

Source: Ministry of Industry and Information Technology of the PRC
www.miit.gov.cn

The 12th Five-year Development Plan for Light Industry

Preface

I. The main achievements in 11th Five-year plan and the situations faced in 12th Five-year plan

(I) The main achievements in 11th Five-year plan

1. The production increased steadily and quickly

In 2010, the industrial added value in light industry exceeded 3 trillion Yuan. The annual increase of above-scale enterprises in light industry is 15.5% during the 11th five-year period. The output of more than 100 products are the first in worldwide in household appliances, leather, plastic products, food, **furniture** and hardware and further consolidate our position of production and consumption country in light industry in the world.

(II) The situations faced in 12th Five-year plan

1. The opportunities of development

Consumption structure upgrade expands the new area for the development of light industry. With the increase of living standard, the space for consumption market further expands and accelerates the structure adjustment of light industry products. Countryside has great demand for light industry products, especially household appliances and electric bicycle. The new demand for new born people and old people will drive the development of relevant light industries. In the next 5 years, we will construct 36 million affordable housings and therefore, the production and sales volume for **furniture**, household appliances, hardware and lights will increase quickly.

2. The technological progress accelerated

3. Quality construction got result

4. Brand effect further increased

5. International competitiveness further increased

6. Industry clusters developed quickly

II. the guiding thought, basic principles and main goals in 12th five-year plan

(I) Guiding thought

(II) Basic principles

(III) Main goals

III. Main task

(I) Push the adjustment of industry structure

(II) Increase the technology innovative ability

(III) Strengthen the quality safety and brand construction

(IV) Meet the multi-level demand in domestic market

1. Promote the upgrade of consumer goods

Combining the increasingly consumption demand, enrich the product assortment and develop and produce product satisfying multi-level demand. Increase the production of concentrated detergent, high effective lighting, mercury-free battery, etc and increase the supply of durable consumer goods such as intelligent household appliances, **healthy and environmental protection furniture**, safe and clean gas stove, etc. Meet the demand for fashion products and luxuries such as high-end mechanical watches, sport bikes and personalized glasses. Develop personalized sporting goods, special tourism products and products for old people and expand the demand for culture, sports and leisure and cultivate new consumption hotspots. Guide and create new market demand.

2. Expand the market in countryside

Strengthen the construction of rural marketing network and post-sale service system and expand consumption market in countryside. Produce the light industry products related to new rural construction, post-disaster reconstruction, and rural infrastructure. Combining the affordable housing project, encourage the enterprise to provide the appropriate kitchen, **furniture**, household appliances, solar water heater, lighting, electric bikes to the farmers based on the consumption habit and usage environment, improve the living conditions for residents in countryside. Increase the quality of agricultural products such as agricultural film and water-saving irrigation equipments, etc to make sure the farmer can buy secured products. Surrounding the construction of public culture and sport equipments, promote the sports products and musical instruments to the countryside and enrich the spiritual culture life of farmers.

3. Increase the market service ability

Guide the enterprise to strengthen the market analysis and predict, hold the market opportunity, innovate the service attitude and service method and increase the market expansion ability. Increase the support for enterprise to expand the domestic market and support all kinds of exhibits and shows and play the role of the exhibition economy. Accelerate the market construction of such industries as plastics, household appliances, leather, hardware, **furniture**, sporting products and sewing machines and further increase the market service ability. Encourage industry and commerce cooperation to develop new market space and promote the enterprise to develop brand union and e-commerce and innovate the development mode.

(V) Expand the international market

(VI) Increase the development level of industry clusters

1. Promote the industry coordinated development in regions

2. Promote the industry zone construction

Special column 4: The project of increase industry clusters

3. The construction of public service platform:

Build and perfect the public service platforms for middle and small enterprises in the industry clusters with good basis including hardware, leather, household appliances, **furniture**, daily ceramics, lighting, etc.

(VII) Promote the energy conservation and emission reduction

(VIII) Promote the integration of “informatization and industrialization”

1. Innovate the promotion system of integration of “informatization and industrialization”

2. Promote the integration of “informatization and industrialization” in important industries

Perfect the personalization design system in such industries as household appliances, **furniture**, toys, leather and daily ceramics, etc. Establish and popularize the collaborative design participated by users. Establish product research and development system with continuous improvement, responding timely and innovation and increase the technology content and value-added of the products. Promote the light industry to increase for high-end value chain. Increase the intelligent and automation level of production equipments in papermaking, sewing machine and food.

