

5、蛋白质/多肽/核酸类药物

面向重大疾病——抗肿瘤蛋白药物（如肿瘤坏死因子），心脑血管系统蛋白药物（如纤溶酶原，重组溶血栓），神经系统蛋白药物尤其是抑郁药物，老年痴呆药物，肌肉关节疾病的蛋白质治疗药物，以及抗病毒等严重传染病蛋白药物的研究与产业化技术；各类细胞因子（如促红细胞生成素，促人血小板生长因子，干扰素，集落刺激因子，白细胞介素，肿瘤坏死因子，趋化因子，转化生长因子，生长因子）等多肽药物的开发技术；抗病毒、抗肿瘤及治疗自身免疫病的核酸类药物及相关中间体的研究及产业化技术等。

6、生物芯片

重大疾病、传染病、遗传病、地方病等诊断用芯片，生物安全检测用芯片，研究用芯片，进出口检验检疫芯片、生物芯片数据获取、处理和分析设备及软件等。

7、生物技术加工天然药物

采用细胞大规模培养、生物转化技术开发生物资源和中药资源，包括：动植物细胞大规模培养技术、发酵法生产濒危、名贵、紧缺药用原料和动植物组织中分离提取生物活性物质原料及新药等。

8、生物分离、装置、试剂及相关检测试剂

适用于基因工程、细胞工程、发酵工程、天然药物的生产、药物活性成份等分离用的高精度、自动化、程序化、连续高效的设备和介质，以及适用于生物制品厂的生产装置等，包括：生物、医药用新型高效分离介质及装置；生物、医药用新型高效膜分离组件及装置；生物、医药用新型高效层析介质及装置；生物、医药用新型发酵技术与装置；生物反应和生物分离的过程集成技术；生物、医药研究、生产及其检测用试剂、试剂盒等。

9、新生物技术

具有明确应用前景的新生物技术，包括：治疗疾病的干细胞技术及用于基因治疗、新药开发和生物医学的 RNAi 技术；用于生物医药研究的纳米技术；能提高多肽药物的稳定性和半衰期，降低免疫原性的多肽修饰技术；海洋生物技术。

（二）中药、天然药物

1、创新药物

拥有自主知识产权、符合现代新药开发技术要求的中药、天然药物新药，包括：从中药、天然药物中提取的有效成份、有效部位，以及新发现的中药材和中药材新的药用部位及制剂等。

2、中药新品种的开发

由中药、天然药物制成的新的复方制剂，对名优中成药及民族药的二次开发，以及新型中药给药系统品种，包括：透皮制剂、缓控速释制剂、靶向制剂、定位制剂等；作为中药质量控制所必需的中药标准品的开发与应用技术。

3、中药资源可持续利用

珍贵和濒危野生动植物资源的种植（养殖）、良种选育技术；珍贵和濒危野生药材代用品及人工制品；符合种植规范和管理要求的中药材；中药材去除重金属和农药残留新技术、新产品的研究等。

（三）化学药

1、创新药物

拥有自主知识产权的创新药物，包括：通过合成或半合成的方法制得的原料药及其制剂；天然物质中提取或通过发酵提取的新的有效单体及其制剂；用拆分或合成等方法制得的已知药物中的单一光学异构体及其制剂；由已上市销售的多组份药物制备为较少组份的药物；新的复方制剂；已有药物新的适应症等。

2、心脑血管疾病治疗药物

抗高血压药物；抗冠心病药物；抗心衰药物；抗血栓药物；治疗脑卒中新药等。

3、抗肿瘤药物

抗恶性肿瘤细胞侵袭转移药物；放化疗增敏药物；肿瘤化学预防及用于癌前病变治疗的药物；作用于肿瘤细胞信号传递系统的新药；其他新型抗肿瘤药物；肿瘤辅助治疗（包括镇痛、止吐、增强免疫功能、肿瘤引起的高钙血症等）药物等。

4、抗感染药物（包括抗细菌、抗真菌、抗原虫药等）

大环内酯类抗生素；头孢菌素抗生素；非典型β-内酰胺类抗生素；抗真菌药物；喹诺酮类抗菌药；四环素类抗菌药；手性硝基咪唑类抗原虫、抗厌氧菌药物；多肽类抗生素等。

5、老年病治疗药物

防治骨质疏松新药；老年痴呆治疗新药；慢性阻塞性肺病治疗新药；前列腺炎及前列腺肥大治疗药物；帕金森氏病治疗药物；便秘治疗药物等。

6、精神神经系统药物

抗郁抑药；抗焦虑药；精神病治疗药；偏头痛治疗药；儿童注意力缺乏综合症治疗药；癫痫治疗药等。

7、计划生育药物

女用避孕药；男用避孕药；事后避孕药；抗早孕药等。

8、重大传染病治疗药物

艾滋病治疗药物；传染性肝炎治疗药物；结核病防治药物；血吸虫病防治药物；流感、禽流感、非典型肺炎等呼吸道传染病的防治药物等。

9、治疗代谢综合症的药物

糖尿病及其并发症治疗药物；血脂调节药；脂肪肝治疗药物；肥胖症治疗药物等。

10、罕见病用药（Orphan Drugs）及诊断用药

罕见病用药；解毒药；诊断用药等（包括 X-射线、超声、CT、NMR 对比增强剂等）。

11、手性药物和重大工艺创新的药物及药物中间体

手性药物技术（包括：外消旋药物的拆分，无效对映体的转化及生物转化合成技术；包结拆分和手性药物的制备技术；手性药物的生物催化合成技术；新型手性体的设计与合成技术；工业化不对称催化技术；由糖合成手性纯天然化合物和其类似物的开发技术；拆分试剂，手性辅助剂，手性分析用试剂，手性源化合物的开发与应用技术等）；能大幅度降低现有药物生产成本的重大工艺创新；节能降耗明显的重大工艺改进；能大幅度减少环境污染的重大工艺改进；市场急需的、有较大出口创汇潜力的药物及药物中间体；改进药物晶型的重大工艺改进等。

（四）新剂型及制剂技术

1、缓、控、速释制剂技术——固体、液体及复方

具有控制药物释放速度的缓、控、速释制剂技术，包括：透皮吸收制剂技术；注射缓、控释制剂（长效储库型注射剂）技术；口服（含舌下）缓、控、速释制剂技术；缓释微丸胶囊（直径为 5～250μm）制剂技术；粘膜、腔道、眼用等其它缓、控释制剂技术等。

2、靶向给药系统

采用脂类、类脂蛋白质及生物降解高分子成分作为载体，将药物包封或嵌构而成的各种类型的新型靶向给药系统，包括：结肠靶向给药（口服）系统及技术；心脑靶向给药（口服、注射）系统及技术；淋巴靶向给药（注射）系统及技术；能实现 2 级靶向，3 级靶向药物制剂的系统及技术等。

3、给药新技术及药物新剂型

高效、速效、长效、靶向给药新型药物，药物控释纳米材料，新型给药技术和装备，缓释、控释、透皮吸收制剂技术，蛋白或多肽类药物的口服制剂技术。包括：纳米技术、脂质体技术、微囊释放新技术等。

4、制剂新辅料

β-环糊精衍生物、微晶纤维素和微粉硅胶等固体制剂用辅料，具有掩盖药物的不良口感、提高光敏药物的稳定性、减少药物对胃肠道的刺激性、使药物在指定部位释放等作用的包衣材料，包括：纤维素衍生物和丙烯酸树脂类衍生物等；注射用辅料，包括：注射用β-

环糊精衍生物、注射用卵磷脂和注射用豆磷脂等。控、缓释口服制剂，粘膜给药和靶向给药制剂，眼用药物，皮肤给药等特殊药用辅料。

（五）医疗仪器技术、设备与医学专用软件

1、医学影像技术

X 射线摄影成像技术（高频，中频）、新型高性能超声诊断技术（彩色 B 超）、功能影像和分子影像成像技术、新型图像识别和分析系统以及其它新型医学成像技术，包括：电阻抗成像技术，光 CT 技术等。

2、治疗、急救及康复技术

新型微创外科手术器具及其配套装置；植入式电子刺激装置；新型急救装置；各类介入式治疗技术与设备 ;以治疗计划系统为核心的数字化精确放射治疗技术以及医用激光设备等。

3、电生理检测、监护技术

数字化新型电生理检测和监护设备技术；适用于基层医院、社区医疗、生殖健康服务机构，以及能面向家庭的各类新型无创和微创检测诊断技术、监护设备和康复设备；高灵敏度、高可靠性的新型医用传感器及其模块组件等。

