

Order of the President

(No. 42 (2005))

The Company Law of the People's Republic of China was amended and adopted at the 18th session of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on October 27, 2005. The amended Company Law of the People's Republic of China is hereby promulgated and shall come into force on January 1, 2006.

President of the People's Republic of China Hu Jintao

October 27, 2005

Company Law of the People's Republic of China

(Adopted at the Fifth Session of the Standing Committee of the Eighth National People's Congress on December 29, 1993. Revised for the first time on December 25, 1999 according to the Decision of the Thirteenth Session of the Standing Committee of the Ninth People's Congress on Amending the Company Law of the People's Republic of China. Revised for the second time on August 28, 2004 according to the Decision of the 11th Session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on Amending the Company Law of the People's Republic of China. Revised for the third time at the 18th Session of the 10th National People's Congress of the People's Republic of China on October 27, 2005)

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Chapter I General Provisions

Article 1 This Law is enacted for the purposes of regulating the organization and operation of companies, protecting the legitimate rights and interests of companies, shareholders and creditors, maintaining the socialist economic order, and promoting the development of the socialist market economy

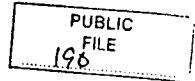
Article 2 The term "company" as mentioned in this Law refers to a limited liability company or a joint stock company limited set up within the territory of the People's Republic of China according to the provisions of this Law.

Article 3 A company is an enterprise legal person, which has independent legal person property and enjoys the right to legal person property. It shall bear the liabilities for its debts with all its property. For a limited liability company, a shareholder shall be liable for the company to the extent of the capital contributions it has paid. For a joint stock limited company, a shareholder shall be liable for the company to the extent of the shares it has subscribed to.

Article 4 The shareholders of a company shall be entitled to enjoy the capital proceeds, participate in making important decisions, choose managers and enjoy other rights.

Article 5 When conducting business operations, a company shall comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, accept the supervision of the government and general public, and bear social responsibilities.

The legitimate rights and interests of a company shall be protected by laws and must not be offended.



Article 6 To establish a company, an application for establishment registration shall be filed with the company registration authority. If the application meets the establishment requirements of this Law, the company registration authority shall register the company as a limited liability company or joint stock limited company. If the application does not meet the establishment requirements of this Law, it shall not be registered as a limited liability company or joint stock limited company.

If any law or administrative regulation provides that the establishment of a company shall be subject to approval, and relevant approval formalities shall be gone through prior to the registration of the company.

The general public may go to a company registration authority to search and consult the registration information filed by a company and the authority shall provide the research services for the public.

Article 7 For a lawfully established company, the company registration authority shall issue a company business license to the company. The date of issuance of the company business license shall be the date of establishment of the company. The company business license shall state the name, domicile, registered capital, actually paid capital, business scope, legal representative, etc. If any of the items as stated in the business license is changed, the company shall modify the registration and the company registration authority shall replace its old business license by a new one.

Article 8 A limited liability company established according to this Law shall include the words of "limited liability company" or "limited company" in its name. A joint stock limited company established according to this Law shall include words of "joint stock limited company" or "joint stock company".

Article 9 A limited liability company to be changed into a joint stock limited company shall satisfy the requirements as prescribed in this Law for joint stock limited companies. A joint stock limited company to be changed into a limited liability company shall conform to the conditions as prescribed in this Law for limited liability companies. In either of the aforesaid cases, the creditor's rights and debts of the company prior to the change shall be succeeded by the company after the change.

Article 10 A company shall regard its main office as its domicile.

Article 11 A company established according to this Law shall formulate its bylaw that are binding on the company, its shareholders, directors, supervisors and senior managers.

Article 12 A company's business scope shall be defined in its bylaw and shall be registered according to law. The company may change its business scope by modifying its bylaw, but it shall go through the formalities for modifying the registration.

If the business scope of a company covers any item subject to approval pursuant to any law or administrative regulation, approval shall be obtained according to the law.

Article 13 The legal representative of a company shall, be assumed by the chairman of the board of directors, executive director or manager according to the company's bylaw and

shall be registered according to law. If the legal representative of the company is changed, the company shall go through the formalities for modifying the registration.

Article 14 A company may set up branches. To set up a branch, the company shall file a registration application with the company registration authority and shall obtain a business license. A branch shall not enjoy the status of an enterprise legal person and its civil liabilities shall be born by its parent company.

