

Source: Guangdong Provincial Government website www.gd.gov.cn

The 12th Five-year Plan Outline for National Economic and Social Development of Guangdong Province

Part 1: General requirement and development goals

Chapter 1: Development basis

The construction of Green Guangdong has achieved initial success, eliminated backward cement and **steel** capacity, closed small thermal power and promoted the energy conservation and emission reduction. The environment quality improved and ecological construction obtained new progress. Some indexes such as the unit GDP energy consumption, discharges of sulfur dioxide and chemical oxygen demand achieved the mission of the country.

Chapter 2: Development environment

Chapter 3: Guiding thought

Chapter 4: Development goals

Part 2: Innovation drives and constructs new Guangdong

Chapter 1: Perfect innovation system

Chapter 2: Strengthen innovation capacity

Chapter 3: Create the land for innovative talents

Chapter 4: Optimize innovative development environment

Part 3: Optimize, upgrade and construct global modern industrial base

Chapter 1: Improve the development of modern service industry

Chapter 2: Promote the upgrading of manufacturing industry

Promote the **steel** industry scale and push the recombination between enterprises and create Zhanjiang **Steel** production base with international competitiveness.

Chapter 3: cultivate and develop strategically emerging industry

Chapter 4: Increase the industry competitiveness

Fasten the merger and acquisition focusing on cars, steel, cement and rare earth and support the enterprises with advantage to develop and expand and increase enterprises' scale and industrial concentration and form some enterprises with international competitiveness.

Part 4: Realize the coordination between consumption and investment

Chapter 1: Expand the consumption

Chapter 2: Expand the investment

Chapter 3: Optimize import and export

Chapter 4: Develop private economy

Part 5: Construct beautiful village by strengthening agriculture and benefit farmers

Chapter 1: Develop modern agriculture actively

Chapter 2: Increase farms revenue

Chapter 3: Promote the livable countryside construction

Chapter 4: Perfect village development mechanism

Part 6: Increase the urbanization level by overall planning for urban and rural

Chapter 1: Increase urbanization quality

Push the reform of urban village and rural-urban continuum and finish the reform of 200 urban villages till the end of 2015 and finish the removal of chemical factory, steel factory and high-risk enterprises in cities.

Chapter 2: Strengthen the radiation function of central cities.

Chapter 3: Develop and expand county economy

Chapter 4: Push the urban village integration management

Part 7: Construct new pattern of harmonious development through integration and joint action

Chapter 1: Implement main functional area strategy

Chapter 2: Push the Pearl River Delta economic integration

Chapter 3: Push the development in east, west and north of Guangdong

Fasten the construction of coastal industrial zone focusing on petrochemical, steel, shipbuilding and energy, develop special economy, marine economy and modern agriculture and become heavy chemical industry base, logistics base, new energy industry base, marine economic development demonstration area, modern agriculture demonstration area in our country even in the world and become the new economic increase point in the province.

Chapter 4: Construct marine economy comprehensive development zone

Part 8: Green development and protect the beautiful mountains

Chapter 1: strengthen resource conservation and comprehensive utilization

Push the circular economy in, between steel and petrochemical industries as well as the industry and society in Zhanjiang and construct Donghai circular economy demonstration area.

Chapter 2: strengthen the environment protection

Implement the joint prevention and control for air pollution, manage the pollutant discharge in electricity, steel and cement industries, control the discharge of sulfur dioxide, nitric oxide, PM and VOC and solve the atmospheric haze issue in Pearl River Delta region.

Chapter 3: Push the ecological construction

Chapter 4: Push low-carbon development

Part 9: Strengthen support and push infrastructure modernization

Chapter 1: Construct modern comprehensive transportation system

Chapter 2: Construct cleaning energy safeguard system

Chapter 3: Perfect people's liveliness and water conservancy system

Chapter 4: Optimize effective network system

Part 10: Safeguard and improve people's livelihood

Chapter 1: Increase people's revenue

Chapter 2: Promote employment and construct harmonious labor relationship

Chapter 3: Perfect social safeguard system

Chapter 4: Increase medical service level

Chapter 5: Fasten affordable housing project construction

Chapter 6: Strengthen population and sports work

Chapter 7: Construct safety Guangdong

Part 11: Improve connotation and increase culture power

Chapter 1: Establish high quality education system

Chapter 2: Perfect education development support system

Chapter 3: Perfect public cultural services system

Chapter 4: Fasten the development of culture industry

Chapter 5: Improve the culture image of Guangdong

Part 12: Reform and increase the advantage in system and mechanism

Chapter 1: Perfect administrative system

Chapter 2: Deepen the economic reform

Chapter 3: Strengthen and innovate social management

Chapter 4: Increase the advantage of special economic zone

Chapter 5: Perfect the democracy and law

Part 13: Mutual benefit and win-win, deepen the cooperation among Guangdong, Hong Kong and Macao

Chapter 1: Improve the cooperation in service industry

Chapter 2: Accelerate the construction of important trans-boundary infrastructure

Chapter 3: Construct high quality Pearl River Delta life circle

Chapter 4: Perfect and create cooperative system

Part 14: Open cooperation, increase the economic internationalization level

Chapter 1: Increase the level for the use of foreign funds

Chapter 2: Increase the level of “go-out”

Chapter 3: Expand the cooperation with ASEAN

Chapter 4: Deepen the cooperation with Taiwan

Chapter 5: Strengthen the cooperation in Pearl River Delta region

Part 15: Safeguard for planning and implementation

Chapter 1: Perfect the planning implementation system

Chapter 2: Strengthen the support of important projects

Chapter 3: Strengthen the supervision for planning

文件来源：广东省政府网站 www.gd.gov.cn

广东省国民经济和社会发展第十二个五年规划纲要

第一篇 总体要求和发展目标

第一章 发展基础

绿色广东建设初见成效。积极淘汰落后水泥、**钢铁**产能，关停小火电，扎实推进节能减排工作。环境质量有所改善，生态建设取得新进展。单位生产总值能源消耗、二氧化硫排放和化学需氧量排放总量等约束性指标超额完成国家下达任务。

第二章 发展环境

第三章 指导思想

第四章 发展目标

第二篇 创新驱动 建设创新型广东

第一章 完善创新机制

第二章 增强创新能力

第三章 打造创新人才高地

第四章 优化创新发展环境

第三篇 优化升级 建设全球重要现代产业基地

第一章 推进现代服务业大发展

第二章 促进制造业高级化

推进钢铁产业规模化，积极推进企业联合重组，打造具有国际竞争力的湛江钢铁生产基地。

第三章 培育发展战略性新兴产业

第四章 提升产业竞争力

以汽车、钢铁、水泥、稀土等产业为重点，加快兼并重组步伐，支持优势企业发展壮大，着力提高企业规模水平和产业集中度，形成一批具有国际竞争力的大企业。

第四篇 内外并举 实现消费投资出口协调拉动

第一章 切实扩大消费

第二章 有效扩大投资

第三章 积极优化进出口

第四章 大力发展民营经济

第五篇 强农惠农 建设美好新农村

第一章 积极发展现代农业

第二章 努力增加农民收入

第三章 大力推进宜居乡村建设

第四章 完善农业农村发展机制

第六篇 统筹城乡 提升城镇化发展水平

第一章 提高城镇化质量

市推进城中村和城乡结合部改造，到 2015 年完成 200 条城中村改造，基本完成城市内化工厂、**钢铁**厂、高危企业搬迁。

第二章 强化中心城市集聚辐射功能

第三章 发展壮大县域经济

第四章 推进城乡一体化管理

第七篇 联动融合 构建区域协调发展新格局

第一章 实施主体功能区战略

第二章 推进珠三角区域经济一体化

第三章 促进粤东西北地区跨越发展

加快建设以石化、**钢铁**、船舶制造、能源生产为主的沿海重化产业带，发展特色经济、海洋经济和现代农业，建设成为我国乃至世界级的重化工业基地和物流基地、新能源产业基地、海洋经济发展示范区、现代农业示范区，成为全省新的经济增长极。

第四章 建设海洋经济综合开发试验区

第八篇 绿色发展 保护秀美山川

第一章 加强资源节约和综合利用

积极推进湛江**钢铁**和石化两大产业内部、产业间及产业与社会间三大层次的循环经济，建设东海岛循环经济示范区。

第二章 加强环境保护

实施大气污染联防联控，重点防治电力、**钢铁**、水泥等行业的污染排放，控制二氧化硫、氮氧化物、颗粒物和挥发性有机物的排放，重点解决珠三角大气灰霾问题。

第三章 推进生态建设

第四章 推动低碳发展

第九篇 强化支撑 推进基础设施现代化

第一章 建设现代综合运输体系

第二章 构建清洁能源保障体系

第三章 完善民生水利基础体系

第四章 优化高效信息网络体系

第十篇 普惠共享 保障和改善民生

第一章 提高居民收入

第二章 促进就业和构建和谐劳动关系

第三章 健全社会保障体系

第四章 提高医疗卫生服务水平

第五章 加快安居工程建设

第六章 加强人口和体育工作

第七章 建设平安广东

第十一篇 内涵提升 提高文化软实力

第一章 建立高质量教育体系

第二章 完善教育发展支撑体系

第三章 健全公共文化服务体系

第四章 加快发展文化产业

第五章 提升广东文化形象

第十二篇 改革先行 增创体制机制新优势

第一章 完善行政体制

第二章 深化经济体制改革

第三章 加强和创新社会管理

第四章 增创经济特区新优势

第五章 健全民主法制

第十三篇 互利共赢 深化粤港澳合作

第一章 推进服务业合作

第二章 加快跨界重大基础设施建设

第三章 共建大珠三角优质生活圈

第四章 完善和创新合作机制

第十四篇 开放合作 提升经济国际化水平

第一章 提高利用外资水平

第二章 提高“走出去”水平

第三章 扩大与东盟的战略合作

第四章 深化对台经贸合作

第五章 加强泛珠三角等区域合作

第十五篇 规划实施保障

第一章完善规划实施机制

第二章强化重大项目支撑

第三章加强规划监督考评

Source: Guangdong Provincial Government website www.gd.gov.cn

The 13th Five-year Plan Outline for National Economic and Social Development of Guangdong Province

Part 1: Adopt and guide economic development and create innovative, harmonious, green, open and sharing development new situation

Chapter 1: Social economic development environment

- I. The great achievements obtained in the 12th five-year period
- II. The development situation faced during the 13th five-year period

Part 1: General development requirement during the 13th five-year period

- I. Guiding thought
- II. Basic principle
- III. Development goals
- IV. Basic idea

Part 2: Complete the construction of a comprehensive well-off society and step onto a new journey for realizing socialist modernization

Chapter 1: Deepen the reform and establish thorough socialist economic system

- I. Deepen administrative management reform
- II. Perfect basic economic system
- III. Perfect modern market system
- IV. Establish modern financial system
- V. Deepen investment and financing system reform
- VI. Establish modern and high effective financial system
- VII. Fasten the construction of credit system
- VIII. Deepen the reform in Guangzhou Pilot Free Trade Zone
- IX. Prevent and solve all kinds of risks

Part 2: Insist innovative development and construct an economic system and development mode supported and guided by innovation

- I. Construct open region innovative system
- II. Strengthen enterprises' technology innovation
- III. Deepen the implementation of creative talents
- IV. Push comprehensive innovative reform
- V. Improve the people's entrepreneurship

Chapter 3: Push the structure reform in supply side and establish industry system with international competitiveness

- I. Strengthen the structure reform in supply side
- II. Strengthen the core competitiveness in manufacturing
- III. Improve the development of modern service industry
- IV. Cultivate and develop strategically emerging industry
- V. Develop the marine economy

The important projects in marine industry during the 13th five-year period

High-end sea-front industry projects: Push the construction of CNOOC Huizhou refining 2 phase and Zhongke joint venture Guangdong refining integration; construct Zhanjiang **Steel** base; Develop the further processing projects such as cold-rolled and **galvanized steel** sheet; push the construction of Taishan nuclear power and Yangjiang nuclear power; Fasten the construction of high-end sea-front industry zone such as Zhuhai Gaolan Port and Maoming Binhai Zone.

Chapter 4: Occupy the commanding height of information and construct high information province

- I. Increase information infrastructure level
- II. Develop “internet +” actively
- III. Implement big data strategy
- IV. Strengthen information safety system construction

Chapter 5 Strengthen integrity and construct harmonious development

- I. Strengthen the radiation function of central cities
- II. Consolidate and increase the competitiveness of Pearl river delta cities
- III. Push the development in east, west and north of Guangdong
- IV. Increase the support for underdeveloped regions
- V. Push the regions integrative development

Chapter 6: Push new-type urbanization and increase urban-rural integration development level

- I. Push the civilization of farmers
- II. Promote the livable countryside construction
- III. Develop county economy actively
- IV. Perfect urban-rural mechanism

Chapter 7: Strengthen the position of agriculture, rural areas and farmers and construct beautiful new village

- I. Push the agricultural modernization
- II. Increase farms' revenue constantly
- III. Promote the livable countryside construction
- IV. Push the comprehensive reform in village steadily

Chapter 8: Fasten the modern infrastructure system and increase the delayed effect of economic and social development

- I. Construct modern comprehensive transportation system
- II. Construct modern energy system
- III. Construct modern water conservancy support and safeguard system

Chapter 9: Increase the open advantage and construct open economy status

- I. Establish Guangzhou Pilot of Free Trade Zone in high standard

II. Establish the strategic pivot of “One Belt and One Road” and economic and trade cooperation center

III. Strengthen the cooperation in Pearl River Delta region

IV. Optimize the open strategy

V. Push the upgrade of foreign trade

VI. Support the enterprise to “go-out”

Chapter 10: Improve the deep integration and form the cooperation among Guangzhou, Macao and Taiwan

I. Create big Guangdong, Hongkong and Macao region

II. Push the service liberalization in Guangdong, Hongkong and Macao region

III. Construct high quality Guangdong, Hongkong and Macao life circle

IV. Strengthen the communication between Guangdong and Taiwan Region

Chapter 11: Push the rule of law province and create fair and justice environment

I. Increase the government governance ability and level

II. Construct society with rule of law

III. Create governance mechanism

Chapter 12 Increase culture power and create civilized spiritual home

I. Increase the civic culture qualities

II. Increase people’ spiritual and cultural life

III. Develop the culture industry

IV. Push the culture system reform and innovation

Chapter 13: Increase livelihood and well-being and realize the equalization of public service and integration of urban and rural in social safeguard

I. Push the targeted poverty alleviation and targeted overcome poverty

II. Establish the system for the equalization of basic public service and integration of urban and rural in social safeguard

III. Improve the employment and optimize the revenue allocation

IV. Develop education and strengthen the province

V. Increase the people's healthy safeguard

VI. Perfect social safeguard system

VII. Facilitate the balanced development in population

VIII. Construct safe Guangdong

Chapter 14: Push green loop low-carbon development and construct ecological demonstration province

I. Fasten the construction of main functional area

II. Promote the conservation of resources

III. Push the comprehensive treatment for environment pollution

IV. Fasten the ecological restoration and construction

V. Respond to climate change actively

VI. Propose ecological civilization

VII. Strengthen the construction of ecological civilization

Part 1: Planning and guiding, put forth efforts to lengthen the short stave, improve the carrier, strict review and implement the tasks in 13th five-year plan

Chapter 1: Construct the well-off society first

Chapter 2: Perfect the implementation of plan and implement safeguard system

I. Strengthen the planning connection

II. Strengthen the implementation

III. Strengthen the supervision

Chapter 3: Strengthen the support of important carrier

- I. Implement the specific important plan
- II. Distribute the important project reasonably

文件来源：广东省政府网站 www.gd.gov.cn

广东省国民经济和社会发展的第十三个五年规划纲要

第一篇 适应和引领经济发展新常态 开创创新、协调、绿色、开放、共享发展新局面

第一章 经济社会发展环境

第一节 “十二五”时期取得了重大成就

第二节 “十三五”时期面临的发展形势

第二章 “十三五”时期经济社会发展总体要求

第一节 指导思想

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第四节 基本理念

第二篇 率先全面建成小康社会 迈上率先基本实现社会主义现代化新征程

第一章 坚持全面深化改革 基本建立比较完善的社会主义市场经济体制

第一节深化行政管理体制改革

第二节完善基本经济制度

第三节健全现代市场体系

第四节建立现代财政制度

第五节深化投融资体制改革

第六节构建现代高效金融体系

第七节加快社会信用体系建设

第八节深化广东自贸试验区改革先行先试

第九节有效防范和化解各类风险

第二章坚持创新驱动发展着力构建以创新为主要引领和支撑的经济体系和发展模式

第一节构建开放型区域创新体系

第二节强化企业技术创新主体地位

第三节深入实施创新人才战略

第四节推进全面创新改革试验

第五节着力推进大众创业万众创新

第三章大力推进供给侧结构性改革基本建立具有全球竞争力的产业新体系

第一节加强供给侧结构性改革

第二节增强制造业核心竞争力

第三节提升现代服务业发展水平

第四节培育壮大战略性新兴产业

第五节大力发展海洋经济

专栏 6 “十三五”时期我省海洋产业发展重大工程

高端临海产业工程。继续推进中海油惠州炼化二期、中科合资广东炼化一体化等项目建设；建设湛江**钢铁**基地，在广州南沙发展冷轧板、**镀锌**钢板等钢材深加工项目；重点推进台山核电、阳江核电项目建设；加快珠海高栏港、茂名滨海新区等高端临海产业集聚区建设。

第四章抢占信息化制高点建设高水平信息化强省

第一节提升信息基础设施水平

第二节大力发展“互联网+ ”

第三节深入实施大数据战略

第四节加强信息安全体系建设

第五章增强发展整体性构建区域协调发展新格局

第一节强化中心城市辐射带动作用

第二节巩固提升珠三角城市群核心竞争力

第三节着力推进粤东西北地区振兴发展

第四节加大对经济欠发达地区扶持力度

第五节积极促进区域融合发展

第六章推进新型城镇化提升城乡一体化发展水平

第一节有序推进农业转移人口市民化

第二节建设和谐宜居城市

第三节大力发展县域经济

第四节完善城乡一体化机制

第七章强化“三农”基础地位建设幸福美丽新农村

第一节大力推进农业现代化

第二节积极促进农民持续增收

第三节加快建设美丽宜居乡村

第四节稳步推进农村综合改革

第八章加快构建现代基础设施体系增强经济社会发展后劲

第一节建设现代综合交通运输体系

第二节建设现代能源体系

第三节建立现代水利支撑保障体系

第九章增创对外开放优势构建开放型经济新格局

第一节高标准建设广东自贸试验区

第二节建设“一带一路”战略枢纽和经贸合作中心

第三节深化泛珠三角区域合作

第四节优化对外开放格局

第五节推进外经贸发展转型升级

第六节大力支持企业“走出去”

第十章促进深度融合发展形成粤港澳台合作新局面

第一节打造粤港澳大湾区

第二节深入推进粤港澳服务贸易自由化

第三节 共建粤港澳优质生活圈

第四节 加强粤台合作交流

第十一章 全面推进依法治省营造公平正义的法治环境

第一节 提升政府治理能力和水平

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第三节 创新社会治理体制

第十二章 提升文化软实力打造文明高尚的精神家园

第一节 全面提升公民文明素质

第二节 丰富人民精神文化生活

第三节 大力发展文化产业

第四节 推动文化体制改革创新

第十三章 不断增进民生福祉率先实现基本公共服务均等化和社会保障城乡一体化

第一节 大力推进精准扶贫精准脱贫

第二节 构建基本公共服务均等化和社会保障城乡一体化机制

第三节 促进充分就业和优化收入分配格局

第四节 努力建设教育强省

第五节 增强人民健康保障

第六节 完善社会保障体系

第七节 促进人口均衡发展

第八节 努力建设平安广东

第十四章 促进绿色循环低碳发展建设生态文明示范省

第一节 加快建设主体功能区

第二节 促进资源节约利用

第三节 强力推进环境污染综合治理

第四节 加快生态修复与建设

第五节 积极主动应对气候变化

第六节 倡导生态文明新风尚

第七节 加强生态文明制度建设

第三篇 规划引导、补齐短板、完善载体、严格考评把“十三五”目标任务落到实处

第一章 全力补齐率先全面建成小康社会任务短板...

第二章完善规划实施保障机制

第一节加强规划衔接

第二节加强落实机制

第三节加强监督考评

第三章强化重大载体支撑作用

第一节编制实施重点专项规划

第二节合理布局重大项目工程

Issuance authority: Peoples' Government of Zhejiang Province

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The 12th five-year plan outline for national economic and social development in Zhejiang Province

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Develop and expand competitive industries. Develop capital intensive and technology intensive industries such as automobile, equipment and medicine, etc. Develop modern port-surrounding industries such as petrochemical, shipbuilding and steel, introduce and implement the major projects with large investment scale, strong industry relevance and high value added. Transform and improve the traditional industries such as textile, light industry, construction materials and nonferrous metals and eliminate the backward capacity and transfer the processing and manufacturing link relying on resources and environment. Popularize the application of integrated manufacture, flexible manufacture, precise manufacture, clean manufacture and virtual manufacture and so on, and improve our position in global industry chain. Improve the construction enterprises' technology level using new materials, new structure, new technology and new equipments, improve the upgrade of construction industry and push our province to become strong construction province from big construction province.

Steel: Construct Ningbo port-surrounding steel base, accelerate the upgrade of Hangzhou Steel, develop special steel and further processing, make the steel industry become strong and push the combination and restructure of steel enterprises.

Light industry: Improve the competitiveness of industries such as food, household appliances, paper making, leather, plastic products, lighting products, and **furniture** and daily chemicals, develop the printing, packaging, sporting products and arts and crafts and push the construction of Asian packaging center.

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浙江省国民经济和社会发展的第十二个五年规划纲要

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发展壮大优势产业。大力发展汽车、装备、医药等资金和技术密集型产业，择优发展石化、船舶、**钢铁**等现代临港工业，着力引进和组织实施一批投资规模大、产业关联强、附加值高的重大项目。有选择地改造提升纺织、轻工、建材、有色金属等传统行业，坚决淘汰落后产能，加快转移过度依赖资源环境的加工制造环节。推广应用集成制造、柔性制造、精密制造、清洁生产、虚拟制造等先进制造模式，不断提升我省制造业在全球产业价值链中的地位。运用新材料、新结构、新技术、新设备，提升建筑企业技术水平，促进建筑业转型升级，推动我省由建筑大省向建筑强省跨越。

钢铁。规划建设宁波临港钢铁基地，加快杭钢转型升级，积极发展优特钢及深加工，做强做精不锈钢产业，推进钢铁企业联合重组。

轻工。提升食品、家电、造纸、皮革、塑料制品、照明电器、**家具**、日用化工等行业的竞争优势，发展印刷、包装、文体用品和工艺美术产业，推进亚洲包装中心建设。

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Issuance authority: Peoples' Government of Zhejiang Province

The 13th five-year plan outline for national economic and social development in Zhejiang Province

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(II) Create the best entrepreneurship and innovation environment

(III) Push the construction of robust province through talents

III. Establish the system and mechanism of guiding economic development

(I) Deepen the government reform aiming at governance modernization

(II) Push the reform of marketization of resources allocation

(III) Stimulate the vitality of all kinds of market entities

IV. Establish the new pattern of overall opening and cooperation

(I) Try to be the pioneer of “one belt and one road”

(II) Participate in the construction of Yangtze River Economic Zone and regional cooperation development actively

(III) Create major open platform actively

V. Accelerate the strategic adjustment of industry structure

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(II) Cultivate big industry of trillion

(III) Push the agriculture modernization actively

(IV) Construct high level industry clusters and special towns

VI. Maintain the stable operation of economy under new normal

(I) Push the “reduce capacity, inventory and leverage and lower cost”

(II) Expand the market space

(III) Expand effective investment

(IV) Adopt and guide the upgrade of consumption

VII. Construct modern infrastructure network

(I) Construct modern comprehensive transportation system of connectivity

(II) Construct clean low-carbon, safe and high effective and intelligent modern energy system

(III) Construct modern water conservancy infrastructure

(IV) Construct high speed, mobile, safe and extensive information infrastructure network

VIII. Push the new type urbanization and coordinative development between urban and rural

(I) Establish the new development structure with the four metropolitan areas as subject and marine economic zone and ecologic function zone as wings

(II) Push the new type of urbanization

(III) Push the transform of countryside construction

IX. Increase the level of public service overall

(I) Realize education modernization in advance

(II) Increase the quality of employment

(III) Accelerate the increase of resident’ income in urban and rural

(IV) Perfect the social safeguard system

(V) Establish healthy Zhejiang

(VI) Push the balanced development of population

X. Strengthen the ecological construction continuously

(I) Strengthen the economical circular utilization of resources

Develop the circular economy actively. Control the decrease of resources consumption in industries such as petrochemical, steel, electricity, chemical, construction materials, nonferrous metal, textile dyeing, papermaking and so on and focus on industry clusters, development zone (industrial zone) and establish circular economy.