4、医学检验技术

体现自动化和信息化的应急生化检验装置、常规生化分析仪器、常规临床检验仪器以及具有明确的临床诊断价值的新技术，采用新工艺、新方法或新材料的其他医学检验技术和设备等。

5、医学专用网络环境下的软件

医用标准化语言编译及电子病历（EMR）系统；电子健康档案系统；重大疾病专科临床信息系统；社区医疗健康信息系统以及实用三维数字医学影像后处理系统等。

（六）轻工和化工生物技术

1、生物催化技术

具有重要市场前景及自主知识产权的生物催化技术，包括：用于合成精细化学品的生物催化技术；新型高效酶催化剂品种和新用途；新型酶和细胞固定化方法及反应器；生物手性化学品的合成；生物法合成多肽类物质；有生物活性的新型糖类和糖醇类等。

2、微生物发酵新技术

高效菌种的选育和新型发酵工程和代谢工程技术，包括：微生物发酵生产的新产品及其化学改性新产品；微生物发酵新技术和新型反应器；新功能微生物的选育方法和发酵过程的优化、控制新方法以及采用代谢工程手段提高发酵水平的新方法；传统发酵产品的技术改造和生产新工艺等；重大发酵产品中可提高资源利用度，减少排污量的清洁生产新技术和新工艺等。

3、新型、高效工业酶制剂

对提高效率、降低能耗和减少排污有显著效果的绿色化学处理工艺及新型、高效工业酶制剂，包括：有机合成用酶制剂；纺织工业用酶、洗涤剂用酶、食品用酶、制药工业用酶、饲料用酶、环保用酶等酶制剂，酶制剂质量评价技术及标准；生物新材料用酶；生物新能源用酶等。

4、天然产物有效成份的分离提取技术

可提高资源利用率的、从天然动植物中提取有效成份制备高附加值精细化学品的分离提取技术，包括：天然产物有效成份的分离提取新技术；天然产物有效成份的全合成、化学改性及深加工新技术；天然产物中分离高附加值的新产品；高效分离纯化技术集成及装备的开发与生产；从动植物原料加工废弃物中进一步分离提取有效成份的新技术等。

5、生物反应及分离技术

高效生物反应器，高密度表达系统技术，大规模高效分离技术、介质和设备，大型分离系统及在线检测控制装置，基因工程、细胞工程和蛋白质工程产品专用分离设备，生物过程参数传感器和自控系统。

6、功能性食品及生物技术在食品安全领域的应用

辅助降血脂、降血压、降血糖功能食品；抗氧化功能食品；减肥功能食品；辅助改善老年记忆功能食品；功能化传统食品；以及功能性食品有效成份检测技术和功能因子生物活性稳态化技术；食品安全的生物检测技术等。

（七）现代农业技术

1、农林植物优良新品种与优质高效安全生产技术

优质、高效、高产优良新品种技术；水肥资源高效利用型新品种技术；抗病虫、抗寒、抗旱、耐盐碱等抗逆新品种技术；新型、环保肥料与植物生长调节剂及高效安全施用技术。

2、畜禽水产优良新品种与健康养殖技术

畜禽水产优良新品种及快繁技术；珍稀动物、珍稀水产养殖技术；畜牧业、水产业健康养殖技术和模式；畜牧水产业环境调控和修复技术与模式；安全、优质、专用、新型饲料及饲料添加剂生产和高效利用技术；畜牧水产业质量安全监控、评价、检测技术；优质奶牛新品种及规模化、集约化饲养与管理技术。

3、重大农林植物灾害与动物疫病防控技术

重大农林植物病虫鼠草害、重大旱涝等气象灾害以及森林火灾监测、预警、防控新技术；主要植物病虫害及抗药性检测、诊断技术；环保型农药创制、高效安全施用与区域性农林重大生物灾害可持续控制技术；畜禽水产重大疾病监测预警、预防控制、快速诊断、应急处理技术；烈性动物传染病、动物源性人畜共患病高效特异性疫苗生产技术；高效安全新型兽药及技术质量监测等技术。

4、农产品精深加工与现代储运

农业产业链综合开发和利用技术；农产品加工资源节约和综合利用技术；农产品分级、包装和品牌管理技术；农业产业链标准化管理技术；大宗粮油绿色储运、鲜活农产品保鲜及物流配送、农林产品及特种资源增值加工、农林副产品资源化利用；农副产品精深加工和清洁生态型加工技术与设备；农产品质量安全评价、快速检测、全程质量控制等技术。

5、现代农业装备与信息化技术

新型农作物、牧草、林木种子收获、清选、加工设备；新型农田作业机械、设施农业技术装备与高效施肥、施药机械和设备；新型畜禽、水产规模化养殖以及牧草、饲料加工、林产机械和新型农产品产地处理技术装备；农业生产过程监测、控制及决策系统与技术；精准农业技术、遥感技术与估产及农村信息化服务系统与技术。

6、水资源可持续利用与节水农业

水源保护、水环境修复、节水灌溉、非常规水源灌溉利用、旱作节水和农作物高效保水等新技术、新材料、新工艺和新产品。

7、农业生物技术

新型畜禽生物兽药和生物疫苗，生物肥料，生物农药及生物饲料等。

三、航空航天技术

1、民用飞机技术

民用飞机综合航空电子、飞行控制技术；安全及救生技术；民用航空发动机及重要部件；小型、超小型飞机（含无人驾驶飞机）专用发动机及重要部件。

2、空中管制系统

民用航空卫星通信、导航、监视及航空交通管理系统（CNS/ATM）管制工作站系统、CNS/ATM 网关系统、飞行流量管理系统和自动化管制系统等；先进的空中管制空域设计与评估系统，数字化放行（PDC）系统，自动终端信息服务（D-ATIS）系统，空中交通进离港排序辅助决策系统，空管监视数据融合处理系统，飞行计划集成系统，卫星导航地面增强系统，自动相关监视系统和多点相关定位系统等。

3、新一代民用航空运行保障系统

新型民用航空综合性公共信息网络平台、安全管理系统、天气观测和预报系统、适航审定系统；新型先进的机场安全检查系统、货物及行李自动运检系统、机场运行保障系统。

4、卫星通信应用系统

通信卫星地面用户终端、便携式多媒体终端、卫星地面上行系统、卫星地面差放站以及采用卫星通信新技术（新协议）的高性价比地面通信系统，宽带/高频/激光卫星通信系统等；与卫星固定通信业务、卫星移动通信业务、电视卫星直播业务（卫星数字音频广播）和互联网宽带接入业务相关的四大业务地面终端设备及关键配套部件；高精度地面终端综合检测仪器与系统。

5、卫星导航应用服务系统

卫星导航多模增强应用服务系统（含连续观测网络、实时通信网络、数据处理中心和公共服务平台）、基于位置信息的综合服务系统及其应用服务终端（与无线通信网络结合的全球导航卫星系统技术和室内定位技术）、具有导航、通信、视听等多种功能的车载、船载等移动信息系统；个人导航信息终端；兼容型卫星导航接收机；卫星导航专用芯片、SOC 系统、小型嵌入系统；嵌入式软件。

四、新材料技术

（一）金属材料

1、铝、镁、钛轻合金材料深加工技术

环保、节能新工艺新技术生产高纯金属镁、高洁净镁合金和高强度、高韧性、耐腐蚀铝合金、镁合金、钛合金材料，及其在航空、汽车、信息、高速列车等行业的应用技术；大断面、中空大型钛合金及铝合金板材，镁及镁合金的液态铸轧技术，镁、铝、钛合金的线、

板、带、薄板（箔）、铸件、锻件、异型材等系列化产品的加工与焊接技术，后加工成形技术和着色、防腐技术以及相关的配套设备；精密压铸技术生产高性能铝合金、镁合金材及铸件；钛及钛合金低成本生产技术及其应用技术，钛及钛合金焊接管生产技术。

2、高性能金属材料及特殊合金材料生产技术

先进高温合金材料及其民用制品生产技术；超细晶粒的高强度、高韧性、强耐蚀钢铁材料生产技术；为提高钢铁材料洁净度、均匀度、组织细度等影响材料性能，提高冶金行业资源、能源利用效率，实现节能、环保，促进钢铁行业可持续发展的配套相关材料、部件制造技术；高强度、高韧性、高导性、耐腐蚀、高抗磨、耐高（低）温等特殊钢材料、高温合金材料、工模具材料制造技术；超细组织钢铁材料的轧制工艺、先进微合金化、高均质连铸坯、高洁净钢的冶炼工艺，高强度耐热合金钢及铸锻工艺和焊接技术，高性能碳素结构钢、高强度低合金钢、超高强度钢、高牌号冷轧硅钢生产工艺；高性能铜合金材（高强、高导、无铅黄铜等）生产技术、采用金属横向强迫塑性变形和冷轧一次成型工艺生产热交换器用铜及铜合金无缝高翅片管技术；通过连铸、拉拔制成合金管线材技术。