V. The development direction of main industries

(I) Durable consumer goods

1. Plastic products
2. Household appliances
3. Leather
4. Hardware
5. Battery

6. **Furniture**

Develop green environmental protection and safe furniture products in priority, cultivate famous brand and increase the value-added. Accelerate the research and application of green environmental protection new materials and new technology, increase the research and design ability of product style, function and personalization and highlight the technology and culture of the products. Create the marketing mode and promote the marketing of furniture to change from traditional mode based on concentrated stores to develop a multi-dimensional mode including e-commerce and

self-built marketing channel. Increase the development level of furniture industry cluster and establish national R&D center and public information platform for main furniture industry cluster.

(II) Fast consumer goods

(III) Culture and art, sports and leisure products

(IV) Light industry machinery and equipment

V. Policies and measures

(I) Implement the policies of expansion of consumption demand and play the role of light industry in prosperous market and meeting the demand of residents. Implement the expansion of consumption demand and increase the effective supply. Perfect the policies that encourage consumption and adjust the relevant policies that are against consumption increase and improve the consumption environment and protect the rights of the consumers. Promote the upgrade of consumption structure in cities and countryside. Implement the policies on energy saving, environmental protection and safety and guide the consumption of energy-saving household appliances, **healthy furniture**, high effective lightings and green mercury-free battery. Support the enterprises construction of post-sales service system in countryside and expand the countryside market. Cultivate new consumption hotspot and make policies that promote the consumption of sports and leisure products.

(II) Strengthen the guidance of industrial policies and play the guidance role of industrial policies

(III) Support the technology innovation and technology reform

(IV) Accelerate the form of standard

(V) Implement the brand strategy actively

(VI) Promote the credit system construction of food enterprises

(VII) Build the outside environment which is good for the development of middle and small enterprises

(VIII) Play the role of the associates actively and play the bridge and link role of associates in connecting government and enterprises

VI. Organization and implementation

轻工业“十二五”发展规划

前言

一、“十一五”主要成就和“十二五”面临形势

(一) “十一五”主要成就

1. 生产平稳较快增长

2010 年, 全部轻工业完成工业增加值超过 3 万亿元。“十一五”期间轻工业规模以上企业工业增加值年均增长 15.5%。家用电器、皮革、塑料制品、食品、**家具**、五金制品等行业 100 多种产品产量居世界第一, 进一步巩固了我国作为世界轻工产品生产和消费大国的地位。

(二) “十二五”面临的形势

1. 发展的机遇

消费结构升级为轻工业的发展拓宽了新的领域。随着居民生活水平的提高, 消费市场空间进一步扩大, 加快了轻工产品结构调整。农村市场对轻工产品特别是对家用电器、电动自行车等耐用消费品有较大的需求, 新增人口、老年人等特殊人群新的消费需求, 必然带动轻工业相关产业的发展。未来 5 年, 我国将建设 3600 万套保障性住房, 随之带动一大批**家具**、家电、五金、照明等轻工产品生产、销售量快速增长。

2. 技术进步步伐加快

3. 质量建设取得成效

4. 品牌影响力进一步增强

5. 国际竞争力有所提升

6. 产业集群发展较快

二、“十二五”发展的指导思想、基本原则和主要目标

(一) 指导思想

(二) 基本原则

(三) 主要目标

三、重点任务

(一) 着力推动产业结构调整

(二) 加快提高技术创新能力

(三) 加强质量安全和品牌建设

（四）满足国内市场多层次需求

1. 促进消费产品升级

围绕日益增长的消费需求，不断丰富产品花色品种，开发生产适应多层次消费需求的产品。加大浓缩洗涤剂、高效照明电器、无汞电池等节能环保产品的生产，提高智能化家电、**健康环保家具**、安全清洁燃气具等耐用消费品的供给能力，满足消费者对高端机械手表、运动型自行车、个性化眼镜等时尚产品和奢侈品的需求，促进城市居民消费升级。开发个性化的文体用品、特色旅游休闲产品及适合老龄消费群体的产品，扩大文化、体育、休闲等新兴消费需求，培育新的消费热点，引导和创造新的市场需求。