(II) Push the environment control and ecological protection

Push the treatment of waste gas and haze; implement the prevention plan of air pollution; push the close down and removal of serious pollution enterprises and increase the development of clean energy and increase the dust control in such industries as steel, cement and glass and so on.

(III) Respond to the climate change actively

Control the emission of greenhouse gas strictly. Develop low-carbon industries and control the carbon emission in industries such as electricity, construction materials, steel, chemical, papermaking, nonferrous metal and aviation as well as planting, livestock and poultry industry and fishing industry. Push the low-carbon urbanization and propose low-carbon life and culture. Support the development zone to realize the carbon emission peak in advance and increase the carbon collecting capacity in forest and wetland.

(IV) Perfect the system of ecological culture

XI. Push the construction of culture-rich province to new step

(I) Consolidate and strong mainstream ideology

(II) Construct modern public culture service system

(III) Increase the development level of culture industry

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(V) Increase the construction level of Safe Zhejiang

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(四) 建设高速、移动、安全、泛在的信息基础设施网络

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(二) 着力提升就业质量

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(二)推进环境治理和生态保护

全面推进治气治霾。深入实施大气污染防治计划。推进大气重污染企业关停搬迁，加大清洁能源开发力度。加强**钢铁**、水泥、玻璃等行业粉尘控制。

(三)积极应对气候变化

严格控制温室气体排放。发展低碳产业，有效控制电力、建材、**钢铁**、化工、造纸、有色金属、航空等重点行业以及种植业、畜禽养殖业和渔业碳排放。推进低碳城镇化，倡导低碳生活和文化。支持优化开发区域率先实现碳排放峰值目标。增强森林、湿地的碳汇能力。

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Contract Law of the People's Republic of China

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

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

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

March 15, 1999

Contract Law of the People's Republic of China

General Provisions

Chapter 1 General Provisions

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

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

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

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

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

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

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

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

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

The contract established according to law is protected by law.

Chapter 2 Conclusion of Contracts

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

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

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

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

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

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

- (1) titles or names and domiciles of the parties;
- (2) subject matter;
- (3) quantity;
- (4) quality;
- (5) price or remuneration;
- (6) time limit, place and method of performance;
- (7) liability for breach of contract; and
- (8) method to settle disputes.

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

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

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

(1) its contents shall be specific and definite;

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

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

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

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

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

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

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

Article 19 An offer may not be revoked, if

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

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

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

(1) the notice of rejection reaches the offeror;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

party.

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

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

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

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

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

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

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

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

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

Chapter 3 Validity of Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) damaging the public interests;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 4 Performance of Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) its business has seriously deteriorated;

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

(3) it has lost its business creditworthiness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 5 Modification and Assignment of Contracts

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

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

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

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

- (1) such rights may not be assigned in light of the nature of the contract;
- (2) such rights may not be assigned according to the agreement between the parties;
- (3) such rights may not be assigned according to the provisions of the laws.

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6 Termination of Contractual Rights and Obligations

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

- (1) the obligations have been performed as agreed upon;
- (2) the contract has been rescinded;
- (3) the obligations have been offset against each other;

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

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

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

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

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

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

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

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

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

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

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

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

(5) other circumstance as provided by law.

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

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

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

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

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

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

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

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

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

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

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

(2) the whereabouts of the obligee are unknown;

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

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

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

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

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

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

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

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

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

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

Chapter 7 Liabilities for Breach of Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 8 Other Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

Specific Provisions

Chapter 9 Sales Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

taking delivery thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 11 Gift Contracts

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

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

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

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

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

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

Article 190 A gift may be conditioned on an obligation.

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

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

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

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

- (1) seriously harming the donor or any immediate family member thereof;
- (2) failing to perform support obligations owed to the donor;
- (3) failing to perform the obligations under the gift contract.

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

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

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

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

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

Chapter 12 Contracts for Loan of Money

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 13 Leasing Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 14 Financial Leasing Contracts

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

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

A financial leasing contract shall be concluded in writing.

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 15 Contracts for Work

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 16 Contracts for Construction Projects

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by the surveyor or designer.

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

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

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

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

Chapter 17 Transportation Contracts

Section One General Provisions

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

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

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

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

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

Section Two Passenger Transportation contracts

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

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

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

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

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

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

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

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

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

shall be charged.

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

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

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

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

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

Section Three Cargo Transportation contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section Four Multi-modal Transportation contract

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

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

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

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

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

Chapter 18 Technology Contracts

Section One General Provisions

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

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

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

- (1) project name;
- (2) contents, scope and requirement of the subject matter;
- (3) the plan, schedule, period, place, territory and method of performance;
- (4) confidentiality of technical information and materials;
- (5) allocation of responsibilities for risks;
- (6) ownership of the technology and allocation of benefits accrued therefrom;
- (7) standard applicable to and method of acceptance test;

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

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

(10) method of dispute resolution;

(11) definition of terms and phrases.

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

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

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

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

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

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

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

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

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

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

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

Section Two Technology Development Contract

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

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

A technology development contract shall be in written form.

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

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

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

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

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

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

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

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

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

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

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

for the enlarged losses.

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

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

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

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

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

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

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

Section Three Technology Transfer Contracts

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

A technology transfer contract shall be in written form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section Four Technical Consulting Contracts and Technical Service Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 19 Storage Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 20 Warehousing Contracts

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

Article 382 A warehousing contract becomes effective upon its formation.

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

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

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

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

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

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

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

(1) name and domicile of the depositor;

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

(3) standards of spoilage of the warehousing goods;

(4) place of storage;

(5) time period of storage;

(6) warehousing fee;

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

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

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

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

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

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

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

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

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

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

Article 394 Where the goods are damaged or lost during the warehousing period due to improper safekeeping by the safekeeping party, it shall be liable for damages. If the goods are deteriorated or damaged due to unconformity of the nature of the warehoused goods or of the packing with the terms of the contract, or the fact that the goods exceed the valid storage period, the safekeeping party is not liable for damages.

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

Chapter 21 Commission Contracts

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

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

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

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

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

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

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

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

Article 403 Where the agent enter into a contract in its own name with a third party who is not aware of the agency relationship between the agent and the principal, if the agent fails to perform its obligation toward the principal due to any reason attributable to such third party, the agent shall disclose the third party to the principal, allowing it to exercise the agent's rights against such third party, except where the third party will not enter into the contract with the agent if he knows the identity of the principal at the time of entering into the contract.

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

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

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

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

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

otherwise, such agreement shall prevail.

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

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

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

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

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

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

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

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

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

Chapter 22 Contracts of Commission Agency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 23 Intermediation contracts

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

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

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

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

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

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

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

Supplementary Provisions

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

中华人民共和国主席令

（第十五号）

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

中华人民共和国主席 江泽民

1999年3月15日

中华人民共和国合同法

（1999年3月15日第九届全国人民代表大会第二次会议通过）

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第一章 一般规定

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

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

婚姻、收养、监护等有关身份关系的协议，适用其他法律的规定。

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

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

第五条 【公平原则】当事人应当遵循公平原则确定各方的权利和义务。

第六条 【诚实信用原则】当事人行使权利、履行义务应当遵循诚实信用原则。

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

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

依法成立的合同，受法律保护。

第二章 合同的订立

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

当事人依法可以委托代理人订立合同。

第十条 【合同的形式】当事人订立合同，有书面形式、口头形式和其他形式。

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

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

第十二条 【合同内容】合同的内容由当事人约定，一般包括以下条款：

- （一）当事人的名称或者姓名和住所；
- （二）标的；
- （三）数量；
- （四）质量；
- （五）价款或者报酬；
- （六）履行期限、地点和方式；
- （七）违约责任；
- （八）解决争议的方法。

当事人可以参照各类合同的示范文本订立合同。

第十三条 【订立合同方式】当事人订立合同，采取要约、承诺方式。

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

- （一）内容具体确定；
- （二）表明经要约人承诺，要约人即受该意思表示约束。

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

商业广告的内容符合要约规定的，视为要约。

第十六条 【要约的生效】要约到达受要约人时生效。

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

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

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

第十九条 【要约不得撤销的情形】有下列情形之一的，要约不得撤销：

- （一）要约人确定了承诺期限或者以其他形式明示要约不可撤销；

(二) 受要约人有理由认为要约是不可撤销的, 并已经为履行合同作了准备工作。

第二十条 【要约的失效】有下列情形之一的, 要约失效:

- (一) 拒绝要约的通知到达要约人;
- (二) 要约人依法撤销要约;
- (三) 承诺期限届满, 受要约人未作出承诺;
- (四) 受要约人对要约的内容作出实质性变更。

第二十一条 【承诺的定义】承诺是受要约人同意要约的意思表示。

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

第二十三条 【承诺的期限】承诺应当在要约确定的期限内到达要约人。

要约没有确定承诺期限的, 承诺应当依照下列规定到达:

- (一) 要约以对话方式作出的, 应当即时作出承诺, 但当事人另有约定的除外;
- (二) 要约以非对话方式作出的, 承诺应当在合理期限内到达。

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

第二十五条 【合同成立时间】承诺生效时合同成立。

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

采用数据电文形式订立合同的, 承诺到达的时间适用本法第十六条第二款的规定。

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

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

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

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

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

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

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

第三十四条 【合同成立地点】承诺生效的地点为合同成立的地点。

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

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

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

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

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

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

格式条款是当事人为了重复使用而预先拟定，并在订立合同时未与对方协商的条款。

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

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

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

- （一）假借订立合同，恶意进行磋商；
- （二）故意隐瞒与订立合同有关的重要事实或者提供虚假情况；
- （三）有其他违背诚实信用原则的行为。

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

第三章 合同的效力

第四十四条 【合同的生效】依法成立的合同，自成立时生效。

法律、行政法规规定应当办理批准、登记等手续生效的，依照其规定。

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

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

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

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

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

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

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

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

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

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

第五十二条 【合同无效的法定情形】有下列情形之一的，合同无效：

- （一）一方以欺诈、胁迫的手段订立合同，损害国家利益；
- （二）恶意串通，损害国家、集体或者第三人利益；
- （三）以合法形式掩盖非法目的；
- （四）损害社会公共利益；
- （五）违反法律、行政法规的强制性规定。

第五十三条 【合同免责条款的无效】合同中的下列免责条款无效：

- （一）造成对方人身伤害的；
- （二）因故意或者重大过失造成对方财产损失的。

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

- （一）因重大误解订立的；
- （二）在订立合同时显失公平的。

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

当事人请求变更的，人民法院或者仲裁机构不得撤销。

第五十五条 【撤销权的消灭】有下列情形之一的，撤销权消灭：

- （一）具有撤销权的当事人自知道或者应当知道撤销事由之日起一年内没有行使撤销权；
- （二）具有撤销权的当事人知道撤销事由后明确表示或者以自己的行为放弃撤销权。

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

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

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

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

第四章 合同的履行

第六十条 【严格履行与诚实信用】当事人应当按照约定全面履行自己的义务。

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

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

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

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

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

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

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

（五）履行方式不明确的，按照有利于实现合同目的的方式履行。

（六）履行费用的负担不明确的，由履行义务一方负担。

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

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

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

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

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

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

- （一）经营状况严重恶化；
- （二）转移财产、抽逃资金，以逃避债务；
- （三）丧失商业信誉；
- （四）有丧失或者可能丧失履行债务能力的其他情形。

当事人没有确切证据中止履行的，应当承担违约责任。

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

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

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

债务人提前履行债务给债权人增加的费用，由债务人负担。

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

债务人部分履行债务给债权人增加的费用，由债务人负担。

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

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

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

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

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

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

第五章 合同的变更和转让

第七十七条 【合同变更条件】当事人协商一致，可以变更合同。

法律、行政法规规定变更合同应当办理批准、登记等手续的，依照其规定。

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

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

- （一）根据合同性质不得转让；
- （二）按照当事人约定不得转让；
- （三）依照法律规定不得转让。

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

债权人转让权利的通知不得撤销，但经受让人同意的除外。

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

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

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

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

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

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

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

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

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

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

第六章 合同的权利义务终止

第九十一条 【合同消灭的原因】有下列情形之一的，合同的权利义务终止：

- （一）债务已经按照约定履行；
- （二）合同解除；
- （三）债务相互抵销；
- （四）债务人依法将标的物提存；
- （五）债权人免除债务；
- （六）债权债务同归于一人；
- （七）法律规定或者当事人约定终止的其他情形。

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

第九十三条 【合同约定解除】当事人协商一致，可以解除合同。

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

第九十四条 【合同的法定解除】有下列情形之一的，当事人可以解除合同：

- （一）因不可抗力致使不能实现合同目的；

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

(三) 当事人一方迟延履行主要债务,经催告后在合理期限内仍未履行;

(四) 当事人一方迟延履行债务或者有其他违约行为致使不能实现合同目的;

(五) 法律规定的其他情形。

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

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

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

法律、行政法规规定解除合同应当办理批准、登记等手续的,依照其规定。

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

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

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

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

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

第一百零一条 【提存的要件】有下列情形之一的,难以履行债务的,债务人可以将标的物提存:

(一) 债权人无正当理由拒绝受领;

(二) 债权人下落不明;

(三) 债权人死亡未确定继承人或者丧失民事行为能力未确定监护人;

(四) 法律规定的其他情形。

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

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

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

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

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

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

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

第七章 违约责任

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

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

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

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

- （一）法律上或者事实上不能履行；
- （二）债务的标的不适于强制履行或者履行费用过高；
- （三）债权人在合理期限内未要求履行。

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

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

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

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

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

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

当事人就迟延履行约定违约金的，违约方支付违约金后，还应当履行债务。

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

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

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

本法所称不可抗力，是指不能预见、不能避免并不能克服的客观情况。

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

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

当事人因防止损失扩大而支出的合理费用，由违约方承担。

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

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

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

第八章 其他规定

第一百二十三条 【其他规定的适用】其他法律对合同另有规定的，依照其规定。

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

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

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

第一百二十六条 【涉外合同】涉外合同的当事人可以选择处理合同争议所适用的法律，但法律另有规定的除外。涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

在中华人民共和国境内履行的中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同，适用中华人民共和国法律。

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

第一百二十八条 【合同争议的解决】当事人可以通过和解或者调解解决合同争议。

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

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

分则

第九章 买卖合同

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

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

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

法律、行政法规禁止或者限制转让的标的物，依照其规定。

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

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

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

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

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

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

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

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

第一百四十一条 【交付的地点】出卖人应当按照约定的地点交付标的物。

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

（一）标的物需要运输的，出卖人应当将标的物交付给第一承运人以运交给买受人；

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

第一百五十七条 【买受人的检验义务】买受人收到标的物时应当在约定的检验期间内检验。没有约定检验期间的，应当及时检验。

第一百五十八条 【买受人的通知义务及免除】当事人约定检验期间的，买受人应当在检验期间内将标的物的数量或者质量不符合约定的情形通知出卖人。买受人怠于通知的，视为标的物的数量或者质量符合约定。

当事人没有约定检验期间的，买受人应当在发现或者应当发现标的物的数量或者质量不符合约定的合理期间内通知出卖人。买受人在合理期间内未通知或者自标的物收到之日起两年内未通知出卖人的，视为标的物的数量或者质量符合约定，但对标的物有质量保证期的，适用质量保证期，不适用该两年的规定。

出卖人知道或者应当知道提供的标的物不符合约定的，买受人不受前两款规定的通知时间的限制。

第一百五十九条 【买受人的基本义务】买受人应当按照约定的数额支付价款。对价款没有约定或者约定不明确的，适用本法第六十一条、第六十二条第二项的规定。

第一百六十条 【支付价款的地点】买受人应当按照约定的地点支付价款。对支付地点没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，买受人应当在出卖人的营业地支付，但约定支付价款以交付标的物或者交付提取标的物单证为条件的，在交付标的物或者交付提取标的物单证的所在地支付。

第一百六十一条 【支付价款的时间】买受人应当按照约定的时间支付价款。对支付时间没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，买受人应当在收到标的物或者提取标的物单证的同时支付。

第一百六十二条 【多交标的物的处理】出卖人多交标的物的，买受人可以接收或者拒绝接收多交的部分。买受人接收多交部分的，按照合同的价格支付价款；买受人拒绝接收多交部分的，应当及时通知出卖人。

第一百六十三条 【标的物孳息的归属】标的物在交付之前产生的孳息，归出卖人所有，交付之后产生的孳息，归买受人所有。

第一百六十四条 【解除合同与主物的关系】因标的物主物不符合约定而解除合同的，解除合同的效力及于从物。因标的物的从物不符合约定被解除的，解除的效力不及于主物。

第一百六十五条 【数物并存的合同解除】标的物为数物，其中一物不符合约定的，买受人可以就该物解除，但该物与他物分离使标的物的价值显受损害的，当事人可以就数物解除合同。

第一百六十六条 【分批交付标的物的合同解除】出卖人分批交付标的物的，出卖人对其中一批标的物不交付或者交付不符合约定，致使该批标的物不能实现合同目的的，买受人可以就该批标的物解除。

出卖人不交付其中一批标的物或者交付不符合约定，致使今后其他各批标的物的交付不能实现合同目的的，买受人可以就该批以及今后其他各批标的物解除。

买受人如果就其中一批标的物解除，该批标的物与其他各批标的物相互依存的，可以就已经交付和未交付的各批标的物解除。

第一百六十七条 【分期付款买卖中的合同解除】分期付款的买受人未支付到期价款的金额达到全部价款的五分之一的，出卖人可以要求买受人支付全部价款或者解除合同。

出卖人解除合同的，可以向买受人要求支付该标的物的使用费。

第一百六十八条 【样品买卖】凭样品买卖的当事人应当封存样品，并可以对样品质量予以说明。出卖人交付的标的物应当与样品及其说明的质量相同。

第一百六十九条 【样品买卖特殊责任】凭样品买卖的买受人不知道样品有隐蔽瑕疵的，即使交付的标的物与样品相同，出卖人交付的标的物的质量仍然应当符合同种物的通常标准。

第一百七十条 【试用买卖的试用期间】试用买卖的当事人可以约定标的物的试用期间。对试用期间没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，由出卖人确定。

第一百七十一条 【买受人对标的物的认可】试用买卖的买受人在试用期内可以购买标的物，也可以拒绝购买。试用期间届满，买受人对是否购买标的物未作表示的，视为购买。

第一百七十二条 【招标投标买卖】招标投标买卖的当事人的权利和义务以及招标投标程序等，依照有关法律、行政法规的规定。

第一百七十三条 【拍卖】拍卖的当事人的权利和义务以及拍卖程序等，依照有关法律、行政法规的规定。

第一百七十四条 【买卖合同准用于有偿合同】法律对其他有偿合同有规定的，依照其规定；没有规定的，参照买卖合同的有关规定。

第一百七十五条 【互易合同】当事人约定易货交易，转移标的物的所有权的，参照买卖合同的有关规定。

第十章 供用电、水、气、热力合同

第一百七十六条 【定义】供用电合同是供电人向用电人供电，用电人支付电费的合同。

第一百七十七条 【主要条款】供用电合同的内容包括供电的方式、质量、时间，用电容量、地址、性质，计量方式，电价、电费的结算方式，供用电设施的维护责任等条款。

第一百七十八条 【履行地】供用电合同的履行地点，按照当事人约定；当事人没有约定或者约定不明确的，供电设施的产权分界处为履行地点。

第一百七十九条 【安全供电义务及责任】供电人应当按照国家规定的供电质量标准 and 约定安全供电。供电人未按照国家规定的供电质量标准和约定安全供电，造成用电人损失的，应当承担损害赔偿责任。

第一百八十条 【中断供电的通知义务】供电人因供电设施计划检修、临时检修、依法限电或者用电人违法用电等原因，需要中断供电时，应当按照国家有关规定事先通知用电人。未事先通知用电人中断供电，造成用电人损失的，应当承担损害赔偿责任。

第一百八十一条 【不可抗力断电的抢修义务】因自然灾害等原因断电，供电人应当按照国家有关规定及时抢修。未及时抢修，造成用电人损失的，应当承担损害赔偿责任。

第一百八十二条 【用电人交付电费义务】用电人应当按照国家有关规定和当事人的约定及时交付电费。用电人逾期不交付电费的，应当按照约定支付违约金。经催告用电人在合理期限内仍不交付电费和违约金的，供电人可以按照国家规定的程序中止供电。

第一百八十三条 【安全用电义务】用电人应当按照国家有关规定和当事人的约定安全用电。用电人未按照国家有关规定和当事人的约定安全用电，造成供电人损失的，应当承担损害赔偿责任。