3、超细及纳米粉体及粉末冶金新材料工艺技术

高纯超细粉、纳米粉体和多功能金属复合粉生产技术，包括铜、镍、钴、铝、镁、钛等有色金属和特殊铁基合金粉末冶金材料粉体成型和烧结致密化技术；采用粉末预处理、烧结扩散制成高性能铜等有色金属预合金粉制造技术；高性能、特殊用途钨、钼深加工材料及应用技术，超细晶粒（纳米晶）硬质合金材料及高端硬质合金刀具等制造技术。

4、低成本、高性能金属复合材料加工成型技术

耐高压、耐磨损、抗腐蚀、改善导电、导热性等方面具有明显优势的金属与多种材料复合的新材料及结构件制、热交换器用铜铝复合管材新工艺；低密度、高强度、高弹性模量、耐疲劳的颗粒增强、纤维增强的铝基复合材料产业化的成型加工技术以及低成本高性能的增强剂生产技术。

5、电子元器件用金属功能材料制造技术

制取电容器用高压、超高比容钽粉的金属热还原、球团化造粒、热处理、脱氧等技术；制成超细径电容器用钽丝的粉末冶金方法成型烧结技术 ;特种导电和焊接用集成电路引线及引线框架材料、电子级无铅焊料、焊球、焊粉、焊膏、贱金属专用电子浆料制造技术；异形接触点材料和大功率无银触头材料制造技术；高磁能积、高内禀矫顽力高性能铁氧体永磁材料和高导磁、低功耗、抗电磁干扰的软磁体材料（高于 OP8F、CL11F、PW40 牌号性能）制造技术，片式电感器用高磁导率、低温烧结铁氧体（NiCuZn）、高性能屏蔽材料、锂离子电池负极载体、覆铜板用的高均匀性超薄铜薄制造技术；电真空用无夹杂、无气孔不锈钢及无氧铜材料规模化生产技术。

6、半导体材料生产技术

经拉晶、切割、研磨、抛光、清洗加工制成的直径大于 8 英寸超大规模集成电路用硅单晶及抛光片和外延片加工技术；太阳能电池用大直径（8 英寸）硅单晶片拉晶技术；低成本、低能耗多晶硅材料及产品产业化技术；大直径红外光学锗单晶材料及大面积宽带隙半导体（氮化镓、碳化硅、氧化锌等）单晶和外延材料制造技术。高纯铜、高纯镍、高纯钴、高纯银、高纯铑、高纯铋、高纯锑、高纯铟、高纯镓等高纯及超纯有色金属材料精炼提纯技术等。

7、低成本超导材料实用化技术

实用化超导线材、块材、薄膜的制备技术和应用技术。

8、特殊功能有色金属材料及应用技术

形状记忆钛镍合金、铜合金材及制品；高阻尼铜合金材；高电位、高电容量镁牺牲阳极；高性能新型释汞、吸汞、吸气材料等。

9、高性能稀土功能材料及其应用技术

高纯度稀土氧化物和稀土单质分离、提取的无污染、生产过程废弃物综合回收的新工艺技术；生产高性能烧结钕铁硼永磁材料和各向异性粘结钕铁硼永磁材料及新型稀土永磁材料新工艺技术；新型高性能稀土发光显示材料，LCD 显示器用稀土荧光粉、PDP 显示器用低压（电压几百伏）荧光粉和绿色节能电光源材料制备和应用技术，高亮度、长余辉红色稀土贮光荧光粉制备和应用技术；大尺寸稀土超磁致伸缩材料及应用技术；稀土激光晶体和玻璃稀土精密陶瓷材料，稀土磁光存储材料，稀土磁致冷材料和巨磁阻材料，稀土生物功能材料制备和应用技术。应用于燃气、石化和环保领域的新型高效稀土催化剂和满足欧IV标准的稀土汽车尾气催化剂制造技术；高性能稀土镁、铝、铜等有色金属材料熔铸加工技术；用于集成电路、平面显示、光学玻璃的高纯、超细稀土抛光材料制备技术。

10、金属及非金属材料先进制备、加工和成型技术

用来制造高性能、多功能的高精、超宽、薄壁、特细、超长的新型材料及先进加工和成形技术；超细和纳米晶粒组织的快速凝固制造技术及超大形变加工技术；高速、高精、超宽、薄壁连铸连轧和高度自动化生产板、带、箔技术；金属半固态成型和近终成型技术；短流程生产工艺技术；超细、高纯、低氧含量、无（少）夹杂合金粉末的制备技术，以及实现致密化、组织均匀化、结构功能一体化或梯度化的粉末冶金成型与烧结技术（包括机械合金化粉末，快速凝固非晶纳米晶粉末，高压水及限制式惰性气体气雾化粉末；温压成型、注射成型、喷射成型、热等静压成型、高速压制等成型；压力烧结、微波、激光、放电、等离子等快速致密化烧结技术及低温烧结）；摩擦焊接技术；物理和化学表面改性技术。

（二）无机非金属材料

1、高性能结构陶瓷强化增韧技术

制造强度高、耐高温、耐磨损、耐腐蚀、耐冲刷、抗氧化、耐烧蚀等优越性能结构陶瓷的超细粉末制备技术、控制烧结工艺和晶界工程及强化、增韧技术；现代工业用陶瓷结构件制备技术；可替代进口和特殊用途的高性能陶瓷结构件制备技术；有重要应用前景的高性能陶瓷基复合材料和超硬复合材料制备技术；陶瓷-金属复合材料，高温过滤及净化用多孔陶瓷材料，连续陶瓷纤维及其复合材料制备技术，高性能、细晶氧化铝产品，低温复相陶瓷产品、碳化硅陶瓷产品等制备技术。

2、高性能功能陶瓷制造技术

通过成份优化调节，生产高性能功能陶瓷的粉末制备、成型及烧结工艺控制技术，包括大规模集成电路封装、贴片专用高性能电子陶瓷材料制造技术；微电子和真空电子用新型高频高导热绝缘陶瓷材料制造技术；新型微波器件及电容器用介电陶瓷和铁电陶瓷材料制造技术；传感器和执行器用各类敏感功能陶瓷材料制造技术；激光元件（激光调制、激光窗口等）用功能陶瓷材料制造技术；光传输、光转换、光放大、红外透过、光开关、光存储、光电耦合等用途的光功能陶瓷、薄膜制造技术等。

3、人工晶体生长技术

新型非线性光学晶体、激光晶体材料制备技术；高机电耦合系数、高稳定性铁电、压电晶体材料制备技术；特殊应用的光学晶体材料制备技术；低成本高性能的类金刚石膜和金刚石膜制品制备技术；衰减时间短、能量分辨率高、光产额高的新型闪烁晶体材料制备技术等。

4、功能玻璃制造技术

具有特殊性能和功能的玻璃或无机非晶态材料的制造技术。包括光传输或成像用玻璃制造技术；光电、压电、激光、电磁、耐辐射、闪烁体等功能玻璃制造技术；屏蔽电磁波玻璃制造技术；新型高强度玻璃制造技术；生物体和固定酶生物化学功能玻璃制造技术；新型玻璃滤光片、光学纤维面板、光学纤维倒像器、X 射线像增强器用微通道板制造技术等。

5、节能与环保用新型无机非金属材料制造技术

替代传统材料，可显著降低能源消耗的无污染节能材料制造技术；与新能源开发和利用相关的无机非金属材料制造技术；高透光新型透明陶瓷制造技术；环保用高性能多孔陶瓷材料制造技术；低辐射镀膜玻璃及多层膜结构玻璃及高强单片铯钾防火玻璃制造技术等。

（三）高分子材料

1、高性能高分子结构材料的制备技术

高强、耐高温、耐磨、超韧的高性能高分子结构材料的聚合物合成技术，分子设计技术，先进的改性技术等，包括特种工程塑料制备技术；具有特殊功能、特殊用途的高附加值热塑性树脂制备技术；关键的聚合物单体制备技术等，如：有机硅、有机氟等聚合物的单体制造技术。

2、新型高分子功能材料的制备及应用技术

新化合物的合成、物理及化学改性等先进的加工成型技术，膜组件；光电信息，高分子材料；液晶高分子材料；形状记忆高分子材料；高分子相变材料，高分子转光材料；具有特殊功能，高附加值的特种高分子材料及以上材料的应用技术。