2. 大力开拓农村市场

加强农村营销网络和售后服务体系建设，开拓农村消费市场，生产与新农村建设、灾后重建、农村基础设施等相配套的轻工产品。结合农村安居工程，鼓励企业加强对农村使用环境和消费习惯的分析，提供适合农村市场的厨卫、**家具**、家电、太阳能热水器、灯具、电动自行车等产品，改善农村居民生活条件。提高农用薄膜、节水灌溉器材等农资产品质量，确保广大农民买到放心农资产品。围绕农村公共文化和体育设施建设，推进文体用品、乐器等产品下乡，丰富农民精神文化生活。

3. 增强市场服务能力

引导企业加强市场分析预测，把握市场机遇，创新服务业态和服务方式，提高市场开拓能力。加大对企业开拓内销市场的支持力度，支持各种类型的展览展销活动，积极发挥会展经济的带动作用。加快塑料、家电、皮革、五金、**家具**、文体用品、缝制机械等行业重点专业市场建设，进一步提升专业化市场服务能力。鼓励工商合作开辟新的市场空间，推动企业发展品牌联盟和电子商务，创新发展模式。

（五）巩固开拓国际市场

（六）提升产业集群发展水平

1. 推动区域产业协调发展

2. 促进产业园区建设

专栏 4：产业集群提升重点工程

3. 公共服务平台建设。在五金、皮革、家电、**家具**、玩具、日用陶瓷、照明电器等发展基础较好的产业集群区，建立和完善一批面向中小企业的公共服务平台。

（七）积极推进节能减排

（八）大力推进“两化”融合

1. 创新“两化”融合推进机制

2. 加快重点行业“两化”融合

完善家电、**家具**、玩具、皮革、日用陶瓷等行业个性化设计体系，建立和普及用户广泛参与的协同设计模式。建立持续改进、及时响应、全流程创新的产品研发体系，提高产品信息技术含量和附加值，促进轻工产品向价值链高端提升。提高造纸、缝制机械、食品等重点行业生产装备智能化和生产过程自动化水平。

四、主要行业发展方向

（一）耐用消费品领域

1. 塑料制品工业
2. 家电工业
3. 皮革工业
4. 五金制品工业
5. 电池工业

6. 家具工业

重点发展绿色环保、安全的**家具产品**，培育知名品牌，提高产品的附加值。加快绿色环保新材料、新技术的研发与应用，增强产品款式、功能、个性化研发设计能力，突出特色产品的技术和文化内涵。创新营销模式，推动**家具**营销由以经销商为以集中卖场为流通平台的传统模式向发展电子商务、自建营销渠道等多元立体化模式发展。提升**家具产业**集群发展水平，主要**家具**产业集群创建国家级研发设计中心和公共信息服务平台。

（二）快速消费品领域

（三）文化艺术体育休闲用品领域

（四）轻工机械装备领域

五、政策措施

（一）继续落实扩大消费需求的政策措施继续发挥轻工业在繁荣市场、满足居民消费需求方面的作用，落实扩大消费需求的总体要求，提高有效供给水平。不断完善鼓励消费的政策措施，逐步调整不利于消费增长的有关政策，改善消费环境，保护消费者权益，积极促进城乡居民消费结构升级。落实国家节能、环保、安全等方面的相关政策，引导节能型家电、**健康家具**、高效照明产品、绿色无汞电池等产品的消费。支持企业加强面向农村市场的售后服务体系建设，深入开拓农村市场。积极培育新的消费热点，研究促进文体、休闲产品等新兴消费的政策措施。

（二）加强产业政策引导充分发挥产业政策的引导作用

（三）支持技术创新和技术改造

（四）加快标准的制修订工作

（五）大力实施品牌战略

（六）推进食品工业企业诚信体系建设

（七）营造有利于中小企业发展的外部环境

（八）充分发挥行业协会的作用发挥行业协会联系政府和企业的桥梁和纽带作用

六、规划组织实施

Source: Ministry of Industry and Information Technology of the PRC
Document No. Gong Xin Bu Gui [2016] No. 241