第一百八十四条 【供用水、气、热力合同】供用水、供用气、供用热力合同，参照供用电合同的有关规定。

第十一章 赠与合同

第一百八十五条 【定义】赠与合同是赠与人将自己的财产无偿给予受赠人，受赠人表示接受赠与的合同。

第一百八十六条 【赠与合同的任意撤销与限制】赠与人在赠与财产的权利转移之前可以撤销赠与。

具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，不适用前款规定。

第一百八十七条 【赠与的登记等手续】赠与的财产依法需要办理登记等手续的，应当办理有关手续。

第一百八十八条 【受赠人的交付请求权】具有救灾、扶贫等社会公益、道德义务性质的赠与合同或者经过公证的赠与合同，赠与人不交付赠与的财产的，受赠人可以要求交付。

第一百八十九条 【赠与人责任】因赠与人故意或者重大过失致使赠与的财产毁损、灭失的，赠与人应当承担损害赔偿责任。

第一百九十条 【附义务赠与】赠与可以附义务。

赠与附义务的，受赠人应当按照约定履行义务。

第一百九十一条 【赠与的瑕疵担保责任】赠与的财产有瑕疵的，赠与人不承担责任。附义务的赠与，赠与的财产有瑕疵的，赠与人在附义务的限度内承担与出卖人相同的责任。

赠与人故意不告知瑕疵或者保证无瑕疵，造成受赠人损失的，应当承担损害赔偿责任。

第一百九十二条 【赠与的法定撤销】受赠人有下列情形之一的，赠与人可以撤销赠与：

- （一）严重侵害赠与人或者赠与人的近亲属；
- （二）对赠与人有扶养义务而不履行；
- （三）不履行赠与合同约定的义务。

赠与人的撤销权，自知道或者应当知道撤销原因之日起一年内行使。

第一百九十三条 【赠与人的继承人或法定代理人的撤销权】因受赠人的违法行为致使赠与人死亡或者丧失民事行为能力的，赠与人的继承人或者法定代理人可以撤销赠与。

赠与人的继承人或者法定代理人的撤销权，自知道或者应当知道撤销原因之日起六个月内行使。

第一百九十四条 【赠与财产的返还】撤销权人撤销赠与的，可以向受赠人要求返还赠与的财产。

第一百九十五条 【赠与义务的免除】赠与人的经济状况显著恶化，严重影响其生产经营或者家庭生活的，可以不再履行赠与义务。

第十二章 借款合同

第一百九十六条 【定义】借款合同是借款人向贷款人借款，到期返还借款并支付利息的合同。

第一百九十七条 【合同形式及主要条款】借款合同采用书面形式，但自然人之间借款另有约定的除外。

借款合同的内容包括借款种类、币种、用途、数额、利率、期限和还款方式等条款。

第一百九十八条 【合同的担保】订立借款合同，贷款人可以要求借款人提供担保。担保依照《中华人民共和国担保法》的规定。

第一百九十九条 【借款人提供其真实情况的义务】订立借款合同，借款人应当按照贷款人的要求提供与借款有关的业务活动和财务状况的真实情况。

第二百条 【利息的预先扣除】借款的利息不得预先在本金中扣除。利息预先在本金中扣除的，应当按照实际借款数额返还借款并计算利息。

第二百零一条 【贷款违约责任】贷款人未按照约定的日期、数额提供借款，造成借款人损失的，应当赔偿损失。

借款人未按照约定的日期、数额收取借款的，应当按照约定的日期、数额支付利息。

第二百零二条 【贷款人的检查、监督权】贷款人按照约定可以检查、监督借款的使用情况。借款人应当按照约定向贷款人定期提供有关财务会计报表等资料。

第二百零三条 【借款使用的限制】借款人未按照约定的借款用途使用借款的，贷款人可以停止发放借款、提前收回借款或者解除合同。

第二百零四条 【利率】办理贷款业务的金融机构贷款的利率，应当按照中国人民银行规定的贷款利率的上下限确定。

第二百零五条 【利息的支付】借款人应当按照约定的期限支付利息。对支付利息的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定，借款期间不满一年的，应当在返还借款时一并支付；借款期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在返还借款时一并支付。

第二百零六条 【借款的返还期限】借款人应当按照约定的期限返还借款。对借款期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，借款人可以随时返还；贷款人可以催告借款人在合理期限内返还。

第二百零七条 【逾期利息】借款人未按照约定的期限返还借款的，应当按照约定或者国家有关规定支付逾期利息。

第二百零八条 【提前偿还借款的利息计算】借款人提前偿还借款的，除当事人另有约定的以外，应当按照实际借款的期间计算利息。

第二百零九条 【借款展期】借款人可以在还款期限届满之前向贷款人申请展期。贷款人同意的，可以展期。

第二百一十条 【自然人间借款合同的生效时间】自然人之间的借款合同，自贷款人提供借款时生效。

第二百一十一条 【自然人间借款合同的利率】自然人之间的借款合同对支付利息没有约定或者约定不明确的，视为不支付利息。自然人之间的借款合同约定支付利息的，借款的利率不得违反国家有关限制借款利率的规定。

第十三章 租赁合同

第二百一十二条 【定义】租赁合同是出租人将租赁物交付承租人使用、收益，承租人支付租金的合同。

第二百一十三条 【合同的主要条款】租赁合同的内容包括租赁物的名称、数量、用途、租赁期限、租金及其支付期限和方式、租赁物维修等条款。

第二百一十四条 【租赁期限】租赁期限不得超过二十年。超过二十年的，超过部分无效。

租赁期间届满，当事人可以续订租赁合同，但约定的租赁期限自续订之日起不得超过二十年。

第二百一十五条 【租赁合同的形式】租赁期限六个月以上的，应当采用书面形式。当事人未采用书面形式的，视为不定期租赁。

第二百一十六条 【出租人基本义务】出租人应当按照约定将租赁物交付承租人，并在租赁期间保持租赁物符合约定的用途。

第二百一十七条 【承租人基本义务】承租人应当按照约定的方法使用租赁物。对租赁物的使用方法没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当按照租赁物的性质使用。

第二百一十八条 【正当使用租赁物的责任】承租人按照约定的方法或者租赁物的性质使用租赁物，致使租赁物受到损耗的，不承担损害赔偿责任。

第二百一十九条 【未正当使用租赁物的责任】承租人未按照约定的方法或者租赁物的性质使用租赁物，致使租赁物受到损失的，出租人可以解除合同并要求赔偿损失。

第二百二十条 【租赁物的维修】出租人应当履行租赁物的维修义务，但当事人另有约定的除外。

第二百二十一条 【出租人履行维修义务】承租人在租赁物需要维修时可以要求出租人在合理期限内维修。出租人未履行维修义务的，承租人可以自行维修，维修费用由出租人负担。因维修租赁物影响承租人使用的，应当相应减少租金或者延长租期。

第二百二十二条 【租赁物的保管】承租人应当妥善保管租赁物，因保管不善造成租赁物毁损、灭失的，应当承担损害赔偿责任。

第二百二十三条 【租赁物的改善】承租人经出租人同意，可以对租赁物进行改善或者增设他物。

承租人未经出租人同意，对租赁物进行改善或者增设他物的，出租人可以要求承租人恢复原状或者赔偿损失。

第二百二十四条 【转租】承租人经出租人同意，可以将租赁物转租给第三人。承租人转租的，承租人与出租人之间的租赁合同继续有效，第三人对租赁物造成损失的，承租人应当赔偿损失。

承租人未经出租人同意转租的，出租人可以解除合同。

第二百二十五条 【租赁物的收益】在租赁期间因占有、使用租赁物获得的收益，归承租人所有，但当事人另有约定的除外。

第二百二十六条 【支付租金的期限】承租人应当按照约定的期限支付租金。对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定，租赁期间不满一年的，应当在租赁期间届满时支付；租赁期间一年以上的，应当在每届满一年时支付，剩余期间不满一年的，应当在租赁期间届满时支付。

第二百二十七条 【租金的未支付、迟延支付和逾期不支付】承租人无正当理由未支付或者迟延支付租金的，出租人可以要求承租人在合理期限内支付。承租人逾期不支付的，出租人可以解除合同。

第二百二十八条 【租赁物的权利瑕疵】因第三人主张权利，致使承租人不能对租赁物使用、收益的，承租人可以要求减少租金或者不支付租金。

第三人主张权利的，承租人应当及时通知出租人。

第二百二十九条 【所有权变动后的合同效力】租赁物在租赁期间发生所有权变动的，不影响租赁合同的效力。

第二百三十条 【优先购买权】出租人出卖租赁房屋的，应当在出卖之前的合理期限内通知承租人，承租人享有以同等条件优先购买的权利。

第二百三十一条 【租赁物的灭失】因不可归责于承租人的事由，致使租赁物部分或者全部毁损、灭失的，承租人可以要求减少租金或者不支付租金；因租赁物部分或者全部毁损、灭失，致使不能实现合同目的的，承租人可以解除合同。

第二百三十二条 【租期不明的处理】当事人对租赁期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，视为不定期租赁。当事人可以随时解除合同，但出租人解除合同应当在合理期限之前通知承租人。

第二百三十三条 【租赁物的瑕疵担保】租赁物危及承租人的安全或者健康的，即使承租人订立合同时明知该租赁物质量不合格，承租人仍然可以随时解除合同。

第二百三十四条 【共同居住人的居住权】承租人在房屋租赁期间死亡的，与其生前共同居住的人可以按照原租赁合同租赁该房屋。

第二百三十五条 【租赁物的返还】租赁期间届满，承租人应当返还租赁物。返还的租赁物应当符合按照约定或者租赁物的性质使用后的状态。

第二百三十六条 【续租】租赁期间届满，承租人继续使用租赁物，出租人没有提出异议的，原租赁合同继续有效，但租赁期限为不定期。

第十四章 融资租赁合同

第二百三十七条 【定义】融资租赁合同是出租人根据承租人对出卖人、租赁物的选择，向出卖人购买租赁物，提供给承租人使用，承租人支付租金的合同。

第二百三十八条 【合同的主要条款及形式】融资租赁合同的内容包括租赁物名称、数量、规格、技术性能、检验方法、租赁期限、租金构成及其支付期限和方式、币种、租赁期间届满租赁物的归属等条款。

融资租赁合同应当采用书面形式。

第二百三十九条 【租赁物的购买】出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，出卖人应当按照约定向承租人交付标的物，承租人享有与受领标的物有关的买受人的权利。

第二百四十条 【索赔权】出租人、出卖人、承租人可以约定，出卖人不履行买卖合同义务的，由承租人行使索赔的权利。承租人行使索赔权利的，出租人应当协助。

第二百四十一条 【买卖合同的变更】出租人根据承租人对出卖人、租赁物的选择订立的买卖合同，未经承租人同意，出租人不得变更与承租人有关的合同内容。

第二百四十二条 【租赁物所有权】出租人享有租赁物的所有权。承租人破产的，租赁物不属于破产财产。

第二百四十三条 【租金的确定】融资租赁合同的租金，除当事人另有约定的以外，应当根据购买租赁物的大部分或者全部成本以及出租人的合理利润确定。

第二百四十四条 【租赁物的瑕疵担保责任】租赁物不符合约定或者不符合使用目的的，出租人不承担责任，但承租人依赖出租人的技能确定租赁物或者出租人干预选择租赁物的除外。

第二百四十五条 【租赁物的占有和使用】出租人应当保证承租人对租赁物的占有和使用。

第二百四十六条 【租赁物造成的损害责任】承租人占有租赁物期间，租赁物造成第三人的人身伤害或者财产损害的，出租人不承担责任。

第二百四十七条 【租赁物的保管、使用、维修】承租人应当妥善保管、使用租赁物。
承租人应当履行占有租赁物期间的维修义务。

第二百四十八条 【承租人拒付租金责任】承租人应当按照约定支付租金。承租人经催告后在合理期限内仍不支付租金的，出租人可以要求支付全部租金；也可以解除合同，收回租赁物。

第二百四十九条 【租赁物价值的部分返还权】当事人约定租赁期间届满租赁物归承租人所有，承租人已经支付大部分租金，但无力支付剩余租金，出租人因此解除合同收回租赁物的，收回的租赁物的价值超过承租人欠付的租金以及其他费用的，承租人可以要求部分返还。

第二百五十条 【租赁期满租赁物归属】出租人和承租人可以约定租赁期间届满租赁物的归属。对租赁物的归属没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，租赁物的所有权归出租人。

第十五章 承揽合同

第二百五十一条 【定义】承揽合同是承揽人按照定作人的要求完成工作，交付工作成果，定作人给付报酬的合同。

承揽包括加工、定作、修理、复制、测试、检验等工作。

第二百五十二条 【合同的主要条款】承揽合同的内容包括承揽的标的、数量、质量、报酬、承揽方式、材料的提供、履行期限、验收标准和方法等条款。

第二百五十三条 【承揽工作的完成】承揽人应当以自己的设备、技术和劳力，完成主要工作，但当事人另有约定的除外。

承揽人将其承揽的主要工作交由第三人完成的,应当就该第三人完成的工作成果向定作人负责;未经定作人同意的,定作人也可以解除合同。

第二百五十四条 【承揽人对辅助性工作的责任】承揽人可以将其承揽的辅助工作交由第三人完成。承揽人将其承揽的辅助工作交由第三人完成的,应当就该第三人完成的工作成果向定作人负责。

第二百五十五条 【承揽人提供材料的义务】承揽人提供材料的,承揽人应当按照约定选用材料,并接受定作人检验。

第二百五十六条 【定作人提供材料及双方义务】定作人提供材料的,定作人应当按照约定提供材料。承揽人对定作人提供的材料,应当及时检验,发现不符合约定时,应当及时通知定作人更换、补齐或者采取其他补救措施。

承揽人不得擅自更换定作人提供的材料,不得更换不需要修理的零部件。

第二百五十七条 【承揽人的通知义务】承揽人发现定作人提供的图纸或者技术要求不合理的,应当及时通知定作人。因定作人怠于答复等原因造成承揽人损失的,应当赔偿损失。

第二百五十八条 【中途变更工作要求的责任】定作人中途变更承揽工作的要求,造成承揽人损失的,应当赔偿损失。

第二百五十九条 【定作人的协助义务】承揽工作需要定作人协助的,定作人有协助的义务。

定作人不履行协助义务致使承揽工作不能完成的,承揽人可以催告定作人在合理期限内履行义务,并可以顺延履行期限;定作人逾期不履行的,承揽人可以解除合同。

第二百六十条 【承揽人接受监督检查的义务】承揽人在工作期间,应当接受定作人必要的监督检查。定作人不得因监督检查妨碍承揽人的正常工作。

第二百六十一条 【验收质量保证】承揽人完成工作的,应当向定作人交付工作成果,并提交必要的技术资料及有关质量证明。定作人应当验收该工作成果。

第二百六十二条 【质量不合约定的责任】承揽人交付的工作成果不符合质量要求的,定作人可以要求承揽人承担修理、重作、减少报酬、赔偿损失等违约责任。

第二百六十三条 【支付报酬期限】定作人应当按照约定的期限支付报酬。对支付报酬的期限没有约定或者约定不明确,依照本法第六十一条的规定仍不能确定的,定作人应当在承揽人交付工作成果时支付;工作成果部分交付的,定作人应当相应支付。

第二百六十四条 【承揽人的留置权】定作人未向承揽人支付报酬或者材料费等价款的,承揽人对完成的工作成果享有留置权,但当事人另有约定的除外。

第二百六十五条 【材料的保管】承揽人应当妥善保管定作人提供的材料以及完成的工作成果,因保管不善造成毁损、灭失的,应当承担赔偿责任。

第二百六十六条 【承揽人的保密义务】承揽人应当按照定作人的要求保守秘密,未经定作人许可,不得留存复制品或者技术资料。

第二百六十七条 【共同承揽】共同承揽人对定作人承担连带责任,但当事人另有约定的除外。

第二百六十八条 【定作人的解除权】定作人可以随时解除承揽合同，造成承揽人损失的，应当赔偿损失。

第十六章 建设工程合同

第二百六十九条 【定义】建设工程合同是承包人进行工程建设，发包人支付价款的合同。

建设工程合同包括工程勘察、设计、施工合同。

第二百七十条 【合同形式】建设工程合同应当采用书面形式。

第二百七十一条 【招标投标】建设工程的招标投标活动，应当依照有关法律的规定公开、公平、公正进行。

第二百七十二条 【总包与分包】发包人可以与总承包人订立建设工程合同，也可以分别与勘察人、设计人、施工人订立勘察、设计、施工承包合同。发包人不得将应当由一个承包人完成的建设工程肢解成若干部分发包给几个承包人。

总承包人或者勘察、设计、施工承包人经发包人同意，可以将自己承包的部分工作交由第三人完成。第三人就其完成的工作成果与总承包人或者勘察、设计、施工承包人向发包人承担连带责任。承包人不得将其承包的全部建设工程转包给第三人或者将其承包的全部建设工程肢解以后以分包的名义分别转包给第三人。

禁止承包人将工程分包给不具备相应资质条件的单位。禁止分包单位将其承包的工程再分包。建设工程主体结构的施工必须由承包人自行完成。

第二百七十三条 【重大建设工程合同的订立】国家重大建设工程合同，应当按照国家规定的程序和国家批准的投资计划、可行性研究报告等文件订立。

第二百七十四条 【勘察、设计合同主要内容】勘察、设计合同的内容包括提交有关基础资料 and 文件（包括概预算）的期限、质量要求、费用以及其他协作条件等条款。

第二百七十五条 【施工合同主要条款】施工合同的内容包括工程范围、建设工期、中间交工工程的开工和竣工时间、工程质量、工程造价、技术资料交付时间、材料和设备供应责任、拨款和结算、竣工验收、质量保修范围和质量保证期、双方相互协作等条款。

第二百七十六条 【建设工程监理】建设工程实行监理的，发包人应当与监理人采用书面形式订立委托监理合同。发包人与监理人的权利和义务以及法律责任，应当依照本法委托合同以及其他有关法律、行政法规的规定。

第二百七十七条 【发包人检查权】发包人在不妨碍承包人正常作业的情况下，可以随时对作业进度、质量进行检查。

第二百七十八条 【隐蔽工程的验收】隐蔽工程在隐蔽以前，承包人应当通知发包人检查。发包人没有及时检查的，承包人可以顺延工程日期，并有权要求赔偿停工、窝工等损失。

第二百七十九条 【竣工验收】建设工程竣工后，发包人应当根据施工图纸及说明书、国家颁发的施工验收规范和质量检验标准及时进行验收。验收合格的，发包人应当按照约定支付价款，并接收该建设工程。

建设工程竣工验收合格后，方可交付使用；未经验收或者验收不合格的，不得交付使用。

第二百八十条 【勘察、设计人质量责任】勘察、设计的质量不符合要求或者未按照期限提交勘察、设计文件拖延工期，造成发包人损失的，勘察人、设计人应当继续完善勘察、设计，减收或者免收勘察、设计费并赔偿损失。

第二百八十一条 【施工人的质量责任】因施工人的原因致使建设工程质量不符合约定的，发包人有权要求施工人在合理期限内无偿修理或者返工、改建。经过修理或者返工、改建后，造成逾期交付的，施工人应当承担违约责任。

第二百八十二条 【质量保证责任】因承包人的原因致使建设工程在合理使用期限内造成人身和财产损害的，承包人应当承担损害赔偿责任。

第二百八十三条 【发包人违约责任】发包人未按照约定的时间和要求提供原材料、设备、场地、资金、技术资料的，承包人可以顺延工程日期，并有权要求赔偿停工、窝工等损失。

第二百八十四条 【发包人原因致工程停建、缓建的责任】因发包人的原因致使工程中途停建、缓建的，发包人应当采取措施弥补或者减少损失，赔偿承包人因此造成的停工、窝工、倒运、机械设备调迁、材料和构件积压等损失和实际费用。

第二百八十五条 【发包人的原因致勘察、设计、返工、停工或修改设计】因发包人变更计划，提供的资料不准确，或者未按照期限提供必需的勘察、设计工作条件而造成勘察、设计的返工、停工或者修改设计，发包人应当按照勘察人、设计人实际消耗的工作量增付费用。

第二百八十六条 【工程价款的支付】发包人未按照约定支付价款的，承包人可以催告发包人在合理期限内支付价款。发包人逾期不支付的，除按照建设工程的性质不宜折价、拍卖的以外，承包人可以与发包人协议将该工程折价，也可以申请人民法院将该工程依法拍卖。建设工程的价款就该工程折价或者拍卖的价款优先受偿。

第二百八十七条 【适用承揽合同的规定】本章没有规定的，适用承揽合同的有关规定。

第十七章 运输合同

第一节 一般规定

第二百八十八条 【定义】运输合同是承运人将旅客或者货物从起运地点运输到约定地点，旅客、托运人或者收货人支付票款或者运输费用的合同。

第二百八十九条 【公共运输承运人】从事公共运输的承运人不得拒绝旅客、托运人通常、合理的运输要求。

第二百九十条 【按约定期间运输义务】承运人应当在约定期间或者合理期间内将旅客、货物安全运输到约定地点。

第二百九十一条 【按约定路线运输义务】承运人应当按照约定的或者通常的运输路线将旅客、货物运输到约定地点。

第二百九十二条 【旅客、托运人或收货人基本义务】旅客、托运人或者收货人应当支付票款或者运输费用。承运人未按照约定路线或者通常路线运输增加票款或者运输费用的，旅客、托运人或者收货人可以拒绝支付增加部分的票款或者运输费用。

第二节 客运合同

第二百九十三条 【合同的成立】客运合同自承运人向旅客交付客票时成立，但当事人另有约定或者另有交易习惯的除外。

第二百九十四条 【持有效客票乘运义务】旅客应当持有效客票乘运。旅客无票乘运、超程乘运、越级乘运或者持失效客票乘运的，应当补交票款，承运人可以按照规定加收票款。旅客不交付票款的，承运人可以拒绝运输。

第二百九十五条 【退票与变更】旅客因自己的原因不能按照客票记载的时间乘坐的，应当在约定的时间内办理退票或者变更手续。逾期办理的，承运人可以不退票款，并不再承担运输义务。

第二百九十六条 【按约定限量携带行李义务】旅客在运输中应当按照约定的限量携带行李。超过限量携带行李的，应当办理托运手续。

第二百九十七条 【违禁品或危险物品的携带禁止】旅客不得随身携带或者在行李中夹带易燃、易爆、有毒、有腐蚀性、有放射性以及有可能危及运输工具上人身和财产安全的危险物品或者其他违禁物品。

旅客违反前款规定的，承运人可以将违禁物品卸下、销毁或者送交有关部门。旅客坚持携带或者夹带违禁物品的，承运人应当拒绝运输。

第二百九十八条 【承运人告知重要事项义务】承运人应当向旅客及时告知有关不能正常运输的重要事由和安全运输应当注意的事项。

第二百九十九条 【承运人迟延运输】承运人应当按照客票载明的时间和班次运输旅客。承运人迟延运输的，应当根据旅客的要求安排改乘其他班次或者退票。

第三百条 【承运人变更运输工具】承运人擅自变更运输工具而降低服务标准的，应当根据旅客的要求退票或者减收票款；提高服务标准的，不应当加收票款。

第三百零一条 【对旅客的救助义务】承运人在运输过程中，应当尽力救助患有急病、分娩、遇险的旅客。

第三百零二条 【旅客伤亡的损害赔偿责任】承运人应当对运输过程中旅客的伤亡承担损害赔偿责任，但伤亡是旅客自身健康原因造成的或者承运人证明伤亡是旅客故意、重大过失造成的除外。

前款规定适用于按照规定免票、持优待票或者经承运人许可搭乘的无票旅客。

第三百零三条 【对行李的赔偿责任】在运输过程中旅客自带物品毁损、灭失，承运人有过错的，应当承担损害赔偿责任。

旅客托运的行李毁损、灭失的，适用货物运输的有关规定。

第三节 货运合同

第三百零四条 【托运人告知义务】托运人办理货物运输，应当向承运人准确表明收货人的名称或者姓名或者凭指示的收货人，货物的名称、性质、重量、数量，收货地点等有关货物运输的必要情况。

因托运人申报不实或者遗漏重要情况，造成承运人损失的，托运人应当承担损害赔偿责任。

第三百零五条 【托运人提交文件义务】货物运输需要办理审批、检验等手续的，托运人应当将办理完有关手续的文件提交承运人。

第三百零六条 【托运人的包装义务】托运人应当按照约定的方式包装货物。对包装方式没有约定或者约定不明确的，适用本法第一百五十六条的规定。

托运人违反前款规定的，承运人可以拒绝运输。

第三百零七条 【托运人运送危险货物的义务】托运人托运易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当按照国家有关危险物品运输的规定对危险物品妥善包装，作出危险物标志和标签，并将有关危险物品的名称、性质和防范措施的书面材料提交承运人。