3、高分子材料的低成本、高性能化技术

高分子化合物或新的复合材料的改性技术、共混技术等；高刚性、高韧性、高电性、高耐热的聚合物合金或改性材料技术；新型热塑性弹性体；具有特殊用途、高附加值的新型改性高分子材料技术。

4、新型橡胶的合成技术及橡胶新材料

橡胶新品种的分子设计技术；接枝、共聚技术；卤化技术；充油、充碳黑技术等；特种合成橡胶材料；新型橡胶功能材料及制品；重大的橡胶基复合新材料技术。

5、新型纤维材料

成纤聚合物的接枝、共聚、改性及纺丝新技术；成纤聚合物制备的具有特殊性能或功能化纤维；高性能纤维产品；环境友好及可降解型纤维。

6、环境友好型高分子材料的制备技术及高分子材料的循环再利用技术

以可再生的生物质为原料制备新型高分子材料技术；全降解塑料制备技术；子午线轮胎翻新工艺；废弃橡胶循环再利用技术。

7、高分子材料的加工应用技术

采用现代橡胶加工设备和现代加工工艺的共混、改性、配方技术；高比强度、大型、外型结构复杂的热塑性塑料制备技术；大型先进的橡塑加工设备、高精密的橡塑设备技术；先进的模具设计和制造技术等。

（四）生物医用材料

1、介入治疗器具材料

可降解血管内支架；减少血栓形成或再狭窄的表面涂层或改性的血管内支架；具有特殊功能的非血管管腔支架；介入导管，包括 PTCA 导管（导丝）等；介入栓塞式封堵器械及基栓塞剂等。

2、心血管外科用新型生物材料及产品

材料编织的人工血管；生物复合型人工血管；人工心脏瓣膜或瓣膜成形环等。

3、骨科内置物

可降解固定材料；可降解人工骨移植材料；可生物降解的骨、神经修复生物活性材料等。

4、口腔材料

牙种植体；高耐磨复合树脂充填材料；非创伤性牙体修复材料（ART）；金属烤瓷制品；硅橡胶类印模材料等。

5、组织工程用材料及产品

组织器官缺损修复用可降解材料；组织工程技术产品，包括组织工程骨、皮肤等；组织诱导性支架材料等。

6、载体材料、控释系统用材料

生物活性物质载体材料；药物控释系统用材料等。

7、专用手术器械及材料

微创外科器械；手术各科的专用或精细手术器械；外科手术灌洗液等。

（五）、精细化学品

1、电子化学品

集成电路和分立器件用化学品；印刷线路板生产和组装用化学品；显示器件用化学品。包括高分辨率光刻胶及配套化学品；印制电路板（PCB）加工用化学品；超净高纯试剂及特种（电子）气体；先进的封装材料；彩色液晶显示器用化学品；研磨抛光用化学品等。

2、新型催化剂技术

重要精细化学品合成催化剂；新型石油加工催化剂；新型生物催化技术及催化剂；环保用新型、高效催化剂；有机合成新型催化剂；聚烯烃用新型高效催化剂；催化剂载体用新材料及各种新型助催化材料等。

3、新型橡塑助剂技术

新型环保型橡胶助剂；加工型助剂新品种；新型、高效、复合橡塑助剂新产品。

4、超细功能材料技术

采用最新粉体材料的结构、形态、尺寸控制技术、粒子表面处理和改性技术、高分散均匀复合技术等。

5、功能精细化学品

环境友好的新型水处理剂及其它高效水处理材料；新型造纸专用化学品；适用于保护性开采和提高石油采收率的新型油田化学品；新型表面活性剂；高性能、水性化功能涂料及助剂；新型纺织染整助剂；高性能环保型胶粘剂；新型安全环保颜料和染料；高性能环境友好型皮革化学品。

五、高技术服务业

1、共性技术

具有自主知识产权、面向行业特定需求的共性技术，包括：行业共性技术标准研究、制定与推广业务，专利分析等。

2、现代物流

具备自主知识产权的现代物流管理系统或平台技术；具备自主知识产权的供应链管理系统或平台技术等。

3、集成电路

基于具有自主知识产权的集成电路产品专有设计技术（含掩模版制作专有技术），包括：芯片设计软件、IP 核、布图等，提供专业化的集成电路产品设计与掩模版制作服务；基于具有自主知识产权的集成电路产品测试软、硬件技术，为客户的集成电路产品（含对园片和半成品）研发和生产提供测试；基于具有自主知识产权的集成电路芯片加工及封装技术与生产设备，为客户提供园片加工和封装加工。

4、业务流程外包（BPO）

依托行业，利用其自有技术，为行业内企业提供有一定规模的、高度知识和技术密集型的服务；面向行业、产业以及政府的特定业务，基于自主知识产权的服务平台，为客户提供高度知识和技术密集型的业务整体解决方案等。

5、文化创意产业支撑技术

具有自主知识产权的文化创意产业支撑技术。包括：终端播放技术、后台服务和运营管理平台支撑技术、内容制作技术（虚拟现实、三维重构等）、移动通信服务技术等。

6、公共服务

有明显行业特色和广泛用户群基础的信息化共性服务，包括：客户信息化规划咨询、信息化系统的运行维护、网络信息安全服务等。

7、技术咨询服务

信息化系统咨询服务、方案设计、集成性规划等。

8、精密复杂模具设计

具备一定的信息化、数字化高端技术条件，为中小企业提供先进精密复杂模具制造技术、设计服务（包括汽车等相关产品高精密模具设计等）。

9、生物医药技术

为生物、医药的研究提供符合国家新药研究规范的高水平的安全、有效、可控性评价服务。包括：毒理、药理、药代、毒代、药物筛选与评价，以及药物质量标准的制定、杂质对照品的制备及标化；为研究药物缓、控释等新型制剂提供先进的技术服务，中试放大的技术服务等。

10、工业设计

能够创造和发展产品或系统的概念和规格，使其功能、价值和外观达到最优化，同时满足用户与生产商的要求。

六、新能源及节能技术

（一）可再生清洁能源技术

1、太阳能

（1）太阳能热利用技术

包括新型高效、低成本的太阳能热水器技术；太阳能建筑一体化技术及热水器建筑模块技术；太阳能采暖和制冷技术；太阳能中高温（80-200℃）利用技术等。

（2）太阳能光伏发电技术

包括高效、低成本晶体硅太阳光伏电池技术（包括厚度 250 微米以下的薄片电池和效率 316% 的高效电池）。新型高效、低成本新型及薄膜太阳能电池技术，包括非晶硅薄膜电池，化合物薄膜电池，纳米染料电池，异质结太阳电池，有机太阳电池，低倍和高倍聚光太阳电池，第三代新型太阳电池等。并网光伏技术，包括与建筑结合的光伏发电（BIPV）技术，大型（MW 级以上）荒漠光伏电站技术，光伏建筑专用模块，并网逆变器，专用控制、监测系统，自动向日跟踪系统等。光伏发电综合利用技术，包括太阳能照明产品（包括 LED 产品），太阳能制氢，太阳能水泵，太阳能空调，太阳能动力车、船，太阳能工业和通信电源、太阳能光伏村落和户用成套电源等。

（3）太阳能热发电技术

高温（300-1500℃）太阳能热发电技术、产品和工程开发，包括塔式热发电，槽式热发电，碟式热发电和菲涅尔透镜聚光式太阳能热发电等。

2、风能

（1）1.5MW 以上风力发电技术

适应中国气候、复杂地形条件的 1.5MW 以上风力发电机组的总体设计、总装技术及关键部件的设计制造技术等。

（2）风电场配套技术

风资源评估分析、风电场设计和优化、风电场监视与控制、风电接入系统设计及电网稳定性分析、短期发电量预测及调度匹配、风电场平稳过渡及控制等技术。

3、生物质能

（1）生物质发电关键技术及发电原料预处理技术

包括直燃（混燃）发电系统耦合技术，蒸汽余热回收技术，热效率≥85%、燃烧过程不结渣、不产生新污染，具有广泛原料适应性的生物质直燃发电装置；能保证生物质在燃烧设备中充分燃烧的原料装卸、输送技术，能有效分离生物质中的 Cl 等腐蚀性物质的预处理技术等。

（2）生物质固体燃料致密加工成型技术

吨成型燃料的加工过程能耗低于 80Kwh/t，成型燃料密度 1～1.4g/cm3，水分小于 12%，加工过程机械化和自动化的生物质致密加工成型技术。包括木质纤维碾切搭接技术，成型模板设计技术，一体化、可移动颗粒燃料生产设备的系统耦合技术等。