Development Plan for Light Industry (2016-2020)

I. The main achievements in 12th Five-year plan and the situations faced in 13th Five-year plan

- (I) The main achievements in 12th Five-year plan
- (II) The situations faced in 13th Five-year plan

II. The guiding thought, basic principles and main goals in 13th five-year plan

- (I) Guiding thought
- (II) Basic principles
- (III) Main goals

III. Main task

- (I) Implement “San Pin” strategy

1. Meet the consumption demand through “increasing kinds” . Divide the market demand and show humanization and precise in design and development, packaging and marketing. Excavate the demand blind spot through the micro-innovation in design, development and production and increase the assortment and product function. Promote the customization and develop customization, package design and cloud manufacture in such industries as food, household appliances, leather, **furniture**, hardware, lighting and so on.

- (II) Increase the initiative ability

Special column 4: Basic initiative platform construction projects

- 1. Food
- 2. Plastic products
- 3. Leather
- 4. **Furniture**: Furniture’s complex surface’s three-dimensional data information collection platform

- (III) Push the intelligent development actively

1. Expand the application of “informatization and industrialization” integration

2. Push the intelligent manufacture and push the application of internet, cloud computing and big data in light industry. Push the intelligent manufacture in such industries as food, home appliance, leather and **furniture** with good basis and accelerate the application of software and hardware manufactured intelligently and industrialization. Make research on the completed equipments manufacture intelligently and push the innovation and application of digital workshop/intelligent workshop and accelerate the experience communication and promotion.

Special column 6: Intelligent development push project

- 1. Household appliances
- 2. Papermaking
- 3. **Furniture**: The application of 3D printing in the manufacture of furniture and parts,

module production of customization and construction of intelligent workshop.

(IV) Adjust the industry structure

1. Push the adjustment of industry structure. Further optimize the merger and acquisition and support the strategic cooperation and merger and acquisition in such industries as food, plastic products, household appliances, leather, papermaking and **furniture** and cultivate some enterprise group with core competitiveness and play their radiation role in product development, technology demonstration, information diffusion and sales networks. Stimulate the initiative of middle and small enterprises and develop in the direction of “specific, precise, special, new and excellent”. Guide the big enterprise and middle and small enterprise to cooperate and coordinate through specialization division, service outsourcing and order production. Push the enterprises in lead acid battery, leather, and papermaking to exit the backward capacity by standard of strict safety, environment protection, quality, energy consumption and technology.

Special column 7: Project of industry structure optimization

1. Push the industries to transfer in order
2. Build modern industry cluster
3. Construction of public service platform: build and perfect the public service platforms in the industry clusters with good basis including household appliances, leather, **furniture**, hardware, lighting, ceramics, toys, and sewing machinery, etc.

(V) Carry out the green manufacture overall

(VI) Arrange the domestic and foreign markets

Expand the domestic market actively. Expand the rural consumption market and expand the light industry product related to the construction of new village, post-disaster reconstruction, and rural infrastructure. Combining the affordable housing project, encourage the enterprise to provide the appropriate household appliances, **furniture**, hardware, lighting, bikes to the farmers based on the consumption habit and usage environment and guide the upgrade of consumption in village.

V. The development direction of main industries

(I) Durable consumer goods

Furniture industry: Push the furniture industry to develop in the direction of green, environment protection, healthy and fashion. Fasten the research and development of new composite material and strengthening coatings and accelerate the application of 3D print and reverse engineering in the design and production of furniture. Develop the traditional solid wood furniture, high quality panel furniture, bamboo leisure furniture with culture creativity, healthy children furniture with environment protection and furniture for old people with special functions. Push the production and sales connection between internet, web of things, smart home and e-commerce and furniture and support the construct of smart workshop, cultivate the new mode of customization. Push the integrated development between furniture and construction and push the development of whole house customization and push the enterprise to

provide whole solutions and increase the experience of users. Guide the middle and west regions to take over the industry transfer.