托运人违反前款规定的，承运人可以拒绝运输，也可以采取相应措施以避免损失的发生，因此产生的费用由托运人承担。

第三百零八条 【托运人请求变更的权利】在承运人将货物交付收货人之前，托运人可以要求承运人中止运输、返还货物、变更到达地或者将货物交给其他收货人，但应当赔偿承运人因此受到的损失。

第三百零九条 【承运人的通知义务及收货人及时提货义务】货物运输到达后，承运人知道收货人的，应当及时通知收货人，收货人应当及时提货。收货人逾期提货的，应当向承运人支付保管费等费用。

第三百一十条 【收货人对货物的检验】收货人提货时应当按照约定的期限检验货物。对检验货物的期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在合理期限内检验货物。收货人在约定的期限或者合理期限内对货物的数量、毁损等未提出异议的，视为承运人已经按照运输单证的记载交付的初步证据。

第三百一十一条 【承运人的赔偿责任】承运人对运输过程中货物的毁损、灭失承担赔偿责任，但承运人证明货物的毁损、灭失是因不可抗力、货物本身的自然性质或者合理损耗以及托运人、收货人的过错造成的，不承担损害赔偿责任。

第三百一十二条 【确定货损额的方法】货物的毁损、灭失的赔偿额，当事人有约定的，按照其约定；没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，按照交付或者应当交付时货物到达地的市场价格计算。法律、行政法规对赔偿额的计算方法和赔偿限额另有规定的，依照其规定。

第三百一十三条 【相继运输的责任承担】两个以上承运人以同一运输方式联运的，与托运人订立合同的承运人应当对全程运输承担责任。损失发生在某一运输区段的，与托运人订立合同的承运人和该区段的承运人承担连带责任。

第三百一十四条 【货物的灭失与运费的处理】货物在运输过程中因不可抗力灭失，未收取运费的，承运人不得要求支付运费；已收取运费的，托运人可以要求返还。

第三百一十五条 【运送物的留置】托运人或者收货人不支付运费、保管费以及其他运输费用的，承运人对相应的运输货物享有留置权，但当事人另有约定的除外。

第三百一十六条 【货物的提存】收货人不明或者收货人无正当理由拒绝受领货物的，依照本法第一百零一条的规定，承运人可以提存货物。

第四节 多式联运合同

第三百一十七条 【多式联运经营人的权利义务】多式联运经营人负责履行或者组织履行多式联运合同，对全程运输享有承运人的权利，承担承运人的义务。

第三百一十八条 【多式联运的责任制度】多式联运经营人可以与参加多式联运的各区段承运人就多式联运合同的各区段运输约定相互之间的责任，但该约定不影响多式联运经营人对全程运输承担的义务。

第三百一十九条 【联运单据的转让】多式联运经营人收到托运人交付的货物时，应当签发多式联运单据。按照托运人的要求，多式联运单据可以是可转让单据，也可以是不可转让单据。

第三百二十条 【托运人的损害赔偿责任】因托运人托运货物时的过错造成多式联运经营人损失的，即使托运人已经转让多式联运单据，托运人仍然应当承担损害赔偿责任。

第三百二十一条 【赔偿责任适用法律的规定】货物的毁损、灭失发生于多式联运的某一运输区段的，多式联运经营人的赔偿责任和责任限额，适用调整该区段运输方式的有关法律规定。货物毁损、灭失发生的运输区段不能确定的，依照本章规定承担损害赔偿责任。

第十八章 技术合同

第一节 一般规定

第三百二十二条 【定义】技术合同是当事人就技术开发、转让、咨询或者服务订立的确立相互之间权利和义务的合同。

第三百二十三条 【订立技术合同的原则】订立技术合同，应当有利于科学技术的进步，加速科学技术成果的转化、应用和推广。

第三百二十四条 【技术合同的主要条款】技术合同的内容由当事人约定，一般包括以下条款：

- （一）项目名称；
- （二）标的的内容、范围和要求；
- （三）履行的计划、进度、期限、地点、地域和方式；
- （四）技术情报和资料的保密；

- （五）风险责任的承担；
- （六）技术成果的归属和收益的分成办法；
- （七）验收标准和方法；
- （八）价款、报酬或者使用费及其支付方式；
- （九）违约金或者损失赔偿的计算方法；
- （十）解决争议的方法；
- （十一）名词和术语的解释。

与履行合同有关的技术背景资料、可行性论证和技术评价报告、项目任务书和计划书、技术标准、技术规范、原始设计和工艺文件，以及其他技术文档，按照当事人的约定可以作为合同的组成部分。

技术合同涉及专利的，应当注明发明创造的名称、专利申请人和专利权人、申请日期、申请号、专利号以及专利权的有效期限。

第三百二十五条 【技术合同价款、报酬或使用费】技术合同价款、报酬或者使用费的支付方式由当事人约定，可以采取一次总算、一次总付或者一次总算、分期支付，也可以采取提成支付或者提成支付附加预付入门费的方式。

约定提成支付的，可以按照产品价格、实施专利和使用技术秘密后新增的产值、利润或者产品销售额的一定比例提成，也可以按照约定的其他方式计算。提成支付的比例可以采取固定比例、逐年递增比例或者逐年递减比例。

约定提成支付的，当事人应当在合同中约定查阅有关会计帐目的办法。

第三百二十六条 【职务技术成果的经济权属】职务技术成果的使用权、转让权属于法人或者其他组织的，法人或者其他组织可以就该项职务技术成果订立技术合同。法人或者其他组织应当从使用和转让该项职务技术成果所取得的收益中提取一定比例，对完成该项职务技术成果的个人给予奖励或者报酬。法人或者其他组织订立技术合同转让职务技术成果时，职务技术成果的完成人享有以同等条件优先受让的权利。

职务技术成果是执行法人或者其他组织的工作任务，或者主要是利用法人或者其他组织的物质技术条件所完成的技术成果。

第三百二十七条 【非职务技术成果的经济权属】非职务技术成果的使用权、转让权属于完成技术成果的个人，完成技术成果的个人可以就该项非职务技术成果订立技术合同。

第三百二十八条 【技术成果的精神权属】完成技术成果的个人有在有关技术成果文件上写明自己是技术成果完成者的权利和取得荣誉证书、奖励的权利。

第三百二十九条 【技术合同的无效】非法垄断技术、妨碍技术进步或者侵害他人技术成果的技术合同无效。

第二节 技术开发合同

第三百三十条 【定义及合同形式】技术开发合同是指当事人之间就新技术、新产品、新工艺或者新材料及其系统的研究开发所订立的合同。

技术开发合同包括委托开发合同和合作开发合同。

技术开发合同应当采用书面形式。

当事人之间就具有产业应用价值的科技成果实施转化订立的合同，参照技术开发合同的规定。

第三百三十一条 【委托人义务】委托开发合同的委托人应当按照约定支付研究开发经费和报酬；提供技术资料、原始数据；完成协作事项；接受研究开发成果。

第三百三十二条 【受托人义务】委托开发合同的研究开发人应当按照约定制定和实施研究开发计划；合理使用研究开发经费；按期完成研究开发工作，交付研究开发成果，提供有关的技术资料和必要的技术指导，帮助委托人掌握研究开发成果。

第三百三十三条 【委托人的违约责任】委托人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十四条 【受托人的违约责任】研究开发人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十五条 【合作开发各方的主要义务】合作开发合同的当事人应当按照约定进行投资，包括以技术进行投资；分工参与研究开发工作；协作配合研究开发工作。

第三百三十六条 【合作开发各方的违约责任】合作开发合同的当事人违反约定造成研究开发工作停滞、延误或者失败的，应当承担违约责任。

第三百三十七条 【合同的解除】因作为技术开发合同标的的技术已经由他人公开，致使技术开发合同的履行没有意义的，当事人可以解除合同。

第三百三十八条 【风险负担及通知义务】在技术开发合同履行过程中，因出现无法克服的技术困难，致使研究开发失败或者部分失败的，该风险责任由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，风险责任由当事人合理分担。

当事人一方发现前款规定的可能致使研究开发失败或者部分失败的情形时，应当及时通知另一方并采取适当措施减少损失。没有及时通知并采取适当措施，致使损失扩大的，应当就扩大的损失承担责任。

第三百三十九条 【技术成果的归属】委托开发完成的发明创造，除当事人另有约定的以外，申请专利的权利属于研究开发人。研究开发人取得专利权的，委托人可以免费实施该专利。

研究开发人转让专利申请权的，委托人享有以同等条件优先受让的权利。

第三百四十条 【合作开发技术成果的归属】合作开发完成的发明创造，除当事人另有约定的以外，申请专利的权利属于合作开发的当事人共有。当事人一方转让其共有的专利申请权的，其他各方享有以同等条件优先受让的权利。

合作开发的当事人一方声明放弃其共有的专利申请权的，可以由另一方单独申请或者由其他各方共同申请。申请人取得专利权的，放弃专利申请权的一方可以免费实施该专利。

合作开发的当事人一方不同意申请专利的，另一方或者其他各方不得申请专利。

第三百四十一条 【技术秘密成果的归属与分享】委托开发或者合作开发完成的技术秘密成果的使用权、转让权以及利益的分配办法，由当事人约定。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，当事人均有使用和转让的权利，但委托开发的研究开发人不得在向委托人交付研究开发成果之前，将研究开发成果转让给第三人。

第三节 技术转让合同

第三百四十二条 【内容及形式】技术转让合同包括专利权转让、专利申请权转让、技术秘密转让、专利实施许可合同。

技术转让合同应当采用书面形式。

第三百四十三条 【技术转让范围的约定】技术转让合同可以约定让与人和受让人实施专利或者使用技术秘密的范围，但不得限制技术竞争和技术发展。

第三百四十四条 【专利实施许可合同的限制】专利实施许可合同只在该专利权的存续期间内有效。专利权有效期限届满或者专利权被宣布无效的，专利权人不得就该专利与他人订立专利实施许可合同。

第三百四十五条 【专利实施许可合同让与人主要义务】专利实施许可合同的让与人应当按照约定许可受让人实施专利，交付实施专利有关的技术资料，提供必要的技术指导。

第三百四十六条 【专利实施许可合同受让人主要义务】专利实施许可合同的受让人应当按照约定实施专利，不得许可约定以外的第三人实施该专利；并按照约定支付使用费。

第三百四十七条 【技术秘密转让合同让与人的义务】技术秘密转让合同的让与人应当按照约定提供技术资料，进行技术指导，保证技术的实用性、可靠性，承担保密义务。

第三百四十八条 【技术秘密转让合同的受让人义务】技术秘密转让合同的受让人应当按照约定使用技术，支付使用费，承担保密义务。

第三百四十九条 【技术转让合同让与人基本义务】技术转让合同的让与人应当保证自己是所提供的技术的合法拥有者，并保证所提供的技术完整、无误、有效，能够达到约定的目标。

第三百五十条 【技术转让合同受让人技术保密义务】技术转让合同的受让人应当按照约定的范围和期限，对让与人提供的技术中尚未公开的秘密部分，承担保密义务。

第三百五十一条 【让与人违约责任】让与人未按照约定转让技术的，应当返还部分或者全部使用费，并应当承担违约责任；实施专利或者使用技术秘密超越约定的范围的，违反约定擅自许可第三人实施该项专利或者使用该项技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

第三百五十二条 【受让人违约责任】受让人未按照约定支付使用费的，应当补交使用费并按照约定支付违约金；不补交使用费或者支付违约金的，应当停止实施专利或者使用技术秘密，交还技术资料，承担违约责任；实施专利或者使用技术秘密超越约定的范围的，未经让与人同意擅自许可第三人实施该专利或者使用该技术秘密的，应当停止违约行为，承担违约责任；违反约定的保密义务的，应当承担违约责任。

第三百五十三条 【技术合同让与人侵权责任】受让人按照约定实施专利、使用技术秘密侵害他人合法权益的，由让与人承担责任，但当事人另有约定的除外。

第三百五十四条 【后续技术成果的归属与分享】当事人可以按照互利的原则，在技术转让合同中约定实施专利、使用技术秘密后续改进的技术成果的分享办法。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，一方后续改进的技术成果，其他各方无权分享。

第三百五十五条 【技术进出口合同的法律适用】法律、行政法规对技术进出口合同或者专利、专利申请合同另有规定的，依照其规定。

第四节 技术咨询合同和技术服务合同

第三百五十六条 【内容】技术咨询合同包括就特定技术项目提供可行性论证、技术预测、专题技术调查、分析评价报告等合同。

技术服务合同是指当事人一方以技术知识为另一方解决特定技术问题所订立的合同，不包括建设工程合同和承揽合同。

第三百五十七条 【技术咨询合同委托人主要义务】技术咨询合同的委托人应当按照约定阐明咨询的问题，提供技术背景材料及有关技术资料、数据；接受受托人的工作成果，支付报酬。

第三百五十八条 【技术咨询合同受托人主要义务】技术咨询合同的受托人应当按照约定的期限完成咨询报告或者解答问题；提出的咨询报告应当达到约定的要求。

第三百五十九条 【委托人与受托人的违约责任】技术咨询合同的委托人未按照约定提供必要的资料和数据，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术咨询合同的受托人未按期提出咨询报告或者提出的咨询报告不符合约定的，应当承担减收或者免收报酬等违约责任。

技术咨询合同的委托人按照受托人符合约定要求的咨询报告和意见作出决策所造成的损失，由委托人承担，但当事人另有约定的除外。

第三百六十条 【技术服务合同委托人义务】技术服务合同的委托人应当按照约定提供工作条件，完成配合事项；接受工作成果并支付报酬。

第三百六十一条 【技术服务合同受托人义务】技术服务合同的受托人应当按照约定完成服务项目，解决技术问题，保证工作质量，并传授解决技术问题的知识。

第三百六十二条 【技术服务合同双方当事人的违约责任】技术服务合同的委托人未履行合同义务或者履行合同义务不符合约定，影响工作进度和质量，不接受或者逾期接受工作成果的，支付的报酬不得追回，未支付的报酬应当支付。

技术服务合同的受托人未按照合同约定完成服务工作的，应当承担免收报酬等违约责任。

第三百六十三条 【新创技术成果的归属和分享】在技术咨询合同、技术服务合同履行过程中，受托人利用委托人提供的技术资料和工作条件完成的新的技术成果，属于受托人。委托人利用受托人的工作成果完成的新的技术成果，属于委托人。当事人另有约定的，按照其约定。

第三百六十四条 【技术培训合同、技术中介合同的法律适用】法律、行政法规对技术中介合同、技术培训合同另有规定的，依照其规定。

第十九章 保管合同

第三百六十五条 【定义】保管合同是保管人保管寄存人交付的保管物，并返还该物的合同。

第三百六十六条 【保管费的支付】寄存人应当按照约定向保管人支付保管费。

当事人对保管费没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，保管是无偿的。

第三百六十七条 【保管合同的成立】保管合同自保管物交付时成立，但当事人另有约定的除外。

第三百六十八条 【保管凭证】寄存人向保管人交付保管物的，保管人应当给付保管凭证，但另有交易习惯的除外。

第三百六十九条 【保管行为的要求】保管人应当妥善保管保管物。

当事人可以约定保管场所或者方法。除紧急情况或者为了维护寄存人利益的以外，不得擅自改变保管场所或者方法。

第三百七十条 【保管物有瑕疵或需特殊保管时寄存人的义务】寄存人交付的保管物有瑕疵或者按照保管物的性质需要采取特殊保管措施的，寄存人应当将有关情况告知保管人。寄存人未告知，致使保管物受损失的，保管人不承担损害赔偿责任；保管人因此受损失的，除保管人知道或者应当知道并且未采取补救措施的以外，寄存人应当承担损害赔偿责任。

第三百七十一条 【第三人代为保管】保管人不得将保管物转交第三人保管，但当事人另有约定的除外。

保管人违反前款规定，将保管物转交第三人保管，对保管物造成损失的，应当承担损害赔偿责任。

第三百七十二条 【保管人不得使用保管物的义务】保管人不得使用或者许可第三人使用保管物，但当事人另有约定的除外。

第三百七十三条 【第三人主张权利的返还】第三人对保管物主张权利的，除依法对保管物采取保全或者执行的以外，保管人应当履行向寄存人返还保管物的义务。

第三人对保管人提起诉讼或者对保管物申请扣押的，保管人应当及时通知寄存人。

第三百七十四条 【保管物的毁损灭失与保管人责任】保管期间，因保管人保管不善造成保管物毁损、灭失的，保管人应当承担损害赔偿责任，但保管是无偿的，保管人证明自己没有重大过失的，不承担损害赔偿责任。

第三百七十五条 【寄存人的告示义务】寄存人寄存货币、有价证券或者其他贵重物品的，应当向保管人声明，由保管人验收或者封存。寄存人未声明的，该物品毁损、灭失后，保管人可以按照一般物品予以赔偿。

第三百七十六条 【保管物领取】寄存人可以随时领取保管物。

当事人对保管期间没有约定或者约定不明确的，保管人可以随时要求寄存人领取保管物；约定保管期间的，保管人无特别事由，不得要求寄存人提前领取保管物。

第三百七十七条 【保管物的返还】保管期间届满或者寄存人提前领取保管物的，保管人应当将原物及其孳息归还寄存人。

第三百七十八条 【货币等的返还】保管人保管货币的，可以返还相同种类、数量的货币。保管其他可替代物的，可以按照约定返还相同种类、品质、数量的物品。

第三百七十九条 【保管费支付期限】有偿的保管合同，寄存人应当按照约定的期限向保管人支付保管费。

当事人对支付期限没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，应当在领取保管物的同时支付。

第三百八十条 【保管人的留置权】寄存人未按照约定支付保管费以及其他费用的，保管人对保管物享有留置权，但当事人另有约定的除外。

第二十章 仓储合同

第三百八十一条 【定义】仓储合同是保管人储存存货人交付的仓储物，存货人支付仓储费的合同。

第三百八十二条 【仓储合同生效时间】仓储合同自成立时生效。

第三百八十三条 【危险物品的储存】储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品或者易变质物品，存货人应当说明该物品的性质，提供有关资料。

存货人违反前款规定的，保管人可以拒收仓储物，也可以采取相应措施以避免损失的发生，因此产生的费用由存货人承担。

保管人储存易燃、易爆、有毒、有腐蚀性、有放射性等危险物品的，应当具备相应的保管条件。

第三百八十四条 【仓储物的验收】保管人应当按照约定对入库仓储物进行验收。保管人验收时发现入库仓储物与约定不符合的，应当及时通知存货人。保管人验收后，发生仓储物的品种、数量、质量不符合约定的，保管人应当承担损害赔偿责任。

第三百八十五条 【仓单】存货人交付仓储物的，保管人应当给付仓单。

第三百八十六条 【仓单应载事项】保管人应当在仓单上签字或者盖章。仓单包括下列事项：

- （一）存货人的名称或者姓名和住所；
- （二）仓储物的品种、数量、质量、包装、件数和标记；
- （三）仓储物的损耗标准；
- （四）储存场所；
- （五）储存期间；
- （六）仓储费；
- （七）仓储物已经办理保险的，其保险金额、期间以及保险人的名称；
- （八）填发人、填发地和填发日期。

第三百八十七条 【仓单的背书及其效力】仓单是提取仓储物的凭证。存货人或者仓单持有人在仓单上背书并经保管人签字或者盖章的，可以转让提取仓储物的权利。

第三百八十八条 【检查权】保管人根据存货人或者仓单持有人的要求，应当同意其检查仓储物或者提取样品。

第三百八十九条 【保管人的通知义务】保管人对入库仓储物发现有变质或者其他损坏的，应当及时通知存货人或者仓单持有人。

第三百九十条 【保管人的催告义务】保管人对入库仓储物发现有变质或者其他损坏，危及其他仓储物的安全和正常保管的，应当催告存货人或者仓单持有人作出必要的处置。因情况紧急，保管人可以作出必要的处置，但事后应当将该情况及时通知存货人或者仓单持有人。

第三百九十一条 【仓储物提取时间】当事人对储存期间没有约定或者约定不明确的，存货人或者仓单持有人可以随时提取仓储物，保管人也可以随时要求存货人或者仓单持有人提取仓储物，但应当给予必要的准备时间。

第三百九十二条 【仓单持有人提取仓储物】储存期间届满，存货人或者仓单持有人应当凭仓单提取仓储物。存货人或者仓单持有人逾期提取的，应当加收仓储费；提前提取的，不减收仓储费。

第三百九十三条 【保管人的提存权】储存期间届满，存货人或者仓单持有人不提取仓储物的，保管人可以催告其在合理期限内提取，逾期不提取的，保管人可以提存仓储物。

第三百九十四条 【保管人违约责任】储存期间，因保管人保管不善造成仓储物毁损、灭失的，保管人应当承担损害赔偿责任。

因仓储物的性质、包装不符合约定或者超过有效储存期造成仓储物变质、损坏的，保管人不承担损害赔偿责任。

第三百九十五条 【仓储合同的法律适用】本章没有规定的，适用保管合同的有关规定。

第二十一章 委托合同

第三百九十六条 【定义】委托合同是委托人和受托人约定，由受托人处理委托人事务的合同。

第三百九十七条 【委托范围】委托人可以特别委托受托人处理一项或者数项事务，也可以概括委托受托人处理一切事务。

第三百九十八条 【委托费用】委托人应当预付处理委托事务的费用。受托人为处理委托事务垫付的必要费用，委托人应当偿还该费用及其利息。

第三百九十九条 【受托人服从指示的义务】受托人应当按照委托人的指示处理委托事务。需要变更委托人指示的，应当经委托人同意；因情况紧急，难以和委托人取得联系的，受托人应当妥善处理委托事务，但事后应当将该情况及时报告委托人。

第四百条 【亲自处理及转委托】受托人应当亲自处理委托事务。经委托人同意，受托人可以转委托。转委托经同意的，委托人可以就委托事务直接指示转委托的第三人，受托人仅就第三人的选任及其对第三人的指示承担责任。转委托未经同意的，受托人应当对转委托的第三人的行为承担责任，但在紧急情况下受托人为维护委托人的利益需要转委托的除外。

第四百零一条 【受托人的报告义务】受托人应当按照委托人的要求，报告委托事务的处理情况。委托合同终止时，受托人应当报告委托事务的结果。

第四百零二条 【委托人的介入权】受托人以自己的名义，在委托人的授权范围内与第三人订立的合同，第三人在订立合同时知道受托人与委托人之间的代理关系的，该合同直接约束委托人和第三人，但有确切证据证明该合同只约束受托人和第三人的除外。

第四百零三条 【委托人对第三人的权利及第三人选择相对人的权利】受托人以自己的名义与第三人订立合同时，第三人不知道受托人与委托人之间的代理关系的，受托人因第三人的原因对委托人不履行义务，受托人应当向委托人披露第三人，委托人因此可以行使受托人对第三人的权利，但第三人与受托人订立合同时如果知道该委托人就不会订立合同的除外。

受托人因委托人的原因对第三人不履行义务，受托人应当向第三人披露委托人，第三人因此可以选择受托人或者委托人作为相对人主张其权利，但第三人不得变更选定的相对人。

委托人行使受托人对第三人的权利的，第三人可以向委托人主张其对受托人的抗辩。第三人选定委托人作为其相对人的，委托人可以向第三人主张其对受托人的抗辩以及受托人对第三人的抗辩。