（3）生物质固体燃料高效燃烧技术

热效率≥85%、不结渣、废气符合排放标准的生物质固体燃料高效燃烧技术与装置等。

（4）生物质气化和液化技术

高转化率热解气化、热解过程工艺条件的系统优化耦合及控制、可凝性有机物（焦油）高效净化处理、生物质气化过程液体、固体产品综合利用技术与装置，生物质气化效率≥70%；燃气热值≥5.0MJ/Nm3；燃气中可凝性有机物≤10mg/Nm3。高效厌氧发酵、有机肥生产、无废水排放技术与装置，有机废弃物产气率≥200L/Kg。

以流化床为基础的生物质热裂解、催化裂解提升液化产品热值技术与装置；生物质直接催化热裂解生产生物柴油技术与装置等。

（5）非粮生物液体燃料生产技术

非粮生物液体燃料包括非粮（糖）的甜高粱、薯类原料生产的乙醇，以及用非食用油原料生产的生物柴油。

甜高粱生产乙醇技术包括原料保存技术，高效产乙醇菌种的筛选与构建技术，快速固体发酵技术与机械化生产和自动化控制装置；低能耗的高粱秆榨汁、保存与发酵技术；发酵时间≤48 小时 ,糖转化率≥92% ,乙醇收率≥90%(相对于理论值),吨燃料乙醇能耗≤500Kg，水耗≤5 吨，无废水排放。

薯类淀粉原料生产乙醇技术包括无蒸煮糖化技术、浓醪发酵技术、纤维素利用技术、废水处理技术；发酵时间≤60 小时，糖转化率≥95%，乙醇收率≥92%（相对于理论值），吨燃料乙醇能耗≤500Kg，水耗≤8 吨，废水 COD≤100ppm。

非食用油原料生产的生物柴油技术包括超临界、亚临界、共溶剂、固体碱（酸）催化、酶催化技术与装置；生物柴油收率≥99.6%（相对于理论转化率），甘油纯度≥99%，吨生物柴油水耗≤0.35 吨，能耗≤20Kg 标煤。

（6）大中型生物质能利用技术

生物质固体燃料致密加工成型设备能力≥500Kg/h，沼气装置日生产能力≥1000M3，甜高粱燃料乙醇厂生产能力≥5 万吨/年，薯类燃料乙醇厂生产能力≥10 万吨/年，生物柴油厂生产能力≥3 万吨/年。

4、地热能利用

高温地热能发电和地热能综合利用技术，包括：地热采暖，地热工业加工，地热供热水，地热养殖、种植，地热洗浴、医疗等；以及利用地源热泵实现采暖、空调的技术。

（二）核能及氢能

1、核能技术

百万千瓦级先进压水堆核电站关键技术，铀浓缩技术及关键设备、高性能燃料零件技术、铀钚混合氧化物燃料技术，先进乏燃料后处理技术，核辐射安全与监测技术，放射性废物处理和处置技术，快中子堆和高温气冷堆核电站技术。

2、氢能技术

天然气制氢技术，化工、冶金副产煤气制氢技术，低成本电解水制氢技术，生物质制氢、微生物制氢技术，金属贮氢、高压容器贮氢、化合物贮氢技术，氢加注设备和加氢站技术，超高纯度氢的制备技术，以氢为燃料的发动机与发电系统。

（三）新型高效能量转换与储存技术

1、新型动力电池（组）、高性能电池（组）

已有研究工作基础、并可实现中试或产业化生产的动力电池（组）、高性能电池（组）和相关技术产品的研究，包括：镍氢电池（组）与相关产品；锂离子动力电池（组）与相关产品；新型高容量、高功率电池与相关产品；电池管理系统；动力电池高性价比关键材料等。

2、燃料电池、热电转换技术

小型燃料电池的关键部件及相关产品；直接醇类燃料电池的关键部件；实现热电转换技术的关键部件及其相关产品等。

（四）高效节能技术

1、钢铁企业低热值煤气发电技术

钢铁企业余压、余热、余能回收利用关键技术，包括高炉煤气余压能量回收透平发电技术（TRT）、低热值煤气燃气轮机联合循环发电技术（CCPP）等。

2、蓄热式燃烧技术

工业炉窑和电站、民用锅炉的高效蓄热式燃烧技术等。

3、低温余热发电技术

水泥、冶金、石油化工等行业低温余热蒸汽发电关键技术。

4、废弃燃气发电技术

沼气、煤层气、高炉煤气、焦炉尾气等工业废弃燃气发电关键技术。

5、蒸汽余压、余热、余能回收利用技术

冷凝水、低参数蒸汽等回收利用新技术。

6、输配电系统优化技术

电能质量优化（包括在先动态谐波治理、先进无功功率补偿等）新技术，电网优化运行分析、设计、管理（包括企业电网优化配置、用电设备功率合理分配等）软件及硬件新技术。

7、高泵热泵技术

地源、水源、空气源、太阳能复合式等高温热泵技术；空调冷凝热回收利用等技术。

8、蓄冷蓄热技术

用于剩余能量储存（包括与之相关转化、移送、利用）新技术。

9、能源系统管理、优化与控制技术

工业、建筑领域的能量系统优化设计、能源审计、优化控制、优化运行管理软件技术，特别是能量系统节能综合优化技术。

10、节能监测技术

自动化、智能化、网络化、功能全、测量范围广、适应性强的能源测量、记录和节能检测新技术。

11、节能量检测与节能效果确认技术

工业、建筑领域节能改造项目节能量检测与节能效果确认（M

V）软件技术。

七、资源与环境技术

（一）水污染控制技术

1、城镇污水处理技术

城市污水生物处理新技术及生物与化学联合处理技术；中、小城镇生活污水低能耗处理技术；村镇生活污水；村镇小型源分离处理技术，低能耗生活污水处理技术。

2、工业废水处理技术

有毒难降解工业废水处理技术，有毒有害化工和放射性废水处理技术，湿式催化氧化技术；重金属废水集成化处理和回收技术与成套装置，煤化工等行业高氨氮废水处理技术与装置，固定化微生物高效脱氮技术；采油废水处理及回注，高含盐废水处理工艺与技术；高浓度工业有机废水处理工艺与技术，高效厌氧生物反应器；高效生物填料，薄膜负载型光催化材料，膜材料及组件，高效水处理药剂的研制，新型复合型絮凝剂处理高浓度、高色度印染废水技术。

3、城市和工业节水和废水资源化技术

生产过程工业冷却水重复利用药剂、技术，管网水质在线检测和防漏技术；各类工业废水深度处理回用集成技术；城市污水处理再生水生产的集成技术；工业、城市废水处理中污泥的处理、处置和资源化技术。

4、面源水污染的控制技术

规模化农业面源污染控制技术及生态处理技术；水产养殖水循环利用和污染控制技术；畜禽养殖场废水厌氧处理沼气高效利用技术。

5、雨水、海水、苦咸水利用技术

雨水收集利用与回渗技术与装置，苦咸水淡化技术；海水膜法低成本淡化技术及关键材料，规模化海水淡化技术；海水、卤水直接利用及综合利用技术。

6、饮用水安全保障技术

灵敏、快速水质在线检测技术；饮用水有机物的高级催化氧化技术，高效膜过滤技术，安全消毒技术，高效控藻、除藻和藻毒素去除技术；饮用水有机物高效吸附剂、高效混凝剂及强化混凝技术；农村饮用水除氟、除砷技术与装置，边远地区和农村饮用水安全消毒小型设备和技术。

（二）大气污染控制技术

1、煤燃烧污染防治技术

高效低耗烟气脱硫、脱硝技术: 燃煤电厂烟气脱硫技术及副产品综合利用技术，烟气脱硫关键技术，烟气脱硝选择性催化还原技术；煤、煤化工转化过程中的废气污染防治技术；高效长寿命除尘技术。

2、机动车排放控制技术

机动车控制用高性能蜂窝载体、满足欧Ⅲ、Ⅳ标准汽车净化技术；满足欧Ⅲ、Ⅳ标准的柴油车净化技术：颗粒物捕集器及再生技术； 催化氧化与还原技术；满足欧Ⅱ、Ⅲ标准摩托车净化技术。

3、工业可挥发性有机污染物防治技术

高效长寿命的吸附材料和吸附回收装置；高效低耗催化材料与燃烧装置；低浓度污染物的高效吸附-催化技术及联合燃烧装置；恶臭废气的捕集与防治技术；油气回收分离技术：针对油库、加油站油气的挥发性有机化合物（VOCs）控制技术。