(II) Fast consumer goods

(III) Culture and art, sports and leisure products

(IV) Light industry machinery and equipment

V. Policies and measures

(I) Increase the reform of market access

(II) Increase the control of market environment

(III) Increase the support in terms of financial and taxation

(IV) Increase the support in financial policies

(V) Strengthen the guide of industrial policies

(VI) Strengthen the service safeguard of measuring technology

(VII) Strengthen the role of standard support

(VIII) Strengthen the support of talents

(IX) Play the role of associates

VI. Implementation

发文机关：工业和信息化部
文号：工信部规〔2016〕241号

轻工业发展规划（2016-2020年）

一、“十二五”主要成就和“十三五”面临形势

(一)“十二五”主要成就

(二)“十三五”面临形势

二、“十三五”发展的指导思想、基本原则和主要目标

(一)指导思想

(二)基本原则

(三)主要目标

三、重点任务

(一)大力实施“三品”战略

1. 以“增品种”满足多样化消费新需求。细分市场需求，在产品的设计开发、外形包装、市场营销等方面处处体现人性化和精细化，通过设计、研发和生产“微创新”，深度挖掘用户的需求盲点，不断增加花色品种、提升产品功能。推进个性化定制，重点在食品、家用电器、皮革、**家具**、五金制品、照明电器等行业发展个性化定制、众包设计、云制造等新型制造模式。

(二)增强自主创新能力

专栏4：基础性创新平台建设工程

1. 食品

2. 塑料制品

3. 皮革

4. **家具**：家具的复杂曲面三维数据信息采集平台。

(三)积极推动智能化发展

1. 扩大两化融合应用领域。

2. 重点推进智能制造。促进工业互联网、云计算、大数据在轻工业综合集成应用。在食品、家用电器、皮革和**家具**等基础条件好的行业，推进智能制造，加快智能制造软硬件产品应用与产业化，研发智能制造成套装备，推进数字化车间/智能工厂的集成创新与应用示范，加快典型经验交流和推广。

专栏6：智能化发展推进工程

1. 家用电器

2. 造纸

3. **家具**：3D打印技术在家具及零件制造中的应用，定制家具模块化生产，智能工厂建设。

(四)着力调整产业结构

1. 推进产业组织结构调整。进一步优化企业兼并重组环境，支持食品、塑料制品、家用电器、皮革、造纸、**家具**等规模效益显著行业企业的战略合作和兼并重组，培育一批核心竞争力强的企业集团，发挥其在产品开发、技术示范、信息扩散和销售网络中的辐射带动作用。激发中小企业创业创新活力，向“专、精、特、新、优”方向发展。引导大企业与中小企业通过专业分工，服务外包、订单生产等多种方式，建立协同创新、合作共赢的协作关系。以更加严格的安全、环保、质量、能耗、技术等标准，促进铅蓄电池、制革、造纸等企业依法依规退出落后

产能。

专栏 7：产业结构优化工程

1. 推动产业有序转移。
2. 建设现代产业集群。
3. 公共服务平台建设。在家用电器、皮革、**家具**、五金制品、照明电器、陶瓷、玩具、缝制机械等发展基础较好的产业集群，建立和完善一批公共服务平台。

(五)全面推行绿色制造

(六)统筹国内外市场

积极扩大国内市场。开拓农村消费市场，扩大与新农村建设、灾后重建、农村基础设施等相配套的轻工产品生产。结合农村安居工程，鼓励企业根据农村使用环境和消费习惯，提供适合农村市场的家用电器、**家具**、五金制品、照明器具、自行车等产品，引导农村消费升级。

四、主要行业发展方向

(一)耐用消费品领域

家具工业。推动**家具**工业向绿色、环保、健康、时尚方向发展。加强新型复合材料、强化水性涂料等研发，加快三维（3D）打印、逆向工程等新技术在**家具**设计和生产中应用。重点发展传统实木**家具**、高品质板式**家具**、具有文化创意的竹藤休闲**家具**、环保健康儿童**家具**和具有特殊功能的老年人**家具**。促进互联网、物联网、智能家居、电子商务等与**家具**生产销售相结合，支持智能车间（工厂）建设，培育个性化定制新模式。推动**家具**工业与建筑业融合发展，推进全屋定制新型制造模式发展，促进企业提供整体解决方案，提高用户体验。引导中西部地区积极承接产业转移。