第四百零四条 【受托人交付财产义务】受托人处理委托事务取得的财产，应当转交给委托人。

第四百零五条 【委托人支付报酬的义务】受托人完成委托事务的，委托人应当向其支付报酬。因不可归责于受托人的事由，委托合同解除或者委托事务不能完成的，委托人应当向受托人支付相应的报酬。当事人另有约定的，按照其约定。

第四百零六条 【受托人的损害赔偿责任】有偿的委托合同，因受托人的过错给委托人造成损失的，委托人可以要求赔偿损失。无偿的委托合同，因受托人的故意或者重大过失给委托人造成损失的，委托人可以要求赔偿损失。

受托人超越权限给委托人造成损失的，应当赔偿损失。

第四百零七条 【委托人的赔偿责任】受托人处理委托事务时，因不可归责于自己的事由受到损失的，可以向委托人要求赔偿损失。

第四百零八条 【另行委托】委托人经受托人同意，可以在受托人之外委托第三人处理委托事务。因此给受托人造成损失的，受托人可以向委托人要求赔偿损失。

第四百零九条 【受托人的连带责任】两个以上的受托人共同处理委托事务的，对委托人承担连带责任。

第四百一十条 【任意解除权】委托人或者受托人可以随时解除委托合同。因解除合同给对方造成损失的，除不可归责于该当事人的事由以外，应当赔偿损失。

第四百一十一条 【委托合同的终止】委托人或者受托人死亡、丧失民事行为能力或者破产的，委托合同终止，但当事人另有约定或者根据委托事务的性质不宜终止的除外。

第四百一十二条 【委托人的后合同义务】因委托人死亡、丧失民事行为能力或者破产，致使委托合同终止将损害委托人利益的，在委托人的继承人、法定代理人或者清算组织承受委托事务之前，受托人应当继续处理委托事务。

第四百一十三条 【受托人死亡后其继承人等的义务】因受托人死亡、丧失民事行为能力或者破产，致使委托合同终止的，受托人的继承人、法定代理人或者清算组织应当及时通知委托人。因委托合同终止将损害委托人利益的，在委托人作出善后处理之前，受托人的继承人、法定代理人或者清算组织应当采取必要措施。

第二十二章 行纪合同

第四百一十四条 【定义】行纪合同是行纪人以自己的名义为委托人从事贸易活动，委托人支付报酬的合同。

第四百一十五条 【处理委托事务的费用承担】行纪人处理委托事务支出的费用，由行纪人负担，但当事人另有约定的除外。

第四百一十六条 【行纪人对委托物的保管义务】行纪人占有委托物的，应当妥善保管委托物。

第四百一十七条 【委托物的处理】委托物交付给行纪人时有瑕疵或者容易腐烂、变质的，经委托人同意，行纪人可以处分该物；和委托人不能及时取得联系的，行纪人可以合理处分。

第四百一十八条 【未按指示进行行纪活动的后果】行纪人低于委托人指定的价格卖出或者高于委托人指定的价格买入的，应当经委托人同意。未经委托人同意，行纪人补偿其差额的，该买卖对委托人发生效力。

行纪人高于委托人指定的价格卖出或者低于委托人指定的价格买入的，可以按照约定增加报酬。没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，该利益属于委托人。

委托人对价格有特别指示的，行纪人不得违背该指示卖出或者买入。

第四百一十九条 【行纪人的介入权】行纪人卖出或者买入具有市场定价的商品，除委托人有相反的意思表示的以外，行纪人自己可以作为买受人或者出卖人。

行纪人有前款规定情形的，仍然可以要求委托人支付报酬。

第四百二十条 【委托物的处置】行纪人按照约定买入委托物，委托人应当及时受领。经行纪人催告，委托人无正当理由拒绝受领的，行纪人依照本法第一百零一条的规定可以提存委托物。

委托物不能卖出或者委托人撤回出卖，经行纪人催告，委托人不取回或者不处分该物的，行纪人依照本法第一百零一条的规定可以提存委托物。

第四百二十一条 【行纪人与第三人的关系】行纪人与第三人订立合同的，行纪人对该合同直接享有权利、承担义务。

第三人不履行义务致使委托人受到损害的，行纪人应当承担损害赔偿责任，但行纪人与委托人另有约定的除外。

第四百二十二条 【行纪人的报酬请求权及留置权】行纪人完成或者部分完成委托事务的，委托人应当向其支付相应的报酬。委托人逾期不支付报酬的，行纪人对委托物享有留置权，但当事人另有约定的除外。

第四百二十三条 【对委托合同的适用】本章没有规定的，适用委托合同的有关规定。

第二十三章 居间合同

第四百二十四条 【定义】居间合同是居间人向委托人报告订立合同的机会或者提供订立合同的媒介服务，委托人支付报酬的合同。

第四百二十五条 【居间人如实报告义务】居间人应当就有关订立合同的事项向委托人如实报告。

居间人故意隐瞒与订立合同有关的重要事实或者提供虚假情况，损害委托人利益的，不得要求支付报酬并应当承担损害赔偿责任。

第四百二十六条 【居间人的报酬请求权】居间人促成合同成立后，委托人应当按照约定支付报酬。对居间人的报酬没有约定或者约定不明确，依照本法第六十一条的规定仍不能确定的，根据居间人的劳务合理确定。因居间人提供订立合同的媒介服务而促成合同成立的，由该合同的当事人平均负担居间人的报酬。

居间人促成合同成立的，居间活动的费用，由居间人负担。

第四百二十七条 【未促成合同成立的处理】居间人未促成合同成立的，不得要求支付报酬，但可以要求委托人支付从事居间活动支出的必要费用。

附则

第四百二十八条 【生效日期及废止条款】本法自1999年10月1日起施行,《中华人民共和国合同法》、《中华人民共和国合同法》、《中华人民共和国合同法》同时废止。

Order of the State Development Planning Commission of the People's Republic of China

(No.11)

The Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council has been approved by the State Council and is hereby promulgated, and shall go into effect on Aug.1, 2001.

Commissioner-in-Chief of the SDPC: Zeng Peiyan

July 4, 2001

The Catalog of Price Regulated by the State Development Planning Commission and Other Department under the State Council

Number	Category of Goods or Services	Goods or Services of Regulated Price
1	Important central reserve goods and materials;	Purchasing price and marketing price of reserve food, edible vegetable oil (material), and cotton; bid base price of reserve sugar; ex-factory price and ex-warehouse price of reserve rock oil; warehousing price and ex-warehouse price of reserve fertilizer; purchasing price and marketing price of reserve silk
2	Tobacco leaves, salt and civil explosion equipments under state monopoly	Purchasing price of tobacco leaves; ex-factory price and wholesale price of salt; base ex-factory price and its floating range of civil explosion equipments
3	Some fertilizer	Base ex-factory price and its floating range, and port settling price

4	Some important pharmaceutical		Ex-factory price (port price) of anesthetics, first-class psychotropic, prevention and immunity pharmaceutical, prophylactic and contraceptive, retail price of other pharmaceutical
5	Teaching material		Unit price of the printed pages and its floating range
6	Natural gas		Ex-factory price
7	Water supplies of central or trans-provincial water conservancy		Ex-reservoir (beginning of the ditch) price
8	Electric power		Price of electrical power of the transmission-line system that hasn't adopted competitive price
			Distribution price of electrical power
9	Military materials		Ex-factory price
10	Important communication and transportation		Charges of pipeline transport and sundries; port charges; transport price of civil aviation and discount range (including airport charges); price of railway passenger transport and freight transport; and charging standards for sundries
11	Basic postal services		Rates
12	Basic telecommunication services		Rates
13	Important special services	Financial settlement and transaction services	Base price and its floating range
		Engineering prospect and design services	Base price and its floating range
		Some intermediary services	Charging standards

Price Regulation Departments	Remarks
The State Development Planning Commission jointly with relevant departments	The scope of price regulation shall include the price of central reserve food, central reserve edible vegetable oil (material), central reserve cotton, sugar, silk, central reserve rock oil, finished oil, central reserve fertilizer, etc reserved by enterprises that undertake central reserve tasks
The State Development Planning Commission jointly with relevant departments	The quasi purchasing price of tobacco leaf shall be fixed by the State Development Planning Commission jointly with the State Tobacco Monopoly Bureau; other levels of price of specific kind of tobacco shall be fixed by the State Tobacco Monopoly Bureau jointly with the State Development Planning Commission, the scope of salt price regulation shall include fixed salt production enterprises and salt wholesale enterprises; the scope of price regulation of civil explosion equipments shall include all production enterprises of the civil explosion industry
The State Development Planning Commission	The scope of price regulation shall include the ex-factory base price and its floating range of the urea, ammonium nitrate produced by large scale nitrogenous fertilizer enterprises of which the production capacity of synthetic ammonia is more than 300,000 tons per year; the port settling price of fertilizer imported by enterprises that have operation qualification according to central import quota
The State Development Planning Commission	The scope of price regulation shall include the pharmaceutical listed in the state basic medical insurance pharmaceutical catalog and other little special pharmaceutical of which the production and operation are monopolized, State Development Planning Commission Price (2000) No. 2141 State Development Planning Commission Catalog of Fixed Price Pharmaceutical
The State Development Planning Commission	The scope of price regulation shall include the price of teaching material of secondary and primary schools, and of junior colleges and technical secondary schools, the quasi price and its floating range of printed pages set by the State Development Planning Commission; the unit price of printed pages of and the retail price of textbooks of secondary and primary schools set by the departments in charge of price at the provincial levels

The State Development Planning Commission	The scope of price regulation shall include the price of the natural gas of overland pools
The State Development Planning Commission	The scope of price regulation shall include the reservoirs, ditches and riverways directly under the central authority and those across the provinces
The State Development Planning Commission	The scope of price regulation shall include the electrical power quantity of independent electricity generating enterprises that haven't adopted the competitive price and that are dispatched uniformly by the transmission-line system of electric power at the provincial level and above, the price of electrical power of the transmission-line system shall be formed through market competition and the government shall no longer examine and approve it after the reform of electrical power system
The State Development Planning Commission	The scope of price regulation shall include the electrical power sold from the transmission-line system at the provincial level and above, the government shall mainly supervise the price of high-tension transmit electricity and the price of low-tension distributed electricity The State Development Planning Commission
The State Development Planning Commission	The scope of price regulation shall include the equipments and matching products used by the armed forces, army provisions (price of military supplies and allowance settlement price), the price catalog of finished oil used by the armies shall be promulgated separately
The State Development Planning Commission jointly with relevant departments	The scope of price regulation shall include state railways, railways of joint venture (joint cooperation) in which the state occupies the holding position; the charges of major ports along the coast and the Yangtse River and all ports opened to the outside world, airports for civil use, and airports for army-civilian use; transport price of domestic air lines and the part of international air lines within China; sundries of domestic pipe transport and the loading charges, oil storage charges, transfer handling charges related to pipe transport
The State Development Planning Commission	The rates of basic postal services include the price of the service of letters, postcards, printed matters, packages, issuance of newspapers and periodicals, postal exchange, express delivery and confidential letters

The Ministry of Information Industry	The rates of basic telecommunication services include the price of the services of fixed net long distance phone calls and local phone calls, mobile phone calls, etc, the Ministry of Information Service shall ask for the opinions of the State Development Planning Commission in advance when formulating the policies on the rates of communication and information service, the reform schemes and the charging standards for communication services
The State Development Planning Commission	The scope of price regulation shall include the settlement handling charges of various commercial banks and non-bank financial agencies, the transaction handling charges and seat charges of national security transaction agencies, the seat charges of China Foreign Exchange Transaction Center, etc, and shall not include the interest rates and exchange rates
The State Development Planning Commission jointly with relevant departments	The scope of price regulation shall include the prospect, design, and relevant technical services of the investment and construction programs undertaken by the engineering prospect and design units
The State Development Planning Commission	The intermediary services shall adopt government regulation price, government reference price and market adjusting price separately according to the different circumstances, the compulsory services such as testing, authentication, notarization, monopoly arbitration shall adopt government regulated price; the services of inadequate competition such as evaluation, agent, certification, bidding, etc shall adopt government reference price, and the Measures for Administration of Intermediary Service Charges [State Development Planning Commission Price No.2255 (1999)] shall be carried out in specific implementation

Explanations:

1. The base price and its floating range, the charging standards and its floating range listed in the column “Goods or Services of Regulated Price” of this Catalog refer to the government reference price, and the others refer to the government regulated price.

Charges of state administrative departments, the price of base oil, finished oil and the urban land base price shall be regulated according to relevant provisions.

2. The prices of goods or services that are provided by laws and regulations and that are regulated by the State Development Planning Commission based on the authorization of the State Council according to changes in the market shall come

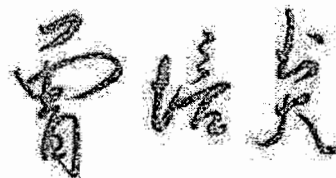
into this Catalog automatically. For the goods and services that are licensed for the purchasing party or the selling party, the State Development Planning Commission shall regulate the price when pricing dispute arise. The goods (or services) that are set for the purpose of safety or environment protection according to the provisions of relevant laws and regulations of the State shall be regulated by the State Development Planning Commission.

3. According to the provisions of Article 19 of Price Law, the departments in charge of price of the people's governments of all provinces, autonomous regions, municipalities directly under the Central Government shall formulate the local price regulation catalogs within the scope provided in Article 18 of Price Law. The local regulated price catalogs shall include two parts: 1) The categories listed in this Catalog shall be listed in the local regulated price catalogs at the same time, and the price regulation departments of the State Council shall be indicated. Among the goods listed in the central price regulation catalog, the price department of the State Council shall only formulate the price of the representative goods, and the price of those non-representative goods shall be formulated by localities according to the price regulation catalog. 2) The price of local goods and services that are in accordance with the requirements for government reference price and government regulation price provided in Article 18 of the Price Law may be listed in the local price regulation catalogs.

中华人民共和国国家发展计划委员会令

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国家发展计划委员会主任：

二〇〇一年七月四日

国家计委和国务院有关部门定价目录

编号	品名	定价内容	定价部门	备注
1	重要的中央储备物资	储备粮食、食用植物油（料）、棉花的收购价格和销售价格，储备食糖竞卖底价，储备石油的出厂价格和出库价格，储备化肥入库和出库价格，储备厂丝收购价格和销售价格	国家计委会同有关部门	定价范围为承担中央储备任务的企业收储的中央储备粮食，中央储备食用植物油（料），中央储备棉花、食糖、厂丝，国家储备用原油、成品油，中央救灾储备化肥等
2	国家专营烟叶、食盐和民爆器材	烟叶收购价格，食盐出厂价格、批发价格，民爆器材出厂基准价格及浮动幅度	国家计委会同有关部门	烟叶中准级收购价格由国家计委会同国家烟草专卖局制定，其他具体品种等级收购价格由国家烟草专卖局会同国家计委制定。食盐定价范围包括食盐定点生产企业和批发企业；民爆器材定价范围包括民爆待业所有生产企业
3	部分化肥	出厂基准价格及浮动幅度，港口结算价格	国家计委	定价范围为合成氨年生产能力 30 万吨以上的大型氮肥企业生产的尿素、硝酸铵出厂基准价格及浮动幅度；有经营资格的企业按照中央进口配额进口的化肥港口结算价格

4	部分重要药品	麻醉药品、一类精神药品、国家统一收购的预防免疫药品和避孕红具的出厂价格（口岸价格），其他药品的零售价格	国家计委	定价范围为列入国家基本医疗保险药品目录的药品及其它生产经营具有垄断性的少量特殊药品
5	教材	印张单价及浮动幅度	国家计委	定价范围为中小学和大中专教材。国家计委制定印张中准价及浮动幅度，各省级价格主管部门制定中小学课本印张单价和零售价格
6	天然气	出厂价格	国家计委	定价范围为陆上油气田天然气
7	中央直属及跨省水利工程供水	出库（渠首）价格	国家计委	定价范围包括中央直属及跨省水库、干渠及河道
8	电力	未实行竞价的上网电价	国家计委	定价范围为未实行竞价上网、由省及省以上电网统一调度的独立发电企业的电量。电力体制改革后，上网电价在市场竞争中形成，政府不再审批
		销售电价	国家计委	定价范围为省及省以上电网销售电量。电力体制改革后，政府主要监管高压输电价格和低压配电价格
9	军品	出厂价格	国家计委	定价范围为武装力量用装备及配套产品，军粮（军供价格和补贴结算价格），供军队用成品油，具体目录另行公布
10	重要交通运输	管道运输及杂项收费，港口收费，民航运输价格及折扣幅度（含机场收费），铁路客货运输价格及杂项作业收费标准	国家计委及有关部门	定价范围为国家铁路、国家控股合资（合作）铁路；沿海长江干线主要港口及所有对外开放港口；民用机场、军民合用机场收费，国内航线及国际航线国内段航空运输价格；国内管道运输杂项收费包括与管道运输相关的装车费、储油费、中转代办费
11	邮政基本业务	资费	国家计委	邮政基本业务资费范围包括信函、明信片、印刷品、包裹、报刊发行、邮政汇兑、特快专递、机要邮件的服务价格

12	电信基本业务		资费	信息产业部	电信基本业务资费范围包括固定网络长途及本地电话、移动电话业务等服务价格。信息产业部在制定通信和信息服务资费政策、改革方案以及通信业务收费标准时，应事先征求国家计委意见
13	重要专业服务	金融结算和交易服务	基准价格及浮动幅度	国家计委	定价范围包括各商业银行和非银行金融机构结算手续费，全国性证券交易机构的交易手续费、席位费，中国外汇交易中心席位费等，不包括利率、汇率
		工程勘察设计服务	基准价格及浮动幅度	国家计委会同有关部门	定价范围为工程勘察设计单位承担的投资建设项目的勘察、设计及相关技术服务
		部分中介服务	收费标准	国家计委	中介服务区别不同情况分别实行政府定价、政府指导价和市民调节价。检验、鉴定、公证、仲裁等垄断、强制性的服务实行政府定价；评估、代理、认证、招投标等竞争不充分的服务实行政府指导价。具体按《中介服务收费管理办法》（计价格[1999]2255号）执行

说明：

一、本目录“定价内容”栏所列的基准价格及浮动幅度、收费标准及浮动幅度是指政府指导价，其它均指政府定价。

国家行政机关收费、原油、成品油价格和城市基准地价公布价格仍按现行有关规定管理。

二、法律法规有明确规定和国务院根据市场情况变化授权国家计委管理的商品或服务价格自动进入本目录。存在买方或卖方垄断的商品和服务，在发生价格矛盾时，由国家计委进行协调和必要的管理。国务院有关部门根据国家有关法律、法规的规定，为了安全、环保等特殊原因，强制在全国范围内使用的商品（或服务）价格，由国家计委进行必要的管理。

三、根据《价格法》第十九条的规定，各省、自治区、直辖市人民政府价格主管部门应当在《价格法》第十八条规定的范围内，制定地方定价目录。地方定价目录包括两部分：（1）列入本目录的品种应同时列入地方定价目录，并注明国务院定价部门。列入中央定价目录的商品中，国务院价格部门只制定代表品价格的，非代表品价格按照定价目录由地方制定。（2）符合《价格法》第十八条规定关于政府指导价格和政府定价条件的地方性商品和服务价格可列入地方定价目录。



OECD Guidelines for Multinational Enterprises

2011 EDITION



OECD Guidelines for Multinational Enterprises 2011 Edition



This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

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Foreword

The *OECD Guidelines for Multinational Enterprises* are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The *Guidelines* are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

The *Guidelines'* recommendations express the shared values of the governments of countries from which a large share of international direct investment originates and which are home to many of the largest multinational enterprises. The *Guidelines* aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.

The *Guidelines* are supported by a unique implementation mechanism of National Contact Points (NCPs), agencies established by adhering governments to promote and implement the *Guidelines*. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the *Guidelines*. They also provide a mediation and conciliation platform for resolving practical issues that may arise.

On 4 May 2010, the governments of the 42 OECD and non-OECD countries adhering to the OECD Declaration on International Investment and Multinational Enterprises and related Decision started work on updating the *Guidelines* to reflect changes in the landscape for international investment and multinational enterprises since the last review in 2000. The changes agreed aim to ensure the continued role of the *Guidelines* as a leading international instrument for the promotion of responsible business conduct.

The updated *Guidelines* and the related Decision were adopted by the 42 adhering governments on 25 May 2011 at the OECD's 50th Anniversary Ministerial Meeting.

Changes to the *Guidelines* include:

- A new human rights chapter, which is consistent with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

- A new and comprehensive approach to due diligence and responsible supply chain management representing significant progress relative to earlier approaches.
- Important changes in many specialised chapters, such as on Employment and Industrial Relations; Combating Bribery, Bribe Solicitation and Extortion, Environment, Consumer Interests, Disclosure and Taxation.
- Clearer and reinforced procedural guidance to strengthen the role of the NCPs, improve their performance and foster functional equivalence.
- A pro-active implementation agenda to assist enterprises in meeting their responsibilities as new challenges arise.

The Update of the *Guidelines* was conducted by the adhering governments and included intensive consultations with a wide range of stakeholders and partners. All non-adhering G20 countries were invited to participate on an equal footing; they made important contributions, as did participants in the regional consultations in Asia, Africa, Latin America and the Middle East and North Africa. The OECD Business and Industry Advisory Committee, the OECD Trade Union Advisory Committee and OECD Watch represented the views of business, workers' organisations and non-governmental organisations (NGOs) through regular consultation meetings and their active participation in the Advisory Group of the Chair of the Working Party responsible for the Update of the *Guidelines*. The UN Secretary-General's Special Representative on Business and Human Rights, Professor John Ruggie, the International Labour Organisation together with other international organisations, also provided extensive input on the Update.

OECD committees on Competition; Consumer Policy; Corporate Governance; Employment, Labour and Social Affairs; Environment Policy; Fiscal Affairs; and the Working Group on Bribery in International Business Transactions contributed to the revisions of the relevant specialised chapters of the *Guidelines*.

The work on the Update was supported by the Investment Division as Secretariat of the OECD Investment Committee, in close collaboration with the Legal Directorate; the Centre for Tax Policy and Administration; the Anti-Corruption Division; the Competition Division; the Corporate Affairs Division; the Division for Employment Analysis and Policy; the Environment and Economy Integration Division; and the Information, Communications and Consumer Policy Division.

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DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

25 May 2011

ADHERING GOVERNMENTS¹

CONSIDERING:

- That international investment is of major importance to the world economy, and has considerably contributed to the development of their countries;
- That multinational enterprises play an important role in this investment process;
- That international co-operation can improve the foreign investment climate, encourage the positive contribution which multinational enterprises can make to economic, social and environmental progress, and minimise and resolve difficulties which may arise from their operations;
- That the benefits of international co-operation are enhanced by addressing issues relating to international investment and multinational enterprises through a balanced framework of inter-related instruments;

1. As at 25 May 2011 adhering governments are those of all OECD members, as well as Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. The European Community has been invited to associate itself with the section on National Treatment on matters falling within its competence.