4、局部环境空气质量提高与污染防治技术

城市公共设施空气环境的消毒杀菌、除尘、净化和提高空气氧含量技术。

5、其他重污染行业空气污染防治技术

高性能除尘滤料和高性能电、袋组合式除尘技术；特殊行业工业排放的有毒有害废气、二噁英、恶臭气体的控制技术；工业排放温室气体的减排技术，碳减排及碳转化利用技术。

（三）固体废弃物的处理与综合利用技术

1、危险固体废弃物的处置技术

危险废物高效焚烧技术，焚烧渣、飞灰熔融技术；危险废物安全填埋处置技术，危险废物固化技术、设备和固化药剂；医疗废物收运、高温消毒处理技术；有害化学品处理技术，放射性废物处理与整备技术与装备；电子废物处置、回收和再利用技术。

2、工业固体废弃物的资源综合利用技术

利用工业固体废弃物生产复合材料、尾矿微晶玻璃、轻质建材、地膜、水泥替代物、工程结构制品等技术；电厂粉煤灰及煤矿矸石、冶金废渣等废弃物的资源回收与综合利用技术；废弃物资源化处理技术。

3、有机固体废物的处理和资源化技术

利用农作物秸秆等废弃植物纤维生产复合板材及其他建材制品的技术；有机垃圾破碎、分选等预处理技术；填埋物气体回收利用技术；填埋场高效防渗技术；小城镇垃圾处理适用技术。

（四）环境监测技术

1、在线连续自动监测技术

环境空气质量自动监测系统（粉尘、细颗粒物、二氧化硫、氮氧化物、酸沉降、沙尘天气、机动车排气等）；地表水水质自动监测系统（化学需氧量、余氯、BOD 水质、氨氮、石油类、挥发酚、微量有机污染物、总氮、总磷等等）；污染源自动监测系统（傅立叶红外测量烟气污染物、烟气含湿量；砷、总铅、总锌；氰化物、氟化物等）；大气中超细颗粒物、有机污染物等采样分析技术。

2、应急监测技术

便携式现场快速测定技术，污染事故应急监测等危险废物特性鉴别、环境监控及灾害预警技术；移动式应急环境监测技术（便携式快速有毒有害气体监测仪及测试组件；便携式水质监测仪与测试组件；便携式工业危险物、重金属、有毒有害化合物的快速监测专用仪器及系统）；应急安全供水技术；应急处理火灾、泄漏造成的环境污染技术。

3、生态环境监测技术

海洋环境监测技术，环境遥感监测系统；脆弱生态资源环境监控及灾害预警技术；多物种生物在线检测技术，水中微量有机污染物的富集技术，持久性有机污染物采样、分析技术。

（五）生态环境建设与保护技术

水土流失防治技术，沙漠化防治技术，天然林保护、植被恢复和重建技术，林草综合加工技术及配套机械设备；湿地保护、恢复与利用及其监测技术，矿山生态恢复、污染土壤修复，非点源污染控制技术；持久性有机污染物（POPs）替代技术；国家生物多样性预警监测和评价技术，系统生态功能区恢复与重建技术。

（六）清洁生产与循环经济技术

1、重点行业污染减排和“零排放”关键技术

电镀、皮革、酿造、化工、冶金、造纸、钢铁、电子等行业污染减排关键技术；上述行业工艺过程中废气、废水、废物资源化回收利用技术。

2、污水和固体废物回收利用技术

污水深度处理安全消毒和高值利用技术；城市景观水深度脱氮除磷处理技术；矿产废渣资源化利用技术；工业无机、有机固体废物资源化处理技术。

3、清洁生产关键技术

煤洁净燃烧、能量梯级利用技术；有毒有害原材料、破坏臭氧层物质替代技术。

4、绿色制造关键技术

绿色基础材料及其制备技术，高效、节能、环保和可循环的新型制造工艺及装备，机电产品表面修复和再制造技术，绿色制造技术在产品开发、加工制造、销售服务及回收利用等产品全生命周期中的应用。

（七）资源高效开发与综合利用技术

1、提高资源回收利用率的采矿、选矿技术

复杂难采矿床规模化开采及开发利用产业化技术；复杂多金属矿高效分离技术；难处理氧化矿高效分离与提取技术；多金属硫化矿电化学控制浮选技术；就地浸矿及生物提取技术；采选过程智能控制及信息化技术。

2、共、伴生矿产的分选提取技术

综合回收共伴生矿物的联合选矿技术；共伴生非金属矿物的回收深加工技术；伴生稀贵金属元素富集提取分离技术。

3、极低品位资源和尾矿资源综合利用技术

极低品位、难选冶金属矿有价金属综合回收利用技术；大用量、低成本、高附加值尾矿微晶玻璃技术；尾矿中有价元素综合回收技术。

八、高新技术改造传统产业

（一）工业生产过程控制系统

1、现场总线及工业以太网技术

符合国际、国内自动化行业普遍采用的主流技术标准（包括：IEC61158、PROFIBUS、FF、DeviceNet、PROFINET、EtherNet/IP、EPA、MODBUS/TCP 等）的现场总线及工业以太网技术。

2、可编程序控制器（PLC）

包括符合 IEC61131 标准、可靠性高、具有新技术特点的 PLC 技术；集成了嵌入式系统、单片机、数模混合等新技术成果的 PLC 技术等。

3、基于 PC 的控制系统

以“工业 PC 机+软逻辑（SoftPLC）”、可编程序先进控制器（PAC）、现场总线及工业以太网为网络、连接远程 I/O 及其它现场设备组成的分布式控制系统。

4、新一代的工业控制计算机

面向图形的操作系统和应用要求，能够解决处理器和显示设备瓶颈问题，采用地址、数据多路复用的高性能 32 位和 64 位总线技术，具有在不关闭系统的情况下“即插即用”功能的高可用系统和容错系统。

（二）高性能、智能化仪器仪表

1、新型自动化仪表技术

适用于实时在线分析、新型现场控制系统、e 网控制系统、基于工业控制计算机和可编程控制的开放式控制系统和特种测控装备，能满足重大工程项目在智能化、高精度、高可靠性、大量程、耐腐蚀、全密封和防爆等特殊要求的新型自动化仪器仪表技术。

2、面向行业的传感器技术

面向行业和重大工程配套，采用新工艺、新结构，具有高稳定性、高可靠性、高精度、智能化的专用传感器技术。

3、新型传感器技术

包括阵列传感器、多维传感器 、复合型传感器、直接输出数字量或频率量的新型敏感器以及采用新传感转换原理的新型传感器等。

4、科学分析仪器、检测仪器技术

等离子光谱仪、近红外光谱仪、非制冷红外焦平面热像仪、微型专用色谱仪；特定领域的专用仪器，包括：农业技术品质和食品营养成分检测、农药及残留量检测、土壤速测等

农业和食品专用仪器；海洋仪器；大气、水和固体废弃物安全监测和预警等核心专用仪器，各种灾害监测仪器；生命科学用分离分析仪器等。

5、精确制造中的测控仪器技术

包括网络化、协同化、开放型的测控系统；精密成形制造及超精密加工制造中的测控仪器仪表；亚微米到纳米级制造中的测控仪器仪表；制造过程中的无损检测仪器仪表；激光加工中的测控仪器仪表等。

（三）先进制造技术

1、先进制造系统及数控加工技术

具有先进制造技术和制造工艺的单元设备、制造系统、生产线等，包括：复合加工、组合加工、绿色制造、快速制造、微米/纳米制造等相关装备和系统；CAD/CAPP/CAM/PDM 技术在内的数字化设计制造系统，现代集成制造系统应用软件、平台及工具，生产计划与实时优化调度系统/ERP 管理软件，虚拟制造（VM）技术，网络制造系统；智能型开放式数控系统、伺服驱动、数控装备、数控编程软件和应用软件、数控加工、数控工艺在内的先进数控技术；中高档数控设备和关键功能部件及关键配套零部件技术等。

2、机器人技术

新一代工业机器人；服务机器人；医疗机器人；水切割机器人；激光切割机器人；AGV 以及制造工厂的仓储物流设备；机器人周边设备；特种机器人；开放式机器人控制技术；虚拟现实（VR）技术；机器人伺服驱动技术；基于机器人的自动加工成套技术；信息机器人技术等。