(二)快速消费品领域

(三)文化艺术体育休闲用品领域

(四)轻工机械装备领域

五、政策措施

(一)加大市场准入改革力度

(二)加大市场环境治理力度

(三)加大财税政策支持力度

(四)加大金融政策支持力度

(五)加强产业政策引导

(六)加强计量技术服务保障

(七)加强标准支撑作用

(八)加强人才支撑保障

(九)发挥行业协会作用

六、组织实施

【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]

Date issued: 06-30-2011
Effective date: 01-01-2012
Issuing authority: Standing Committee of the National People's Congress
Area of law: Administrative Litigation

发布日期: 2011-06-30
生效日期: 2012-01-01
发布部门: 全国人大常委会
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

Chapter II Types and Setting of Administrative Compulsion

Chapter III Procedures for the Implementation of Administrative
Compulsory Measures

Section 1 General Provisions

Section 2 Seizure and Impoundment

Section 3 Freezing

Chapter IV Procedures for Enforcement by Administrative Organs

Section 1 General Provisions

Section 2 Enforcement of Pecuniary Payment Obligations

Section 3 Performance on Behalf of the Party Concerned

Chapter V Application to the People's Court for Enforcement

Chapter VI Legal Liability

Chapter VII Supplementary Provisions

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

第二章 行政强制的种类和设定

第三章 行政强制措施实施程序

第一节 一般规定

第二节 查封、扣押

第三节 冻结

第四章 行政机关强制执行程序

第一节 一般规定

第二节 金钱给付义务的执行

第三节 代履行

第五章 申请人民法院强制执行

第六章 法律责任

第七章 附 则

Chapter I General Principles

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.

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.

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.

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

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.

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

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

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。

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。

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。

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。

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。

第六条 实施行政强制，应当坚持教育与强制相结合。

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.

Chapter II Types and Setting of Administrative Compulsion

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.

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.

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。

第二章 行政强制的种类和设定

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。

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。

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.

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.

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.

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.

Chapter III Procedures for the Implementation of
Administrative Compulsory Measures

Section 1 General Provisions

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。

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。

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。

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。

第三章 行政强制措施实施程序

第一节 一般规定

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.

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 signed 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.

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.

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。

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。

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。

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.

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.

Section 2 Seizure and Impoundment

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.

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.

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 deliver 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

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。

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。

第二节 查封、扣押

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。

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。

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;

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.

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.

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.

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.

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

(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。

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。

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。

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。

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.

Section 3 Freezing

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.

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.

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

- (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。

第三节 冻结

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。

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。

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.

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.

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.

Chapter IV Procedures for Enforcement by Administrative Organs

Section 1 General Provisions

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.

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

的途径和期限;

(五) 行政机关的名称、印章和日期。

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。

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。

第四章 行政机关强制执行程序

第一节 一般规定

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。

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.

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.

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.

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](#).

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

amount and payment method;

(四) 当事人依法享有的陈述权和申辩权。

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。

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。

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。

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.

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.

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.

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.

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。

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。

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。

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。

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

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.

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.

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.

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](#).

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

第二节 金钱给付义务的执行

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。

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。

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。

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。

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.

Section 3 Performance on Behalf of the Party Concerned

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.

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.

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

人不得以任何形式截留、私分或者变相私分。

第三节 代履行

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。

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。

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

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.

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.

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.

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.

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

第五章 申请人民法院强制执行

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。

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。

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。

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。

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.

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.

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's 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.

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.

Chapter VI Legal Liability

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

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。

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。

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。

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。

第六章 法律责任

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.

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.

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.

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。

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。

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.

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.

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.

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.

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.

Chapter VII Supplementary Provisions

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。

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。

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。

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。

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。

第七章 附则

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.

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

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。

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

发布日期： 2013.12.28

生效日期： 2014.03.01

时效性： 现行有效

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 and 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，还应当由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

Promulgation Date: 2013.12.28

Effective Date: 2014.03.01

Validity Status: valid

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 be 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 than 10,000 yuan but not more than 100,000 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 than 100, 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委员会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委员会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，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，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，还应当由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，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，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 irreparable 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. Extension of the time limit necessitated by special circumstances shall be approved by a higher people's court, extension 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. Extension of the time limit necessitated by special circumstances shall be approved by a higher people's court, extension 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 Administration of Taxation	12/10/13