DECLARE:

- | | | |
|--|-----|---|
| Guidelines for Multinational Enterprises | I. | That they jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, set forth in Annex 1 hereto ² , having regard to the considerations and understandings that are set out in the Preface and are an integral part of them;” |
| National Treatment | II. | <ol style="list-style-type: none">1. That adhering governments should, consistent with their needs to maintain public order, to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another adhering government (hereinafter referred to as "Foreign-Controlled Enterprises") treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as "National Treatment");2. That adhering governments will consider applying "National Treatment" in respect of countries other than adhering governments;3. That adhering governments will endeavour to ensure that their territorial subdivisions apply "National Treatment";4. That this Declaration does not deal with the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises; |

2. The text of the *Guidelines for Multinational Enterprises* is reproduced in Part I of this publication.

Conflicting Requirements	III.	That they will co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and that they will take into account the general considerations and practical approaches as set forth in Annex 2 hereto ³ .
International Investment Incentives and Disincentives	IV. 1.	That they recognise the need to strengthen their co-operation in the field of international direct investment;
	2.	That they thus recognise the need to give due weight to the interests of adhering governments affected by specific laws, regulations and administrative practices in this field (hereinafter called "measures") providing official incentives and disincentives to international direct investment;
	3.	That adhering governments will endeavour to make such measures as transparent as possible, so that their importance and purpose can be ascertained and that information on them can be readily available;
Consultation Procedures	V.	That they are prepared to consult one another on the above matters in conformity with the relevant Decisions of the Council;
Review	VI.	That they will review the above matters periodically with a view to improving the effectiveness of international economic co-operation among adhering governments on issues relating to international investment and multinational enterprises.

3. The text of General Considerations and Practical Approaches concerning Conflicting Requirements Imposed on Multinational Enterprises is available from the OECD Website www.oecd.org/daff/investment.

Part I

OECD Guidelines for Multinational Enterprises

**Recommendations for responsible business conduct
in a global context**

Text and Commentary

Note by the Secretariat: The commentaries on the *OECD Guidelines for Multinational Enterprises* have been adopted by the Investment Committee in enlarged session, including the eight non-Member adherents* to the *Declaration on International Investment and Multinational Enterprises*, to provide information on and explanation of the text of the *Guidelines for Multinational Enterprises* and of the Council Decision on the *OECD Guidelines for Multinational Enterprises*. They are not part of the *Declaration on International Investment and Multinational Enterprises* or of the Council Decision on the *OECD Guidelines for Multinational Enterprises*.

In this publication, the commentaries are placed after the chapter they refer to and are numbered consecutively from 1 to 106.

*

Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania.

Preface

1. The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations addressed by governments to multinational enterprises. The *Guidelines* aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the *OECD Declaration on International Investment and Multinational Enterprises* the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives. The *Guidelines* provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the *Guidelines* make a binding commitment to implement them in accordance with the *Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises*. Furthermore, matters covered by the *Guidelines* may also be the subject of national law and international commitments.
2. International business has experienced far-reaching structural change and the *Guidelines* themselves have evolved to reflect these changes. With the rise of service and knowledge-intensive industries and the expansion of the Internet economy, service and technology enterprises are playing an increasingly important role in the international marketplace. Large enterprises still account for a major share of international investment, and there is a trend toward large-scale international mergers. At the same time, foreign investment by small- and medium-sized enterprises has also increased and these enterprises now play a significant role on the international scene. Multinational enterprises, like their domestic counterparts, have evolved to encompass a broader range of business arrangements and organisational forms. Strategic alliances and closer relations with suppliers and contractors tend to blur the boundaries of the enterprise.

3. The rapid evolution in the structure of multinational enterprises is also reflected in their operations in the developing world, where foreign direct investment has grown rapidly. In developing countries, multinational enterprises have diversified beyond primary production and extractive industries into manufacturing, assembly, domestic market development and services. Another key development is the emergence of multinational enterprises based in developing countries as major international investors.
4. The activities of multinational enterprises, through international trade and investment, have strengthened and deepened the ties that join the countries and regions of the world. These activities bring substantial benefits to home and host countries. These benefits accrue when multinational enterprises supply the products and services that consumers want to buy at competitive prices and when they provide fair returns to suppliers of capital. Their trade and investment activities contribute to the efficient use of capital, technology and human and natural resources. They facilitate the transfer of technology among the regions of the world and the development of technologies that reflect local conditions. Through both formal training and on-the-job learning enterprises also promote the development of human capital and creating employment opportunities in host countries.
5. The nature, scope and speed of economic changes have presented new strategic challenges for enterprises and their stakeholders. Multinational enterprises have the opportunity to implement best practice policies for sustainable development that seek to ensure coherence between economic, environmental and social objectives. The ability of multinational enterprises to promote sustainable development is greatly enhanced when trade and investment are conducted in a context of open, competitive and appropriately regulated markets.
6. Many multinational enterprises have demonstrated that respect for high standards of business conduct can enhance growth. Today's competitive forces are intense and multinational enterprises face a variety of legal, social and regulatory settings. In this context, some enterprises may be tempted to neglect appropriate principles and standards of conduct in an attempt to gain undue competitive advantage. Such practices by the few may call into question the reputation of the many and may give rise to public concerns.
7. Many enterprises have responded to these public concerns by developing internal programmes, guidance and management systems that underpin their commitment to good corporate citizenship, good practices and good business and employee conduct. Some of them have

called upon consulting, auditing and certification services, contributing to the accumulation of expertise in these areas. Enterprises have also promoted social dialogue on what constitutes responsible business conduct and have worked with stakeholders, including in the context of multi-stakeholder initiatives, to develop guidance for responsible business conduct. The *Guidelines* clarify the shared expectations for business conduct of the governments adhering to them and provide a point of reference for enterprises and for other stakeholders. Thus, the *Guidelines* both complement and reinforce private efforts to define and implement responsible business conduct.

8. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The start of this process can be dated to the work of the International Labour Organisation in the early twentieth century. The adoption by the United Nations in 1948 of the Universal Declaration of Human Rights was another landmark event. It was followed by the ongoing development of standards relevant for many areas of responsible business conduct – a process that continues to this day. The OECD has contributed in important ways to this process through the development of standards covering such areas as the environment, the fight against corruption, consumer interests, corporate governance and taxation.
9. The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end. Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration. Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective. Governments adhering to the *Guidelines* are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.

I. Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the *Guidelines* may also be regulated by national law or international commitments.
2. Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the *Guidelines*, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.
3. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.
4. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among

them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.

5. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.
6. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, governments adhering to the *Guidelines* nevertheless encourage them to observe the *Guidelines*' recommendations to the fullest extent possible.
7. Governments adhering to the *Guidelines* should not use them for protectionist purposes nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.
8. Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law. The entities of a multinational enterprise located in various countries are subject to the laws applicable in these countries. When multinational enterprises are subject to conflicting requirements by adhering countries or third countries, the governments concerned are encouraged to co-operate in good faith with a view to resolving problems that may arise.
9. Governments adhering to the *Guidelines* set them forth with the understanding that they will fulfil their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations.
10. The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.
11. Governments adhering to the *Guidelines* will implement them and encourage their use. They will establish National Contact Points that promote the *Guidelines* and act as a forum for discussion of all matters relating to the *Guidelines*. The adhering Governments will also participate in appropriate review and consultation procedures to address issues concerning interpretation of the *Guidelines* in a changing world.

II. General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

A. Enterprises should:

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.
2. Respect the internationally recognised human rights of those affected by their activities.
3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
4. Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.
6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
8. Promote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programmes.

9. Refrain from discriminatory or disciplinary action against workers who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.
10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
11. Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur.
12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.
13. In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.
14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.
15. Abstain from any improper involvement in local political activities.

B. Enterprises are encouraged to:

1. Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.
2. Engage in or support, where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognised standards.

Commentary on General Policies

1. The General Policies chapter of the *Guidelines* is the first to contain specific recommendations to enterprises. As such it is important for setting the tone and establishing common fundamental principles for the specific recommendations in subsequent chapters.
2. Enterprises are encouraged to co-operate with governments in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process. It is also recognised that governments should be transparent in their dealings with enterprises, and consult with business on these same issues. Enterprises should be viewed as partners with government in the development and use of both voluntary and regulatory approaches (of which the *Guidelines* are one element) to policies affecting them.
3. There should not be any contradiction between the activity of multinational enterprises (MNEs) and sustainable development, and the *Guidelines* are meant to foster complementarities in this regard. Indeed, links among economic, social, and environmental progress are a key means for furthering the goal of sustainable development.⁴
4. Chapter IV elaborates on the general human rights recommendation in paragraph A.2.
5. The *Guidelines* also acknowledge and encourage the contribution that MNEs can make to local capacity building as a result of their activities in local communities. Similarly, the recommendation on human capital formation is an explicit and forward-looking recognition of the contribution to individual human development that MNEs can offer their employees, and encompasses not only hiring practices, but training and other employee development as well. Human capital formation also incorporates the notion of non-discrimination in hiring practices as well as promotion practices, life-long learning and other on-the-job training.
6. The *Guidelines* recommend that, in general, enterprises avoid making efforts to secure exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation and financial incentives among other issues, without infringing on an enterprise's right to seek changes in the

4. One of the most broadly accepted definitions of sustainable development is in the 1987 World Commission on Environment and Development (the Brundtland Commission): "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs".

statutory or regulatory framework. The words “or accepting” also draw attention to the role of the State in offering these exemptions. While this sort of provision has been traditionally directed at governments, it is also of direct relevance to MNEs. Importantly, however, there are instances where specific exemptions from laws or other policies can be consistent with these laws for legitimate public policy reasons. The environment and competition policy chapters provide examples.

7. The *Guidelines* recommend that enterprises apply good corporate governance practices drawn from the OECD Principles of Corporate Governance. The Principles call for the protection and facilitation of the exercise of shareholder rights, including the equitable treatment of shareholders. Enterprise should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation with stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
8. The Principles call on the board of the parent entity to ensure the strategic guidance of the enterprise, the effective monitoring of management and to be accountable to the enterprise and to the shareholders, while taking into account the interests of stakeholders. In undertaking these responsibilities, the board needs to ensure the integrity of the enterprise’s accounting and financial reporting systems, including independent audit, appropriate control systems, in particular, risk management, and financial and operational control, and compliance with the law and relevant standards.
9. The Principles extend to enterprise groups, although boards of subsidiary enterprises might have obligations under the law of their jurisdiction of incorporation. Compliance and control systems should extend where possible to these subsidiaries. Furthermore, the board’s monitoring of governance includes continuous review of internal structures to ensure clear lines of management accountability throughout the group.
10. State-owned multinational enterprises are subject to the same recommendations as privately-owned enterprises, but public scrutiny is often magnified when a State is the final owner. The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* are a useful and specifically tailored guide for these enterprises and the recommendations they offer could significantly improve governance.
11. Although primary responsibility for improving the legal and institutional regulatory framework lies with governments, there is a strong business case for enterprises to implement good corporate governance.

12. An increasing network of non-governmental self-regulatory instruments and actions address aspects of corporate behaviour and the relationships between business and society. Interesting developments in this regard are being undertaken in the financial sector. Enterprises recognise that their activities often have social and environmental implications. The institution of self-regulatory practices and management systems by enterprises sensitive to reaching these goals – thereby contributing to sustainable development – is an illustration of this. In turn, developing such practices can further constructive relationships between enterprises and the societies in which they operate.
13. Following from effective self-regulatory practices, as a matter of course, enterprises are expected to promote employee awareness of company policies. Safeguards to protect bona fide “whistle-blowing” activities are also recommended, including protection of employees who, in the absence of timely remedial action or in the face of reasonable risk of negative employment action, report practices that contravene the law to the competent public authorities. While of particular relevance to anti-bribery and environmental initiatives, such protection is also relevant to other recommendations in the *Guidelines*.
14. For the purposes of the *Guidelines*, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the *Guidelines*. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation. The *Guidelines* concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business relationship, as described in paragraphs A.11 and A.12. Due diligence can help enterprises avoid the risk of such adverse impacts. For the purposes of this recommendation, ‘contributing to’ an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. The term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. The recommendation in paragraph A.10 applies to those matters covered by the *Guidelines* that are related

to adverse impacts. It does not apply to the chapters on Science and Technology, Competition and Taxation.

15. The nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the enterprise, context of its operations, the specific recommendations in the *Guidelines*, and the severity of its adverse impacts. Specific recommendations for human rights due diligence are provided in Chapter IV.
16. Where enterprises have large numbers of suppliers, they are encouraged to identify general areas where the risk of adverse impacts is most significant and, based on this risk assessment, prioritise suppliers for due diligence.
17. To avoid causing or contributing to adverse impacts on matters covered by the *Guidelines* through their own activities includes their activities in the supply chain. Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting. Entities in the supply chain are often multinational enterprises themselves and, by virtue of this fact, those operating in or from the countries adhering to the Declaration are covered by the *Guidelines*.
18. In the context of its supply chain, if the enterprise identifies a risk of causing an adverse impact, then it should take the necessary steps to cease or prevent that impact.
19. If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.
20. Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.
21. The *Guidelines* recognise that there are practical limitations on the ability of enterprises to effect change in the behaviour of their suppliers. These are related to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain. However, enterprises can also influence suppliers through contractual arrangements such as management contracts, pre-qualification requirements for potential suppliers, voting trusts, and licence or

franchise agreements. Other factors relevant to determining the appropriate response to the identified risks include the severity and probability of adverse impacts and how crucial that supplier is to the enterprise.

22. Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.
23. Enterprises may also engage with suppliers and other entities in the supply chain to improve their performance, in co-operation with other stakeholders, including through personnel training and other forms of capacity building, and to support the integration of principles of responsible business conduct compatible with the *Guidelines* into their business practices. Where suppliers have multiple customers and are potentially exposed to conflicting requirements imposed by different buyers, enterprises are encouraged, with due regard to anti-competitive concerns, to participate in industry-wide collaborative efforts with other enterprises with which they share common suppliers to coordinate supply chain policies and risk management strategies, including through information-sharing.
24. Enterprises are also encouraged to participate in private or multi-stakeholder initiatives and social dialogue on responsible supply chain management, such as those undertaken as part of the proactive agenda pursuant to the Decision of the OECD Council on the *OECD Guidelines for Multinational Enterprises* and the attached Procedural Guidance.
25. Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.
26. Paragraph B.1 acknowledges an important emerging issue. It does not create new standards, nor does it presume the development of new standards. It recognises that enterprises have interests which will be

affected and that their participation along with other stakeholders in discussion of the issues involved can contribute to their ability and that of others to understand the issues and make a positive contribution. It recognises that the issues may have a number of dimensions and emphasises that co-operation should be pursued through appropriate fora. It is without prejudice to positions held by governments in the area of electronic commerce at the World Trade Organisation (WTO). It is not intended to disregard other important public policy interests which may relate to the use of the internet which would need to be taken into account.⁵ Finally, as is the case with the *Guidelines* in general, it is not intended to create conflicting requirements for enterprises consistent with paragraphs 2 and 8 of the Concepts and Principles Chapter of the *Guidelines*.

27. Finally, it is important to note that self-regulation and other initiatives in a similar vein, including the *Guidelines*, should not unlawfully restrict competition, nor should they be considered a substitute for effective law and regulation by governments. It is understood that MNEs should avoid potential trade or investment distorting effects of codes and self-regulatory practices when they are being developed.

5. Some countries have referred to the 2005 Tunis Agenda for the Information Society in this regard.

III. Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Disclosure policies of enterprises should include, but not be limited to, material information on:
 - a) the financial and operating results of the enterprise;
 - b) enterprise objectives;
 - c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;
 - d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;
 - e) related party transactions;
 - f) foreseeable risk factors;
 - g) issues regarding workers and other stakeholders;
 - h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.
3. Enterprises are encouraged to communicate additional information that could include:
 - a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the

- enterprise's activities, information on the enterprise's policies relating to matters covered by the *Guidelines*;
- b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply;
 - c) its performance in relation to these statements and codes;
 - d) information on internal audit, risk management and legal compliance systems;
 - e) information on relationships with workers and other stakeholders.
4. Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the enterprise in all material respects.

Commentary on Disclosure

28. The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.
29. The information highlighted in this chapter addresses disclosure in two areas. The first set of disclosure recommendations is identical to disclosure items outlined in the OECD Principles of Corporate Governance. Their related annotations provide further guidance and the recommendations in the *Guidelines* should be construed in relation to them. The first set of disclosure recommendations may be supplemented by a second set of disclosure recommendations which enterprises are encouraged to follow. The disclosure recommendations focus mainly on publicly traded enterprises. To the extent that they are deemed applicable in light of the nature, size and location of enterprises, they

should also be a useful tool to improve corporate governance in non-traded enterprises; for example, privately held or State-owned enterprises.

30. Disclosure recommendations are not expected to place unreasonable administrative or cost burdens on enterprises. Nor are enterprises expected to disclose information that may endanger their competitive position unless disclosure is necessary to fully inform the investment decision and to avoid misleading the investor. In order to determine what information should be disclosed at a minimum, the *Guidelines* use the concept of materiality. Material information can be defined as information whose omission or misstatement could influence the economic decisions taken by users of information.
31. The *Guidelines* also generally note that information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure. This significantly improves the ability of investors to monitor the enterprise by providing increased reliability and comparability of reporting, and improved insight into its performance. The annual independent audit recommended by the *Guidelines* should contribute to an improved control and compliance by the enterprise.
32. Disclosure is addressed in two areas. The first set of disclosure recommendations calls for timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. Companies are also expected to disclose sufficient information on the remuneration of board members and key executives (either individually or in the aggregate) for investors to properly assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to performance. Related party transactions and material foreseeable risk factors are additional relevant information that should be disclosed, as well as material issues regarding workers and other stakeholders.
33. The *Guidelines* also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions; biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to

socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise’s activities – may pertain to entities that extend beyond those covered in the enterprise’s financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners.

34. Many enterprises have adopted measures designed to help them comply with the law and standards of business conduct, and to enhance the transparency of their operations. A growing number of firms have issued voluntary codes of corporate conduct, which are expressions of commitments to ethical values in such areas as environment, human rights, labour standards, consumer protection, or taxation. Specialised management systems have been or are being developed and continue to evolve with the aim of helping them respect these commitments – these involve information systems, operating procedures and training requirements. Enterprises are cooperating with NGOs and intergovernmental organisations in developing reporting standards that enhance enterprises’ ability to communicate how their activities influence sustainable development outcomes (for example, the Global Reporting Initiative).
35. Enterprises are encouraged to provide easy and economical access to published information and to consider making use of information technologies to meet this goal. Information that is made available to users in home markets should also be available to all interested users. Enterprises may take special steps to make information available to communities that do not have access to printed media (for example, poorer communities that are directly affected by the enterprise’s activities).

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Commentary on Human Rights

36. This chapter opens with a chapeau that sets out the framework for the specific recommendations concerning enterprises' respect for human rights. It draws upon the United Nations Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation.
37. The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size,

sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.

38. A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.
39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.
40. Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments.

41. In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term ‘infringing’ refers to adverse impacts that an enterprise may have on the human rights of individuals.
42. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. ‘Activities’ can include both actions and omissions. Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.
43. Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. ‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.
44. Paragraph 4 recommends that enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly

available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.

45. Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve. Complementary guidance on due diligence, including in relation to supply chains, and appropriate responses to risks arising in supply chains are provided under paragraphs A.10 to A.12 of the Chapter on General Policies and their Commentaries.
46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the *Guidelines* recommend that enterprises have processes in place to enable remediation. Some situations require co-operation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the *Guidelines* and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational-level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the *Guidelines*.

V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.
 - b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.
 - c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.
 - d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.
 - e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.

- b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.
 - c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
- 3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.
- 4.
 - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
 - b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.
 - c) Take adequate steps to ensure occupational health and safety in their operations.
- 5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.
- 6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
- 7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises'

component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

Commentary on Employment and Industrial Relations

47. This chapter opens with a chapeau that includes a reference to “applicable” law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national and international levels of regulation of employment and industrial relations matters. The terms “prevailing labour relations” and “employment practices” are sufficiently broad to permit a variety of interpretations in light of different national circumstances – for example, different bargaining options provided for workers under national laws and regulations.
48. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, last revised in 2006 (the ILO MNE Declaration). The ILO MNE Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD *Guidelines* cover all major aspects of corporate behaviour. The OECD *Guidelines* and the ILO MNE Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO MNE Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the ILO MNE Declaration and the *Guidelines* are institutionally separate.
49. The terminology used in Chapter V is consistent with that used in the ILO MNE Declaration. The use of the terms “workers employed by the

multinational enterprise” and “workers in their employment” is intended to have the same meaning as in the ILO MNE Declaration. These terms refer to workers who are “in an employment relationship with the multinational enterprise”. Enterprises wishing to understand the scope of their responsibility under Chapter V will find useful guidance for determining the existence of an employment relationship in the context of the *Guidelines* in the non-exhaustive list of indicators set forth in ILO Recommendation 198 of 2006, paragraphs 13 (a) and (b). In addition, it is recognised that working arrangements change and develop over time and that enterprises are expected to structure their relationships with workers so as to avoid supporting, encouraging or participating in disguised employment practices. A disguised employment relationship occurs when an employer treats an individual as other than an employee in a manner that hides his or her true legal status.

50. These recommendations do not interfere with true civil and commercial relationships, but rather seek to ensure that individuals in an employment relationship have the protection that is due to them in the context of the *Guidelines*. It is recognised that in the absence of an employment relationship, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in paragraphs A.10 to A.13 of Chapter II on General Policies.
51. Paragraph 1 of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO’s 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.
52. Paragraph 1c) recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high-quality, well-paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this

regard, raising the standards of education of children living in host countries is especially noteworthy.

53. Paragraph 1d) recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. Convention 29 requests that governments “suppress the use of forced or compulsory labour in all its forms within the shortest possible period”, while Convention 105 requests of them to “suppress and not to make use of any form of forced or compulsory labour” for certain enumerated purposes (for example, as a means of political coercion or labour discipline), and “to take effective measures to secure [its] immediate and complete abolition”. At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.
54. The reference to the principle of non-discrimination with respect to employment and occupation in paragraph 1e is considered to apply to such terms and conditions as hiring, job assignment, discharge, pay and benefits, promotion, transfer or relocation, termination, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958, the Maternity Protection Convention 183 of 2000, Employment (Disabled Persons) Convention 159 of 1983, the Older Workers Recommendation 162 of 1980 and the HIV and AIDS at Work Recommendation 200 of 2010, considers that any distinction, exclusion or preference on these grounds is in violation of the Conventions, Recommendations and Codes. The term “other status” for the purposes of the *Guidelines* refers to trade union activity and personal characteristics such as age, disability, pregnancy, marital status, sexual orientation, or HIV status. Consistent with the provisions in paragraph 1e, enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.
55. In paragraph 2c) of this chapter, information provided by companies to their workers and their representatives is expected to provide a “true and fair view” of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality.

Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

56. The reference to consultative forms of worker participation in paragraph 3 of the Chapter is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the ILO MNE Declaration. Such consultative arrangements should not substitute for workers' right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to working arrangements is also part of paragraph 8.
57. In paragraph 4, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment. The ILO Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the *Guidelines*.
58. The recommendation in paragraph 5 of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph A.4 of the General Policies chapter on encouraging human capital formation. The reference to local workers complements the text encouraging local capacity building in paragraph A.3 of the General Policies chapter. In accordance with the ILO Human Resources Development Recommendation 195 of 2004, enterprises are also encouraged to invest, to the greatest extent practicable, in training and lifelong learning while

ensuring equal opportunities to training for women and other vulnerable groups, such as youth, low-skilled people, people with disabilities, migrants, older workers, and indigenous peoples.

59. Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

VI. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
 - b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and
 - c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.
2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - a) provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
 - b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.
4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.
5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.
6. Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as:
 - a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;
 - b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;
 - c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues); and
 - d) exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction, efficient resource utilisation and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity.

7. Provide adequate education and training to workers in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.
8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.

Commentary on the Environment

60. The text of the Environment Chapter broadly reflects the principles and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects standards contained in such instruments as the ISO Standard on Environmental Management Systems.
61. Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business opportunity. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure shareholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.
62. In addition to improving environmental performance, instituting an environmental management system can provide economic benefits to companies through reduced operating and insurance costs, improved energy and resource conservation, reduced compliance and liability charges, improved access to capital and skills, improved customer satisfaction, and improved community and public relations.

63. In the context of these *Guidelines*, “sound environmental management” should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.
64. In most enterprises, an internal control system is needed to manage the enterprise’s activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.
65. Information about the activities of enterprises and about their relationships with sub-contractors and their suppliers, and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest. Reporting and communication are particularly appropriate where scarce or at risk environmental assets are at stake either in a regional, national or international context; reporting standards such as the Global Reporting Initiative provide useful references.
66. In providing accurate information on their products, enterprises have several options such as voluntary labelling or certification schemes. In using these instruments enterprises should take due account of their social and economic effects on developing countries and of existing internationally recognised standards.
67. Normal business activity can involve the *ex ante* assessment of the potential environmental impacts associated with the enterprise’s activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise’s activities and of activities of sub-contractors and suppliers, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The *Guidelines* also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.
68. Several instruments already adopted by countries adhering to the *Guidelines*, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a “precautionary approach”.

None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.

69. The basic premise of the *Guidelines* is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However, the fact that the *Guidelines* are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The *Guidelines* therefore draw upon, but do not completely mirror, any existing instrument.
70. The *Guidelines* are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments – they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to consult periodically with stakeholders on the most appropriate ways forward.
71. The *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate. In this regard, enterprises should take due account of their social and economic effects on developing countries.
72. For example, multinational enterprises often have access to existing and innovative technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a “demonstration effect” on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefit from available and innovative technologies and practices, is an important way of building support for international investment activities more generally.
73. Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.

VII. Combating Bribery, Bribe Solicitation and Extortion

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion. In particular, enterprises should:

1. Not offer, promise or give undue pecuniary or other advantage to public officials or the employees of business partners. Likewise, enterprises should not request, agree to or accept undue pecuniary or other advantage from public officials or the employees of business partners. Enterprises should not use third parties such as agents and other intermediaries, consultants, representatives, distributors, consortia, contractors and suppliers and joint venture partners for channelling undue pecuniary or other advantages to public officials, or to employees of their business partners or to their relatives or business associates.
2. Develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery, developed on the basis of a risk assessment addressing the individual circumstances of an enterprise, in particular the bribery risks facing the enterprise (such as its geographical and industrial sector of operation). These internal controls, ethics and compliance programmes or measures should include a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of bribing or hiding bribery. Such individual circumstances and bribery risks should be regularly monitored and re-assessed as necessary to ensure the enterprise's internal controls, ethics and compliance programme or measures are adapted and continue to be effective, and to mitigate the risk of enterprises becoming complicit in bribery, bribe solicitation and extortion.
3. Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of small facilitation

payments, which are generally illegal in the countries where they are made, and, when such payments are made, accurately record these in books and financial records.

4. Ensure, taking into account the particular bribery risks facing the enterprise, properly documented due diligence pertaining to the hiring, as well as the appropriate and regular oversight of agents, and that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements.
5. Enhance the transparency of their activities in the fight against bribery, bribe solicitation and extortion. Measures could include making public commitments against bribery, bribe solicitation and extortion, and disclosing the management systems and the internal controls, ethics and compliance programmes or measures adopted by enterprises in order to honour these commitments. Enterprises should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery, bribe solicitation and extortion.
6. Promote employee awareness of and compliance with company policies and internal controls, ethics and compliance programmes or measures against bribery, bribe solicitation and extortion through appropriate dissemination of such policies, programmes or measures and through training programmes and disciplinary procedures.
7. Not make illegal contributions to candidates for public office or to political parties or to other political organisations. Political contributions should fully comply with public disclosure requirements and should be reported to senior management.

Commentary on Combating Bribery, Bribe Solicitation and Extortion

74. Bribery and corruption are damaging to democratic institutions and the governance of corporations. They discourage investment and distort international competitive conditions. In particular, the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare, and it impedes efforts to reduce poverty. Enterprises have an important role to play in combating these practices.

75. Propriety, integrity and transparency in both the public and private domains are key concepts in the fight against bribery, bribe solicitation and extortion. The business community, non-governmental organisations, governments and inter-governmental organisations have all co-operated to strengthen public support for anticorruption measures and to enhance transparency and public awareness of the problems of corruption and bribery. The adoption of appropriate corporate governance practices is also an essential element in fostering a culture of ethics within enterprises.
76. The *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the *Anti-Bribery Convention*) entered into force on 15 February 1999. The *Anti-Bribery Convention*, along with the *2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (the *2009 Anti-Bribery Recommendation*), the *2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, and the *2006 Recommendation on Bribery and Officially Supported Export Credits*, are the core OECD instruments which target the offering side of the bribery transaction. They aim to eliminate the “supply” of bribes to foreign public officials, with each country taking responsibility for the activities of its enterprises and what happens within its own jurisdiction.⁶ A programme of rigorous and systematic monitoring of countries’ implementation of the *Anti-Bribery Convention* has been established to promote the full implementation of these instruments.
77. The *2009 Anti-Bribery Recommendation* recommends in particular that governments encourage their enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the *Good Practice Guidance on Internal Controls, Ethics and*

6. For the purposes of the Convention, a “bribe” is defined as an “...offer, promise, or giv(ing) of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”. The Commentaries to the Convention (paragraph 9) clarify that “small ‘facilitation’ payments do not constitute payments made ‘to obtain or retain business or other improper advantage’ within the meaning of paragraph 1 and, accordingly, are also not an offence. Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. ...”.

Compliance, included as Annex II to the 2009 *Anti-Bribery Recommendation*. This *Good Practice Guidance* is addressed to enterprises as well as business organisations and professional associations, and highlights good practices for ensuring the effectiveness of their internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery.

78. Private sector and civil society initiatives also help enterprises to design and implement effective anti-bribery policies.
79. The *United Nations Convention against Corruption (UNCAC)*, which entered into force on 14 December 2005, sets out a broad range of standards, measures and rules to fight corruption. Under the *UNCAC*, States Parties are required to prohibit their officials from receiving bribes and their enterprises from bribing domestic public officials, as well as foreign public officials and officials of public international organisations, and to consider disallowing private to private bribery. The *UNCAC* and the *Anti-Bribery Convention* are mutually supporting and complementary.
80. To address the demand side of bribery, good governance practices are important elements to prevent enterprises from being asked to pay bribes. Enterprises can support collective action initiatives on resisting bribe solicitation and extortion. Both home and host governments should assist enterprises confronted with solicitation of bribes and with extortion. The *Good Practice Guidance on Specific Articles of the Convention* in Annex I of the 2009 *Anti-Bribery Recommendation* states that the *Anti-Bribery Convention* should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe. Furthermore, the *UNCAC* requires the criminalisation of bribe solicitation by domestic public officials.

VIII. Consumer Interests

When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.
2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.
3. Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.
5. Support efforts to promote consumer education in areas that relate to their business activities, with the aim of, *inter alia*, improving the ability of consumers to: *i*) make informed decisions involving complex goods, services and markets, *ii*) better understand the economic, environmental and social impact of their decisions and *iii*) support sustainable consumption.
6. Respect consumer privacy and take reasonable measures to ensure the security of personal data that they collect, store, process or disseminate.
7. Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services.

8. Take into consideration, in applying the above principles, *i)* the needs of vulnerable and disadvantaged consumers and *ii)* the specific challenges that e-commerce may pose for consumers.

Commentary on Consumer Interests

81. The chapter on consumer interests of the OECD *Guidelines* for Multinational Enterprises draws on the work of the OECD Committee on Consumer Policy and the Committee on Financial Markets, as well as the work of other international organisations, including the International Chamber of Commerce, the International Organization for Standardization and the United Nations (*i.e.*, the *UN Guidelines on Consumer Policy*, as expanded in 1999).
82. The chapter recognises that consumer satisfaction and related interests constitute a fundamental basis for the successful operation of enterprises. It also recognises that consumer markets for goods and services have undergone major transformation over time. Regulatory reform, more open global markets, the development of new technologies and the growth in consumer services have been key agents of change, providing consumers with greater choice and the other benefits which derive from more open competition. At the same time, the pace of change and increased complexity of many markets have generally made it more difficult for consumers to compare and assess goods and services. Moreover, consumer demographics have also changed over time. Children are becoming increasingly significant forces in the market, as are the growing number of older adults. While consumers are better educated overall, many still lack the arithmetic and literacy skills that are required in today's more complex, information-intensive marketplace. Further, many consumers are increasingly interested in knowing the position and activities of enterprises on a broad range of economic, social and environmental issues, and in taking these into account when choosing goods and services.
83. The chapeau calls on enterprises to apply fair business, marketing and advertising practices and to ensure the quality and reliability of the products that they provide. These principles, it is noted, apply to both goods and services.
84. Paragraph 1 underscores the importance for enterprises to adhere to required health and safety standards and the importance for them to provide consumers with adequate health and safety information on their products.

85. Paragraph 2 concerns information disclosure. It calls for enterprises to provide information which is sufficient for consumers to make informed decisions. This would include information on the financial risks associated with products, where relevant. Furthermore, in some instances enterprises are legally required to provide information in a manner that enables consumers to make direct comparisons of goods and services (for example, unit pricing). In the absence of direct legislation, enterprises are encouraged to present information, when dealing with consumers, in a way that facilitates comparisons of goods and services and enables consumers to easily determine what the total cost of a product will be. It should be noted that what is considered to be “sufficient” can change over time and enterprises should be responsive to these changes. Any product and environmental claims that enterprises make should be based on adequate evidence and, as applicable, proper tests. Given consumers’ growing interest in environmental issues and sustainable consumption, information should be provided, as appropriate, on the environmental attributes of products. This could include information on the energy efficiency and the degree of recyclability of products and, in the case of food products, information on agricultural practices.
86. Business conduct is increasingly considered by consumers when making their purchasing decisions. Enterprises are therefore encouraged to make information available on initiatives they have taken to integrate social and environmental concerns into their business operations and to otherwise support sustainable consumption. Chapter III of the *Guidelines* on Disclosure is relevant in this regard. Enterprises are there encouraged to communicate value statements or statements of business conduct to the public, including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. Enterprises are encouraged to make this information available in plain language and in a format that is appealing to consumers. Growth in the number of enterprises reporting in these areas and targeting information to consumers would be welcome.
87. Paragraph 3 reflects language that is used in the 2007 Council *Recommendation on Consumer Dispute Resolution and Redress*. The Recommendation establishes a framework for developing effective approaches to address consumer complaints, including a series of actions that industry can take in this respect. It is noted that the mechanisms that many enterprises have established to resolve consumer disputes have helped increase consumer confidence and consumer satisfaction. These mechanisms can provide more practicable solutions to complaints than legal actions, which can be expensive, difficult and time consuming for all the parties involved. For these non-judicial

mechanisms to be effective, however, consumers need to be made aware of their existence and would benefit from guidance on how to file complaints, especially when claims involve cross-border or multi-dimensional transactions.

88. Paragraph 4 concerns deceptive, misleading, fraudulent and other unfair commercial practices. Such practices can distort markets, at the expense of both consumers and responsible enterprises and should be avoided.
89. Paragraph 5 concerns consumer education, which has taken on greater importance with the growing complexity of many markets and products. Governments, consumer organisations and many enterprises have recognised that this is a shared responsibility and that they can play important roles in this regard. The difficulties that consumers have experienced in evaluating complex products in financial and other areas have underscored the importance for stakeholders to work together to promote education aimed at improving consumer decision-making.
90. Paragraph 6 concerns personal data. The increasing collection and use of personal data by enterprises, fuelled in part by the Internet and technological advances, has highlighted the importance of protecting personal data against consumer privacy violations, including security breaches.
91. Paragraph 7 underscores the importance of enterprises to work with public authorities to help prevent and combat deceptive marketing practices more effectively. Co-operation is also called for to diminish or prevent threats to public health and safety and to the environment. This includes threats associated with the disposal of goods, as well as their consumption and use. This reflects recognition of the importance of considering the entire life-cycle of products.
92. Paragraph 8 calls on enterprises to take the situations of vulnerable and disadvantaged consumers into account when they market goods and services. Disadvantaged or vulnerable consumers refer to particular consumers or categories of consumers, who because of personal characteristics or circumstances (like age, mental or physical capacity, education, income, language or remote location) may meet particular difficulties in operating in today's information-intensive, globalised markets. The paragraph also highlights the growing importance of mobile and other forms of e-commerce in global markets. The benefits that such commerce provides are significant and growing. Governments have spent considerable time examining ways to ensure that consumers are afforded transparent and effective protection that is not less in the case of e-commerce than the level of protection afforded in more traditional forms of commerce.

IX. Science and Technology

Enterprises should:

1. Endeavour to ensure that their activities are compatible with the science and technology (S&T) policies and plans of the countries in which they operate and as appropriate contribute to the development of local and national innovative capacity.
2. Adopt, where practicable in the course of their business activities, practices that permit the transfer and rapid diffusion of technologies and know-how, with due regard to the protection of intellectual property rights.
3. When appropriate, perform science and technology development work in host countries to address local market needs, as well as employ host country personnel in an S&T capacity and encourage their training, taking into account commercial needs.
4. When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term sustainable development prospects of the host country.
5. Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.

Commentary on Science and Technology

93. In a knowledge-based and globalised economy where national borders matter less, even for small or domestically oriented enterprises, the ability to access and utilise technology and know-how is essential for improving enterprise performance. Such access is also important for the realisation of the economy-wide effects of technological progress, including productivity growth and job creation, within the context of sustainable development. Multinational enterprises are the main conduit of technology transfer across borders. They contribute to the national

innovative capacity of their host countries by generating, diffusing, and even enabling the use of new technologies by domestic enterprises and institutions. The R&D activities of MNEs, when well connected to the national innovation system, can help enhance the economic and social progress in their host countries. In turn, the development of a dynamic innovation system in the host country expands commercial opportunities for MNEs.

94. The chapter thus aims to promote, within the limits of economic feasibility, competitiveness concerns and other considerations, the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, contributing thereby to the innovative capacities of host countries. In this regard, fostering technology diffusion can include the commercialisation of products which imbed new technologies, licensing of process innovations, hiring and training of S&T personnel and development of R&D co-operative ventures. When selling or licensing technologies, not only should the terms and conditions negotiated be reasonable, but MNEs may want to consider the long-term developmental, environmental and other impacts of technologies for the home and host country. In their activities, multinational enterprises can establish and improve the innovative capacity of their international subsidiaries and subcontractors. In addition, MNEs can call attention to the importance of local scientific and technological infrastructure, both physical and institutional. In this regard, MNEs can usefully contribute to the formulation by host country governments of policy frameworks conducive to the development of dynamic innovation systems.

X. Competition

Enterprises should:

1. Carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anti-competitive effects.
2. Refrain from entering into or carrying out anti-competitive agreements among competitors, including agreements to:
 - a) fix prices;
 - b) make rigged bids (collusive tenders);
 - c) establish output restrictions or quotas; or
 - d) share or divide markets by allocating customers, suppliers, territories or lines of commerce.
3. Co-operate with investigating competition authorities by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.
4. Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

Commentary on Competition

95. These recommendations emphasise the importance of competition laws and regulations to the efficient operation of both domestic and international markets and reaffirm the importance of compliance with

those laws and regulations by domestic and multinational enterprises. They also seek to ensure that all enterprises are aware of developments concerning the scope, remedies and sanctions of competition laws and the extent of co-operation among competition authorities. The term “competition” law is used to refer to laws, including both “antitrust” and “antimonopoly” laws, that variously prohibit: a) anti-competitive agreements; b) the abuse of market power or of dominance; c) the acquisition of market power or dominance by means other than efficient performance; or d) the substantial lessening of competition or the significant impeding of effective competition through mergers or acquisitions.

96. In general, competition laws and policies prohibit: a) hard core cartels; b) other anti-competitive agreements; c) anti-competitive conduct that exploits or extends market dominance or market power; and d) anti-competitive mergers and acquisitions. Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/FINAL, the anticompetitive agreements referred to in sub a) constitute hard core cartels, but the Recommendation incorporates differences in member countries’ laws, including differences in the laws’ exemptions or provisions allowing for an exception or authorisation for activity that might otherwise be prohibited. The recommendations in these *Guidelines* do not suggest that enterprises should forego availing themselves of such legally available exemptions or provisions. The categories sub b) and c) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.
97. The goal of competition policy is to contribute to overall welfare and economic growth by promoting market conditions in which the nature, quality, and price of goods and services are determined by competitive market forces. In addition to benefiting consumers and a jurisdiction’s economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand. Enterprises can contribute to this process by providing information and advice when governments are considering laws and policies that might reduce efficiency or otherwise reduce the competitiveness of markets.
98. Enterprises should be aware that competition laws continue to be enacted, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions.

Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.

99. Finally, enterprises should recognise that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. See generally: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/FINAL; Recommendation of the Council on Merger Review, C(2005)34. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of co-operation among the authorities promotes consistent and sound decision-making and competitive remedies while also permitting cost savings for governments and enterprises.

XI. Taxation

1. It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.
2. Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.

Commentary on Taxation

100. Corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them. An enterprise complies with the spirit of the tax laws and regulations if it takes reasonable steps to determine the intention of the legislature and interprets those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history. Transactions should not be structured in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction unless there exists specific legislation designed to give that result. In this case, the enterprise should reasonably believe that the transaction is structured in

a way that gives a tax result for the enterprise which is not contrary to the intentions of the legislature.

101. Tax compliance also entails co-operation with tax authorities and provision of the information they require to ensure an effective and equitable application of the tax laws. Such co-operation should include responding in a timely and complete manner to requests for information made by a competent authority pursuant to the provisions of a tax treaty or exchange of information agreement. However, this commitment to provide information is not without limitation. In particular, the *Guidelines* make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognises the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.
102. Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies. In the case of enterprises having a corporate legal form, corporate boards are in a position to oversee tax risk in a number of ways. For example, corporate boards should proactively develop appropriate tax policy principles, as well as establish internal tax control systems so that the actions of management are consistent with the views of the board with regard to tax risk. The board should be informed about all potentially material tax risks and responsibility should be assigned for performing internal tax control functions and reporting to the board. A comprehensive risk management strategy that includes tax will allow the enterprise to not only act as a good corporate citizen but also to effectively manage tax risk, which can serve to avoid major financial, regulatory and reputation risk for an enterprise.
103. A member of a multinational enterprise group in one country may have extensive economic relationships with members of the same multinational enterprise group in other countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is limited to that which is relevant to or required by law for the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.

104. Transfer pricing is a particularly important issue for corporate citizenship and taxation. The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by multinational enterprises) means that transfer pricing is a significant determinant of the tax liabilities of members of a multinational enterprise group because it materially influences the division of the tax base between countries in which the multinational enterprise operates. The arm's length principle which is included in both the OECD Model Tax Convention and the UN Model Double Taxation Convention between Developed and Developing Countries, is the internationally accepted standard for adjusting the profits between associated enterprises. Application of the arm's length principle avoids inappropriate shifting of profits or losses and minimises risks of double taxation. Its proper application requires multinational enterprises to co-operate with tax authorities and to furnish all information that is relevant or required by law regarding the selection of the transfer pricing method adopted for the international transactions undertaken by them and their related party. It is recognised that determining whether transfer pricing adequately reflects the arm's length standard (or principle) is often difficult both for multinational enterprises and for tax administrations and that its application is not an exact science.
105. The Committee on Fiscal Affairs of the OECD undertakes ongoing work to develop recommendations for ensuring that transfer pricing reflects the arm's length principle. Its work resulted in the publication in 1995 of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (*OECD Transfer Pricing Guidelines*) which was the subject of the Recommendation of the OECD Council on the Determination of Transfer Pricing between Associated Enterprises (members of an MNE group would normally fall within the definition of Associated Enterprises). The *OECD Transfer Pricing Guidelines* and that Council Recommendation are updated on an ongoing basis to reflect changes in the global economy and experiences of tax administrations and taxpayers dealing with transfer pricing. The arm's length principle as it applies to the attribution of profits of permanent establishments for the purposes of the determination of a host State's taxing rights under a tax treaty was the subject of an OECD Council Recommendation adopted in 2008.
106. The *OECD Transfer Pricing Guidelines* focus on the application of the arm's length principle to evaluate the transfer pricing of associated enterprises. The *OECD Transfer Pricing Guidelines* aim to help tax administrations (of both OECD member countries and non-member countries) and multinational enterprises by indicating mutually

satisfactory solutions to transfer pricing cases, thereby minimising conflict among tax administrations and between tax administrations and multinational enterprises and avoiding costly litigation. Multinational enterprises are encouraged to follow the guidance in the *OECD Transfer Pricing Guidelines*, as amended and supplemented⁷, in order to ensure that their transfer prices reflect the arm's length principle.

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7. One non-OECD adhering country, Brazil, does not apply the *OECD Transfer Pricing Guidelines* in its jurisdiction and accordingly the use of the guidance in those *Guidelines* by multinational enterprises for purposes of determining taxable income from their operations in this country does not apply in the light of the tax obligations set out in the legislation of this country. One other non-OECD adhering country, Argentina, points out that the *OECD Transfer Pricing Guidelines* are not compulsory in its jurisdiction.

Part II

**Implementation Procedures of the OECD Guidelines
for Multinational Enterprises**

Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the OECD Declaration on International Investment and Multinational Enterprises (the “Declaration”), in which the Governments of adhering countries (“adhering countries”) jointly recommend to multinational enterprises operating in or from their territories the observance of Guidelines for Multinational Enterprises (the “Guidelines”);

Recognising that, since operations of multinational enterprises extend throughout the world, international co-operation on issues relating to the Declaration should extend to all countries;

Having regard to the Terms of Reference of the Investment Committee, in particular with respect to its responsibilities for the Declaration [C(84)171(Final), renewed in C/M(95)21];

Considering the Report on the First Review of the 1976 Declaration [C(79)102(Final)], the Report on the Second Review of the Declaration [C/MIN(84)5(Final)], the Report on the 1991 Review of the Declaration [DAFFE/IME(91)23], and the Report on the 2000 Review of the Guidelines [C(2000)96];

Having regard to the Second Revised Decision of the Council of June 1984 [C(84)90], amended June 1991 [C/MIN(91)7/ANN1] and repealed on 27 June 2000 [C(2000)96/FINAL];

Considering it desirable to enhance procedures by which consultations may take place on matters covered by these Guidelines and to promote the effectiveness of the Guidelines;

On the proposal of the Investment Committee:

DECIDES:

I. National Contact Points

1. Adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the *Guidelines* relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet regularly to share experiences and report to the Investment Committee.
4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.

II. The Investment Committee

1. The Investment Committee (“the Committee”) shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the *Guidelines* and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the “advisory bodies”), OECD Watch, as well as other international partners to express their views on matters covered by the *Guidelines*. In addition, exchanges of views with them on these matters may be held at their request.
3. The Committee shall engage with non-adhering countries on matters covered by the *Guidelines* in order to promote responsible business conduct worldwide in accordance with the *Guidelines* and to create a level playing field. It shall also strive to co-operate with non-adhering countries that have a special interest in the *Guidelines* and in promoting their principles and standards.