3、激光加工技术

激光切割加工技术；激光焊接加工技术；材料激光表面改性处理技术；激光雕刻技术和激光三维制造技术以及激光发生器制造和控制系统技术等。

4、电力电子技术

包括具有节能、高效、良好的控制性能和特种传动技术的应用系统；大容量化、高频化、智能化、小功率器件芯片方片化的电力半导体器件；多功能化、智能控制化、绿色环保化的模块；面向工业设备、物流系统、城市交通系统、信息与自动化系统等的高性能特种电机及其控制和驱动技术等。

5、纺织及轻工行业专用设备技术

包括采用高精度驱动、智能化控制、高可靠性技术等开发的纺织机械专用配套部件；建立在计算机及网络技术应用基础上的在线检测控制系统和高性能的产品检测仪器；以控制、计量、检测、调整为一体的、带有闭环控制的环保型包装机械，袋成型、充填、封口设备，无菌包装设备；具有辅助操作自动化和联机自动化的柔性版印刷、防伪印刷、条形码印刷设备、数字直接制版机；精密型注塑机、精密挤出成型及复合挤出成型装备等。

（四）新型机械

1、机械基础件及模具技术

包括数控机床等重点主机配套用精密轴承；高性能、高可靠性、长寿命液压、气动控制元件；精密、复杂、长寿命塑料模具及冲压模具；快速原型和快速经济模具制造新技术等。

2、通用机械和新型机械

包括采用新原理，在功能、结构上有重大创新的新型阀门技术和新型泵技术；有核心专利技术或自主知识产权，利用新传动原理、新机械结构和新加工工艺的新型机械技术等。

（五）电力系统信息化与自动化技术

1、采用新型原理、新型元器件的电力自动化装置

包括采用新型原理、新型元器件和计算机技术开发用于电力生产、输送和供用电各环节的自动化装置；可明显提高系统可靠性、提高生产效率、保证系统安全和供电质量的技术。包括：发电机组新型励磁装置和调速装置，新型安全监控装置和采用新技术的电网监测、控制装置等。

2、采用数字化、信息化技术，提高设备性能及自动化水平的技术

采用数字化和信息化技术，符合国际标准、具有开放性和通用性、高精度和高可靠的新型装置，包括：采用现场总线技术、具有综合状态检测功能的智能化开关柜；具有控制、保护和监测功能的数字化、智能化、集成化和网络化的终端装置；电力设备在线数字化状态检测与监控装置；电能质量检测、控制与综合治理装置；基于 IEC61850 通信协议的变电站综合自动化系统；采用虚拟仪器技术的电力系统用仪器设备；用于新型电能（包括核能发电）系统的连续、高效、安全、可靠的发、输、配电设备中的新技术和新装置等。

3、电力系统应用软件

与发电、变电、输电、配电和用电各领域有关的控制、调度、管理和故障诊断等方面的高级应用软件，以提高电力系统和电力设备的自动化水平、保障安全经济运行、提高设备效率及管理水平，包括：电力系统优化控制软件；新型输配电在线安全监控及决策软件；电

力系统调度自动化软件；电力设备管理及状态检修软件，继电保护信息管理及故障诊断专家系统软件；电力建设工程项目管理软件；节能运行管理专家系统软件；用电管理软件以及电能质量在线评估、仿真分析软件等。

4、用于输配电系统和企业的新型节电装置

采用新原理、新技术和新型元器件，能够补偿无功功率、提高功率因数、减少电能损耗、改善电能质量的新型节电装置，包括：用于企业的新型节电装置；用于企业的节能、节电控制装置及其综合管理系统，用于输配电系统的先进无功功率控制装置以及区域的在线动态谐波治理装置等。

（六）汽车行业相关技术

1、汽车发动机零部件技术

用于乘用车汽油机、乘用车柴油机、商用车柴油机等，具有自主知识产权的先进汽车发动机零部件技术，包括：汽油机电控燃油喷射系统、稀薄燃烧技术、可变进气技术、增压技术、排气净化技术；柴油机电控高压喷射技术、增压中冷技术、排气净化技术，新型代用燃料发动机技术等；新型混合动力驱动系统技术；新型电动驱动系统技术；氢发动机技术、燃料电池动力系统技术；新型动力电池组合技术等。

2、汽车关键零部件技术

具有自主知识产权的新型汽车关键零部件，包括：传动系统、制动系统、转向系统、悬挂系统、车身附件、汽车电器、进排气系统、新型混合动力传动系统、新型纯电动传动系统、轮毂电机、新型代用燃料发动机转换器、新型动力电池等。

3、汽车电子技术

汽车电子控制系统，包括：车身稳定系统、悬架控制系统、驱动力分配系统、制动力分配系统、制动防抱死系统、安全气囊、自动避障系统、自动停车系统、车载故障诊断系统、车身总线系统、智能雨刷、智能防盗系统等。

新型混合动力驱动管理系统、车用动力电池组管理系统、新型电动车用传感器、电动车用大功率电子器件、电动车用新型集成芯片、电动车电器系统用安全保护部件等。

4、汽车零部件前端技术

新能源汽车的配套零部件技术，包括：混合动力系统技术；燃料电池动力系统技术；氢发动机技术；合成燃料技术等。

Administrative Measures on Accreditation of High-tech Enterprises

Promulgation Authorities: The Ministry of Science and Technology, Ministry of Finance, State Administration of Taxation

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Administrative Measures on Accreditation of High-tech Enterprises

Ministry of Science and Technology

Ministry of Finance

State Administration of Taxation

14 April 2008

CHAPTER 1 — GENERAL PRINCIPLES

Article 1 These Measures are specifically formulated pursuant to the relevant provisions of the Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the "Enterprise Income Tax Law"), the Implementation Regulations for the Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the "Implementation Regulations") for the purposes of supporting and encouraging development of high-tech enterprises.

Article 2 High-tech enterprises mentioned in these Measures shall refer to resident enterprises within the territory of China (excluding Hong Kong, Macau and Taiwan) which have been registered for more than one year and which are continuously engaging in research and development and technology commercialisation within the realm of the Regions of Advanced Technologies Strongly Supported by the State (see Appendix — omitted) which form the core independent intellectual property of the enterprise, and carrying out business activities on such basis.

Article 3 The administration of accreditation of high-tech enterprises shall comply with the principles of emphasising the enterprise entity, encouraging technological advancement, implementing dynamic management and adhering to fairness and equitableness.

Article 4 High-tech enterprises, which are accredited pursuant to these Measures, may apply for entitlement to the tax incentive policies pursuant to the relevant provisions of the Enterprise Income Tax Law, the Implementation Regulations, the Administrative Law of the People's Republic of China on the Levying and Collection of Taxes (hereinafter referred to as the "Tax Collection Law"), the Regulations on Implementation of Law of the People's Republic of China on Administration of Tax Collection (hereinafter referred to as the "Implementation Regulations for Tax Collection Law"), etc.

Article 5 The Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation shall be responsible for guiding, administering and supervising the accreditation of high-tech enterprises nationwide.

CHAPTER 2 — ORGANISATION AND IMPLEMENTATION

Article 6 The Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation shall form the Leading Team for Administration of Accreditation of High-tech Enterprises Nationwide (hereinafter referred to as the "Leading Team"), which shall mainly be responsible for:

(1) determining the direction for administration of accreditation of high-tech enterprises nationwide and reviewing the work reports on administration of accreditation of high-tech enterprises;

(2) coordinating and resolving major issues in accreditation and implementation of related policies;

(3) ruling on major disputes in accreditation of high-tech enterprises and, supervising and inspecting the accreditation works in various localities; and

(4) giving opinions on rectification for localities which encounter major issues in accreditation of high-tech enterprises.

Article 7 The Leading Team shall establish an office at the Ministry of Science and Technology. The main duties of the office shall include:

(1) submitting work reports on administration of accreditation of high-tech enterprises;

(2) organising and implementing the inspection of administration of accreditation of high-tech enterprises;

(3) taking charge of administration of filing of the qualifications of experts involved in accreditation of high-tech enterprises;

(4) setting up and managing the "Network for Administration of Accreditation of High-tech Enterprises"; and

(5) taking on other tasks assigned by the Leading Team.

Article 8 The administrative authorities for accreditation of high-tech enterprises within a locality formed by the science and technology administration and management authorities and counterpart financial and tax authorities of all provinces, autonomous regions, centrally-administered municipalities and municipalities with independent planning (hereinafter referred to as the "accreditation authorities") shall carry out the following works pursuant to these Measures:

(1) take charge of accreditation of high-tech enterprises within the respective administrative region;

(2) accept applications for review of qualifications of high-tech enterprises submitted by enterprises;

(3) supervise and inspect accredited enterprises, and accept, verify and handle the relevant reports; and

(4) select experts participating in accreditation of high-tech enterprises and file records with the office of the Leading Team.