4. The Committee shall be responsible for clarification of the *Guidelines*. Parties involved in a specific instance that gave rise to a request for clarification will be given the opportunity to express their views either orally or in writing. The Committee shall not reach conclusions on the conduct of individual enterprises.
5. The Committee shall hold exchanges of views on the activities of National Contact Points with a view to enhancing the effectiveness of the *Guidelines* and fostering functional equivalence of National Contact Points.
6. In fulfilling its responsibilities for the effective functioning of the *Guidelines*, the Committee shall take due account of the attached procedural guidance.
7. The Committee shall periodically report to the Council on matters covered by the *Guidelines*. In its reports, the Committee shall take account of reports by National Contact Points and the views expressed by the advisory bodies, OECD Watch, other international partners and non-adhering countries as appropriate.
8. The Committee shall, in co-operation with National Contact Points, pursue a proactive agenda that promotes the effective observance by enterprises of the principles and standards contained in the *Guidelines*. It shall, in particular, seek opportunities to collaborate with the advisory bodies, OECD Watch, other international partners and other stakeholders in order to encourage the positive contributions that multinational enterprises can make, in the context of the *Guidelines*, to economic, environmental and social progress with a view to achieving sustainable development, and to help them identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

III. Review of the Decision

This Decision shall be periodically reviewed. The Committee shall make proposals for this purpose.

Procedural Guidance

I. National Contact Points

The role of National Contact Points (NCPs) is to further the effectiveness of the *Guidelines*. NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability to further the objective of functional equivalence.

A. Institutional Arrangements

Consistent with the objective of functional equivalence and furthering the effectiveness of the *Guidelines*, adhering countries have flexibility in organising their NCPs, seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.

Accordingly, the National Contact Points:

1. Will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the *Guidelines* and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.
2. Can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more Ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included.
3. Will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the *Guidelines*.

B. Information and Promotion

The National Contact Point will:

1. Make the *Guidelines* known and available by appropriate means, including through on-line information, and in national languages. Prospective investors (inward and outward) should be informed about the *Guidelines*, as appropriate.
2. Raise awareness of the *Guidelines* and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public.
3. Respond to enquiries about the *Guidelines* from:
 - a) other National Contact Points;
 - b) the business community, worker organisations, other non-governmental organisations and the public; and
 - c) governments of non-adhering countries.

C. Implementation in Specific Instances

The National Contact Point will contribute to the resolution of issues that arise relating to implementation of the *Guidelines* in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the *Guidelines*. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
 - a) seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other non-governmental organisations, and relevant experts;
 - b) consult the NCP in the other country or countries concerned;
 - c) seek the guidance of the Committee if it has doubt about the interpretation of the *Guidelines* in particular circumstances;

- d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.
3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:
- a) a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision;
 - b) a report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;
 - c) a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the *Guidelines* as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.

4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.

5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

D. Reporting

1. Each NCP will report annually to the Committee.
2. Reports should contain information on the nature and results of the activities of the NCP, including implementation activities in specific instances.

II. Investment Committee

1. The Committee will consider requests from NCPs for assistance in carrying out their activities, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances.
2. The Committee will, with a view to enhancing the effectiveness of the *Guidelines* and to fostering the functional equivalence of NCPs:
 - a) consider the reports of NCPs;
 - b) consider a substantiated submission by an adhering country, an advisory body or OECD Watch on whether an NCP is fulfilling its responsibilities with regard to its handling of specific instances;
 - c) consider issuing a clarification where an adhering country, an advisory body or OECD Watch makes a substantiated submission on whether an NCP has correctly interpreted the *Guidelines* in specific instances;
 - d) make recommendations, as necessary, to improve the functioning of NCPs and the effective implementation of the *Guidelines*;
 - e) co-operate with international partners;
 - f) engage with interested non-adhering countries on matters covered by the *Guidelines* and their implementation.
3. The Committee may seek and consider advice from experts on any matters covered by the *Guidelines*. For this purpose, the Committee will decide on suitable procedures.
4. The Committee will discharge its responsibilities in an efficient and timely manner.

5. In discharging its responsibilities, the Committee will be assisted by the OECD Secretariat, which, under the overall guidance of the Investment Committee, and subject to the Organisation's Programme of Work and Budget, will:
- a) serve as a central point of information for NCPs that have questions on the promotion and implementation of the *Guidelines*;
 - b) collect and make publicly available relevant information on recent trends and emerging practices with regard to the promotional activities of NCPs and the implementation of the *Guidelines* in specific instances. The Secretariat will develop unified reporting formats to support the establishment and maintenance of an up-to-date database on specific instances and conduct regular analysis of these specific instances;
 - c) facilitate peer learning activities, including voluntary peer evaluations, as well as capacity building and training, in particular for NCPs of new adhering countries, on the implementation procedures of the *Guidelines* such as promotion and the facilitation of conciliation and mediation;
 - d) facilitate co-operation between NCPs where appropriate; and
 - e) promote the *Guidelines* in relevant international forums and meetings and provide support to NCPs and the Committee in their efforts to raise awareness of the *Guidelines* among non-adhering countries.

Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises

1. The Council Decision represents the commitment of adhering countries to further the implementation of the recommendations contained in the text of the *Guidelines*. Procedural guidance for both NCPs and the Investment Committee is attached to the Council Decision.
2. The Council Decision sets out key adhering country responsibilities for the *Guidelines* with respect to NCPs, summarised as follows:
 - Setting up NCPs (which will take account of the procedural guidance attached to the Decision), and informing interested parties of the availability of *Guidelines*-related facilities.
 - Making available necessary human and financial resources.
 - Enabling NCPs in different countries to co-operate with each other as necessary.
 - Enabling NCPs to meet regularly and report to the Committee.
3. The Council Decision also establishes the Committee's responsibilities for the *Guidelines*, including:
 - Organising exchanges of views on matters relating to the *Guidelines*.
 - Issuing clarifications as necessary.
 - Holding exchanges of views on the activities of NCPs.
 - Reporting to the OECD Council on the *Guidelines*.
4. The Investment Committee is the OECD body responsible for overseeing the functioning of the *Guidelines*. This responsibility applies not only to the *Guidelines*, but to all elements of the Declaration (National Treatment Instrument, and the instruments on International Investment Incentives and Disincentives, and Conflicting Requirements). The Committee seeks to ensure that each element in the Declaration is respected and understood, and that they all complement and operate in harmony with each other.

5. Reflecting the increasing relevance of responsible business conduct to countries outside the OECD, the Decision provides for engagement and co-operation with non-adhering countries on matters covered by the *Guidelines*. This provision allows the Committee to arrange special meetings with interested non-adhering countries to promote understanding of the standards and principles contained in the *Guidelines* and of their implementation procedures. Subject to relevant OECD procedures, the Committee may also associate them with special activities or projects on responsible business conduct, including by inviting them to its meetings and to the Corporate Responsibility Roundtables.
6. In its pursuit of a proactive agenda, the Committee will co-operate with NCPs and seek opportunities to collaborate with the advisory bodies, OECD Watch, and other international partners. Further guidance for NCPs in this respect is provided in paragraph 18.

I. Commentary on the Procedural Guidance for NCPs

7. National Contact Points have an important role in enhancing the profile and effectiveness of the *Guidelines*. While it is enterprises that are responsible for observing the *Guidelines* in their day-to-day behaviour, governments can contribute to improving the effectiveness of the implementation procedures. To this end, they have agreed that better guidance for the conduct and activities of NCPs is warranted, including through regular meetings and Committee oversight.
8. Many of the functions in the Procedural Guidance of the Decision are not new, but reflect experience and recommendations developed over the years. By making them explicit the expected functioning of the implementation mechanisms of the *Guidelines* is made more transparent. All functions are now outlined in four parts of the Procedural Guidance pertaining to NCPs: institutional arrangements, information and promotion, implementation in specific instances, and reporting.
9. These four parts are preceded by an introductory paragraph that sets out the basic purpose of NCPs, together with core criteria to promote the concept of “functional equivalence”. Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the Committee in discussing the conduct of NCPs.

Core Criteria for Functional Equivalence in the Activities of NCPs

Visibility. In conformity with the Decision, adhering governments agree to nominate NCPs, and also to inform the business community, worker organisations and other interested parties, including NGOs, about the availability of facilities associated with NCPs in the implementation of the *Guidelines*. Governments are expected to publish information about their NCPs and to take an active role in promoting the *Guidelines*, which could include hosting seminars and meetings on the instrument. These events could be arranged in co-operation with business, labour, NGOs, and other interested parties, though not necessarily with all groups on each occasion.

Accessibility. Easy access to NCPs is important to their effective functioning. This includes facilitating access by business, labour, NGOs, and other members of the public. Electronic communications can also assist in this regard. NCPs would respond to all legitimate requests for information, and also undertake to deal with specific issues raised by parties concerned in an efficient and timely manner.

Transparency. Transparency is an important criterion with respect to its contribution to the accountability of the NCP and in gaining the confidence of the general public. Thus, as a general principle, the activities of the NCP will be transparent. Nonetheless when the NCP offers its “good offices” in implementing the *Guidelines* in specific instances, it will be in the interests of their effectiveness to take appropriate steps to establish confidentiality of the proceedings. Outcomes will be transparent unless preserving confidentiality is in the best interests of effective implementation of the *Guidelines*.

Accountability. A more active role with respect to enhancing the profile of the *Guidelines* – and their potential to aid in the management of difficult issues between enterprises and the societies in which they operate – will also put the activities of NCPs in the public eye. Nationally, parliaments could have a role to play. Annual reports and regular meetings of NCPs will provide an opportunity to share experiences and encourage “best practices” with respect to NCPs. The Committee will also hold exchanges of views, where experiences would be exchanged and the effectiveness of the activities of NCPs could be assessed.

Institutional Arrangements

10. NCP leadership should be such that it retains the confidence of social partners and other stakeholders, and fosters the public profile of the *Guidelines*.
11. Regardless of the structure Governments have chosen for their NCP, they can also establish multi-stakeholder advisory or oversight bodies to assist NCPs in their tasks.
12. NCPs, whatever their composition, are expected to develop and maintain relations with representatives of the business community, worker organisations, other non-governmental organisations, and other interested parties.

Information and Promotion

13. The NCP functions associated with information and promotion are fundamentally important to enhancing the profile of the *Guidelines*.
14. NCPs are required to make the *Guidelines* better known and available online and by other appropriate means, including in national languages. English and French language versions will be available from the OECD, and website links to the *Guidelines* website are encouraged. As appropriate, NCPs will also provide prospective investors, both inward and outward, with information about the *Guidelines*.
15. NCPs should provide information on the procedures that parties should follow when raising or responding to a specific instance. It should include advice on the information that is necessary to raise a specific instance, the requirements for parties participating in specific instances, including confidentiality, and the processes and indicative timeframes that will be followed by the NCP.
16. In their efforts to raise awareness of the *Guidelines*, NCPs will co-operate with a wide variety of organisations and individuals, including, as appropriate, the business community, worker organisations, other non-governmental organisations, and other interested parties. Such organisations have a strong stake in the promotion of the *Guidelines* and their institutional networks provide opportunities for promotion that, if used for this purpose, will greatly enhance the efforts of NCPs in this regard.
17. Another basic activity expected of NCPs is responding to legitimate enquiries. Three groups have been singled out for attention in this regard: *i*) other NCPs (reflecting a provision in the Decision); *ii*) the business community, worker organisations, other non-governmental organisations and the public; and *iii*) governments of non-adhering countries.

Proactive Agenda

18. In accordance with the Investment Committee's proactive agenda, NCPs should maintain regular contact, including meetings, with social partners and other stakeholders in order to:
 - a) consider new developments and emerging practices concerning responsible business conduct;
 - b) support the positive contributions enterprises can make to economic, social and environmental progress;
 - c) participate where appropriate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries.

Peer Learning

19. In addition to contributing to the Committee's work to enhance the effectiveness of the *Guidelines*, NCPs will engage in joint peer learning activities. In particular, they are encouraged to engage in horizontal, thematic peer reviews and voluntary NCP peer evaluations. Such peer learning can be carried out through meetings at the OECD or through direct co-operation between NCPs.

Implementation in Specific Instances

20. When issues arise relating to implementation of the *Guidelines* in specific instances, the NCP is expected to help resolve them. This section of the Procedural Guidance provides guidance to NCPs on how to handle specific instances.
21. The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the *Guidelines*.

Guiding Principles for Specific Instances

22. Consistent with the core criteria for functional equivalence in their activities NCPs should deal with specific instances in a manner that is:

Impartial. NCPs should ensure impartiality in the resolution of specific instances.

Predictable. NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including the provision of good offices, the stages of the specific instance process including indicative timeframes, and the potential role they can play in monitoring the implementation of agreements reached between the parties.

Equitable. NCPs should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure.

Compatible with the Guidelines. NCPs should operate in accordance with the principles and standards contained in the *Guidelines*.

Coordination between NCPs in Specific Instances

23. Generally, issues will be dealt with by the NCP of the country in which the issues have arisen. Among adhering countries, such issues will first be discussed on the national level and, where appropriate, pursued at the bilateral level. The NCP of the host country should consult with the NCP of the home country in its efforts to assist the parties in resolving the issues. The NCP of the home country should strive to provide appropriate assistance in a timely manner when requested by the NCP of the host country.
24. When issues arise from an enterprise's activity that takes place in several adhering countries or from the activity of a group of enterprises organised as consortium, joint venture or other similar form, based in different adhering countries, the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties. The NCPs can seek assistance from the Chair of the Investment Committee in arriving at such agreement. The lead NCP should consult with the other NCPs, which should provide appropriate assistance when requested by the lead NCP. If the parties fail to reach an agreement, the lead NCP should make a final decision in consultation with the other NCPs.

Initial Assessment

25. In making an initial assessment of whether the issue raised merits further examination, the NCP will need to determine whether the issue is

bona fide and relevant to the implementation of the *Guidelines*. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter.
 - whether the issue is material and substantiated.
 - whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
 - the relevance of applicable law and procedures, including court rulings.
 - how similar issues have been, or are being, treated in other domestic or international proceedings.
 - whether the consideration of the specific issue would contribute to the purposes and effectiveness of the *Guidelines*.
26. When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.
27. Following its initial assessment, the NCP will respond to the parties concerned. If the NCP decides that the issue does not merit further consideration, it will inform the parties of the reasons for its decision.

Providing Assistance to the Parties

28. Where the issues raised merit further consideration, the NCP would discuss the issue further with parties involved and offer "good offices" in an effort to contribute informally to the resolution of issues. Where relevant, NCPs will follow the procedures set out in paragraph C-2a) through C-2d). This could include seeking the advice of relevant authorities, as well as representatives of the business community, labour organisations, other non-governmental organisations, and experts.

Consultations with NCPs in other countries, or seeking guidance on issues related to the interpretation of the *Guidelines* may also help to resolve the issue.

29. As part of making available good offices, and where relevant to the issues at hand, NCPs will offer, or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation, to assist in dealing with the issues at hand. In common with accepted practices on conciliation and mediation procedures, these procedures would be used only upon agreement of the parties concerned and their commitment to participate in good faith during the procedure.
30. When offering their good offices, NCPs may take steps to protect the identity of the parties involved where there are strong reasons to believe that the disclosure of this information would be detrimental to one or more of the parties. This could include circumstances where there may be a need to withhold the identity of a party or parties from the enterprise involved.

Conclusion of the Procedures

31. NCPs are expected to always make the results of a specific instance publicly available in accordance with paragraphs C-3 and C-4 of the Procedural Guidance.
32. When the NCP, after having carried out its initial assessment, decides that the issues raised in the specific instance do not merit further consideration, it will make a statement publicly available after consultations with the parties involved and taking into account the need to preserve the confidentiality of sensitive business and other information. If the NCP believes that, based on the results of its initial assessment, it would be unfair to publicly identify a party in a statement on its decision, it may draft the statement so as to protect the identity of the party.
33. The NCP may also make publicly available its decision that the issues raised merit further examination and its offer of good offices to the parties involved.
34. If the parties involved reach agreement on the issues raised, the parties should address in their agreement how and to what extent the content of the agreement is to be made publicly available. The NCP, in consultation with the parties, will make publicly available a report with the results of the proceedings. The parties may also agree to seek the assistance of the NCP in following-up on the implementation of the

agreement and the NCP may do so on terms agreed between the parties and the NCP.

35. If the parties involved fail to reach agreement on the issues raised or if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the *Guidelines*. This procedure makes it clear that an NCP will issue a statement, even when it feels that a specific recommendation is not called for. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the NCP, any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.
36. The NCP should provide an opportunity for the parties to comment on a draft statement. However, the statement is that of the NCP and it is within the NCP's discretion to decide whether to change the draft statement in response to comments from the parties. If the NCP makes recommendations to the parties, it may be appropriate under specific circumstances for the NCP to follow-up with the parties on their response to these recommendations. If the NCP deems it appropriate to follow-up on its recommendations, the timeframe for doing so should be addressed in the statement of the NCP.
37. Statements and reports on the results of the proceedings made publicly available by the NCPs could be relevant to the administration of government programmes and policies. In order to foster policy coherence, NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specific agency's policies and programmes. This provision does not change the voluntary nature of the *Guidelines*.

Transparency and Confidentiality

38. Transparency is recognised as a general principle for the conduct of NCPs in their dealings with the public (see paragraph 9 in "Core Criteria" section, above). However, paragraph C-4 of the Procedural Guidance recognises that there are specific circumstances where confidentiality is important. The NCP will take appropriate steps to protect sensitive business information. Equally, other information, such as the identity of individuals involved in the procedures, should be kept confidential in the interests of the effective implementation of the *Guidelines*. It is understood that proceedings include the facts and arguments brought forward by the parties. Nonetheless, it remains

important to strike a balance between transparency and confidentiality in order to build confidence in the *Guidelines* procedures and to promote their effective implementation. Thus, while paragraph C-4 broadly outlines that the proceedings associated with implementation will normally be confidential, the results will normally be transparent.

Issues Arising in Non-Adhering Countries

39. As noted in paragraph 2 of the Concepts and Principles chapter, enterprises are encouraged to observe the *Guidelines* wherever they operate, taking into account the particular circumstances of each host country.
- In the event that *Guidelines*-related issues arise in a non-adhering country, home NCPs will take steps to develop an understanding of the issues involved. While it may not always be practicable to obtain access to all pertinent information, or to bring all the parties involved together, the NCP may still be in a position to pursue enquiries and engage in other fact finding activities. Examples of such steps could include contacting the management of the enterprise in the home country, and, as appropriate, embassies and government officials in the non-adhering country.
 - Conflicts with host country laws, regulations, rules and policies may make effective implementation of the *Guidelines* in specific instances more difficult than in adhering countries. As noted in the commentary to the General Policies chapter, while the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in a situation where it faces conflicting requirements.
 - The parties involved will have to be advised of the limitations inherent in implementing the *Guidelines* in non-adhering countries.
 - Issues relating to the *Guidelines* in non-adhering countries could also be discussed at NCP meetings with a view to building expertise in handling issues arising in non-adhering countries.

Indicative Timeframe

40. The specific instance procedure comprises three different stages:
1. *Initial assessment and decision whether to offer good offices to assist the parties:* NCPs should seek to conclude an initial assessment

within three months, although additional time might be needed in order to collect information necessary for an informed decision.

2. *Assistance to the parties in their efforts to resolve the issues raised:* If an NCP decides to offer its good offices, it should strive to facilitate the resolution of the issues in a timely manner. Recognising that progress through good offices, including mediation and conciliation, ultimately depends upon the parties involved, the NCP should, after consultation with the parties, establish a reasonable timeframe for the discussion between the parties to resolve the issues raised. If they fail to reach an agreement within this timeframe, the NCP should consult with the parties on the value of continuing its assistance to the parties; if the NCP comes to the conclusion that the continuation of the procedure is not likely to be productive, it should conclude the process and proceed to prepare a statement.
3. *Conclusion of the procedures:* The NCP should issue its statement or report within three months after the conclusion of the procedure.
41. As a general principle, NCPs should strive to conclude the procedure within 12 months from receipt of the specific instance. It is recognised that this timeframe may need to be extended if circumstances warrant it, such as when the issues arise in a non-adhering country.

Reporting to the Investment Committee

42. Reporting would be an important responsibility of NCPs that would also help to build up a knowledge base and core competencies in furthering the effectiveness of the *Guidelines*. In this light, NCPs will report to the Investment Committee in order to include in the Annual Report on the OECD *Guidelines* information on all specific instances that have been initiated by parties, including those that are in the process of an initial assessment, those for which offers of good offices have been extended and discussions are in progress, and those in which the NCP has decided not to extend an offer of good offices after an initial assessment. In reporting on implementation activities in specific instances, NCPs will comply with transparency and confidentiality considerations as set out in paragraph C-4.

II. Commentary on the Procedural Guidance for the Investment Committee

43. The Procedural Guidance to the Council Decision provides additional guidance to the Committee in carrying out its responsibilities, including:
- Discharging its responsibilities in an efficient and timely manner.
 - Considering requests from NCPs for assistance.
 - Holding exchanges of views on the activities of NCPs.
 - Providing for the possibility of seeking advice from international partners and experts.
44. The non-binding nature of the *Guidelines* precludes the Committee from acting as a judicial or quasi-judicial body. Nor should the findings and statements made by the NCP (other than interpretations of the *Guidelines*) be questioned by a referral to the Committee. The provision that the Committee shall not reach conclusions on the conduct of individual enterprises has been maintained in the Decision itself.
45. The Committee will consider requests from NCPs for assistance, including in the event of doubt about the interpretation of the *Guidelines* in particular circumstances. This paragraph reflects paragraph C-2c) of the Procedural Guidance to the Council Decision pertaining to NCPs, where NCPs are invited to seek the guidance of the Committee if they have doubt about the interpretation of the *Guidelines* in these circumstances.
46. When discussing NCP activities, the Committee may make recommendations, as necessary, to improve their functioning, including with respect to the effective implementation of the *Guidelines*.
47. A substantiated submission by an adhering country, an advisory body or OECD Watch that an NCP was not fulfilling its procedural responsibilities in the implementation of the *Guidelines* in specific instances will also be considered by the Committee. This complements provisions in the section of the Procedural Guidance pertaining to NCPs reporting on their activities.
48. Clarifications of the meaning of the *Guidelines* at the multilateral level would remain a key responsibility of the Committee to ensure that the meaning of the *Guidelines* would not vary from country to country. A substantiated submission by an adhering country, an advisory body or OECD Watch with respect to whether an NCP interpretation of the

Guidelines is consistent with Committee interpretations will also be considered.

49. In order to engage with non-adhering countries on matters covered by the *Guidelines*, the Committee may invite interested non-adhering countries to its meetings, annual Roundtables on Corporate Responsibility, and meetings relating to specific projects on responsible business conduct.
50. Finally, the Committee may wish to call on experts to address and report on broader issues (for example, child labour or human rights) or individual issues, or to improve the effectiveness of procedures. For this purpose, the Committee could call on OECD in-house expertise, international organisations, the advisory bodies, non-governmental organisations, academics and others. It is understood that this will not become a panel to settle individual issues.

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OECD Guidelines for Multinational Enterprises

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