Article 9 Upon obtaining the qualification as a high-tech enterprise, the enterprise shall complete tax reduction and exemption formalities with the tax authorities in charge pursuant to the provisions of Article 4 of these Measures.

Where there is a change in the criteria for tax reduction or exemption of a high-tech enterprise entitling to tax reduction or exemption incentives, it shall submit a report to the tax authorities in charge within 15 days from the date of change; where a high-tech enterprise no longer satisfies the criteria for tax reduction or exemption, it shall perform tax payment obligations pursuant to the law; where such a high-tech enterprise fails to pay tax pursuant to the law, the tax authorities in charge shall recover tax payment from the enterprise. Concurrently, where the tax authorities in charge has discovered in the course of the implementation of tax incentive policies that an enterprise does not qualify as a high-tech enterprise, the tax authorities in charge shall request the accreditation authorities to review the status of the enterprise. During the review period, the entitlement to tax reduction or exemption incentives of the enterprise may be suspended.

CHAPTER 3 — CRITERIA AND PROCEDURES

Article 10 An enterprise shall satisfy all the following criteria to be accredited as a high-tech enterprise:

(1) it is an enterprise registered within the territory of China (excluding Hong Kong, Macau and Taiwan) which has obtained independent intellectual property for the core technology of its key products (services) through independent research and development, assignment, acceptance of gift, merger and acquisition, etc. during the past three years or through exclusive licensing for more than five years;

(2) the products (services) fall under the scope stipulated in the Regions of Advanced Technologies Strongly Supported by the State;

(3) the technical personnel holding specialised degrees and higher qualifications constitute more than 30% of the total number of employees of the enterprise in the current year; and among the technical personnel, the research and development personnel constitute more than 10% of the total number of employees of the enterprise in the current year;

(4) the enterprise has, in its feat to obtain new knowledge in science and technology (excluding humanities and social sciences), applied new knowledge in science and technology innovatively or improved technology and products (services) substantially by engaging in continuous research and development activities; and the percentage of the total amount of expenditure for research and development in the past three accounting years in the total amount of revenue from sale shall satisfy the following requirements:

(i) the percentage shall not be less than 6% for enterprises whose revenue from sale in the past year is less than RMB50 million;

(ii) the percentage shall not be less than 4% for enterprises whose revenue from sale in the past year ranges from RMB50 million to RMB200 million; and

(iii) the percentage shall not be less than 3% for enterprises whose revenue from sale in the past year is more than RMB200 million;

where the total amount of expenditure for research and development incurred by an enterprise within the territory of China constitutes not less than 60% of its total amount of expenditure for research and development; and for the enterprise which has been registered for less than three years, the computation shall be based on the actual number of year of operation of the enterprise;

(5) the revenue from high-tech products (services) constitutes more than 60% of the total revenue of the enterprise in the current year; and

(6) the enterprise satisfies the requirements of the Guidelines for Administration of Accreditation of High-tech Enterprises (to be formulated separately) in terms of the management level of its research and development organisation, its ability in technology commercialisation, the quantity of independent intellectual property and the growth in sales and gross assets, etc.

Article 11 The accreditation procedures of high-tech enterprises shall be as follows:

(1) self-assessment and application of the enterprise

The enterprise shall login to the "Network for Administration of Accreditation of High-tech Enterprises" and refer to the criteria stipulated in Article 10 of these Measures for self-assessment. Where the enterprise holds the view that it satisfies the accreditation criteria, it may submit an application for accreditation to the accreditation authorities.

(2) submit the following application materials

(i) application for accreditation of high-tech enterprises;

(ii) duplicate copy of enterprise business licence and tax registration certificate (photocopy);

(iii) intellectual property certificate (exclusive licensing contract), approval document for manufacturing, proof material for new products or new technologies (verified new), product quality inspection report, proof of project proposal for technological plan at provincial level and other relevant proof materials;

(iv) statement of the number of employees of the enterprise, qualification structure and percentage of research and development personnel against the total number of employees of the enterprise;

(v) statement of research and development expenditure of the enterprise for the past three accounting years verified by a qualified intermediary (where the enterprise is in operation for less than three years, based on the actual number of year in operation), and attached explanatory materials for research and development activities; and

(vi) financial statements of the enterprise for the past three accounting years verified by a qualified intermediary (including balance sheet, income statement and cash flow statement; where the enterprise is in operation for less than three years, based on the actual number of year in operation) and statement of revenue from technical activities.

(3) compliance checks

The accreditation authorities shall establish a panel of experts for judging the accreditation of high-tech enterprises; experts from the panel shall be randomly selected according to the application materials submitted by an enterprise to review the applicant's qualifications and give accreditiation opinions.

(4) Accreditation, public announcement and filing

The accreditation authorities shall conduct accreditation of enterprises. A public announcement of accredited high-tech enterprises shall be placed on the "Network for

Administration of Accreditation of High-tech Enterprises" for 15 working days; where no objection is raised, the list shall be filed with the office of the Leading Team for records, a public announcement of the outcome of accreditation shall be published on the "Network for Administration of Accreditation of High-tech Enterprises", and a standardised print of the "Certificate of High-tech Enterprise" shall be issued to the enterprises.

Article 12 The qualifications of a high-tech enterprise shall be valid for three years from the date of issuance of the certificate. An enterprise shall submit an application for review of qualifications within three months before the expiry date of the certificate. Where an enterprise fails to submit an application for review of qualifications or fails to pass the review of qualifications, it will cease to qualify as a high-tech enterprise automatically with effect from the expiry date of the certificate.

Article 13 An application for review of qualifications of a high-tech enterprise shall be supported with a report on research and development, other technological innovations, etc. carried out in the past three years.

In the review of qualifications, emphasis shall be placed on whether the enterprise satisfies the criteria stipulated in Article 10 (4); where the enterprise satisfies the criteria, public announcement and filing shall be made pursuant to Article 11 (4).

The qualifications of a high-tech enterprise which has passed the review of qualifications shall be valid for three years. Where the enterprise makes another application for accreditation upon the expiry of the validity period, the application shall be processed pursuant to the provisions of Article 11 of these Measures.

Article 14 Where there is a significant change in the business activities, manufacturing and technological activities, etc. of a high-tech enterprise (such as merger and acquisition, restructuring, change of business, etc.), the enterprise shall report to the administrative authorities for accreditation within 15 days; where the enterprise no longer satisfies the criteria stipulated in these Measures after the change, it shall cease to qualify as a high-tech enterprise from that year; where the enterprise needs to apply for accreditation as a high-tech enterprise, it shall complete the formalities stipulated in Article 11 of these Measures.

In the event of a change of name of a high-tech enterprise, the name change shall be confirmed with the accreditation authorities; upon making a public announcement and filing, a new "Certificate of Accreditation" shall be issued, however, there shall be no change in the serial number and validity period.

CHAPTER 4 — PENALTY PROVISIONS

Article 15 Under any of the following circumstances, the qualifications of an accredited high-tech enterprise shall be cancelled:

(1) the enterprise has provided false information in the process of application for accreditation;

(2) the enterprise is found to have committed tax evasion, tax fraud, etc.;

(3) the enterprise has encountered a significant safety or quality incident; and

(4) the enterprise has committed illegal acts or violations of environmental or other laws and regulations, and has been punished by the relevant authorities.

Where an enterprise has had its qualification as a high-tech enterprise cancelled, the accreditation authorities shall not accept any application for accreditation from such enterprise within five years.

Article 16 All organisations and personnel participating in accreditation of high-tech enterprises shall bear integrity and compliance obligations to their accreditation works, and confidentiality obligations to the relevant materials and information of the enterprises applying for accreditation. Organisations and personnel in violation of the relevant requirements and disciplines for accreditation of high-tech enterprises shall be dealt with accordingly.

CHAPTER 5 — SUPPLEMENTARY PROVISIONS

Article 17 The former Accreditation Criteria and Measures for High-tech Enterprises Outside State High-Tech Industrial Development Zones (Guokefahuozi (1996) 018) and the former Accreditation Criteria and Measures for High-tech Enterprises in State High-Tech Industrial Development Zones (Guokefahuozi (2000) 324) shall not be executed with effect from the date of implementation of these Measures.

Article 18 The Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation shall be responsible for the interpretation of these Measures.

Article 19 The Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation shall formulate the Guidelines for Administration of Accreditation of High-tech Enterprises separately.

Article 20 These Measures shall be effective 1 January 2008.

Appendix: Regions of Advanced Technologies Strongly Supported by the State (omitted)