A company may set up subsidiaries which enjoy the status of an enterprise legal person and shall be independently responsible for their own civil liabilities.

Article 15 A company may invest in other enterprises. However, unless it is otherwise provided for by any law, it shall not become a capital contributor that shall bear several and joint liabilities for the debts of the enterprises in which it invests.

Article 16 Where a company intends to invest in any other enterprise or provide collateral in favor of others, the company shall make a resolution through the board of directors, shareholders' meeting or shareholders' assembly according to its bylaw. If the bylaw prescribes any limit on the total amount of investments or collateral, or on the amount of a single investment or collateral, the aforesaid total amount or amount shall not exceed the limited amount. If a company intends to provide collateral to a shareholder or actual controller of the company, it shall make a resolution through the shareholder's meeting or shareholders' assembly.

The shareholder as mentioned in the preceding paragraph or the shareholder dominated by the actual controller as mentioned in the preceding paragraph shall not participate in voting on the matter as mentioned in the preceding paragraph. Such matter requires the affirmative votes of more than half of the other shareholders attending the meeting.

Article 17 Every company shall protect the lawful rights and interests of its employees, sign employment contracts with its employees, buy social insurances, and strengthen labor protection so as to ensure work safety.

Every company shall intensify, in various forms, the professional education and in-service training of its employees so as to improve their personal quality.

Article 18 The employees of a company may organize some branch of labor union to carry out union activities and safeguard the lawful rights and interests of the employees according to the Labor Union Law of the People's Republic of China. The company shall provide some necessary conditions for the branch to carry out its activities. The branch may, on behalf of the employees, sign collective contracts with the company with respect to the remuneration, working hours, welfare, insurance, work safety and sanitation, and other matters.

In accordance with the Constitution and other relevant laws, a company shall adopt democratic management in the form of assembly of the representatives of the employees or any other ways.

To make a decision on restructuring or any important issue relating to business operations, or to formulate any important bylaw, a company shall solicit the opinions of its labor union, and shall solicit the opinions and proposals of the employees through the assembly of the representatives of the employees or in any other way.

Article 19 Employees or members of a company may establish a branch of the Chinese Communist Party for and by themselves according to the Charter of the Chinese Communist Party. The company shall provide some necessary conditions for the branch to carry out its activities.

Article 20 The shareholders of a company shall abide by the laws, administrative regulations and bylaw and shall exercise the shareholder's rights under the law. None of them may injure any of the interests of the company or of other shareholders by abusing the shareholder's rights, or injure the interests of any creditor of the company by abusing the independent status of legal person or the shareholder's limited liabilities.

Where any of the shareholders of a company causes any loss to the company or to other shareholders by abusing the shareholder's rights, it shall be liable for compensation.

Where any of the shareholders of a company evades the payment of its debts by abusing the independent status of legal person or the shareholder's limited liabilities, if it seriously injures the interests of any creditor, it shall bear several and joint liabilities for the debts of the company.

Article 21 Neither the controlling shareholder, nor the actual controller, nor any of the directors, supervisors or senior management of a company may injure the interests of the company by taking advantage of its connection relationship with the company. Anyone who causes any loss to the company due to violating the preceding paragraph shall be liable for the damages.

Article 22 A resolution of the shareholders' meeting, shareholders' assembly or board of directors of the company that is in violation of any law or administrative regulation shall be null and void.

If the procedures for calling a shareholders' meeting or shareholders' assembly, or meeting of the board of directors, or the voting form, is in violation of any law, administrative regulation or the bylaw, or if a resolution is in violation of the bylaw of the company, the shareholders may, within 60 days from the day when the resolution is made, request the people's court to revoke it.

If the shareholders initiate a lawsuit under the preceding paragraph, the people's court shall, at the request of the company, demand the shareholders to provide corresponding guaranty.

Where a company has, according to the resolution of the shareholders' meeting, shareholders' assembly or meeting of the board of directors, completed the modification registration, if the people's court declares the resolution null and void or revoke the resolution, the company shall file an application with the company registration authority for revoking the modification registration.

Chapter II Establishment and Organizational structure of A Limited Liability Company

Section 1 Establishment

Article 23 The establishment of a limited liability company shall meet the following conditions:

- (1)The number of shareholders constitutes the quorum;
- (2)The amount of capital contributions paid by the shareholders reaches the statutory minimum amount of the registered capital;
- (3)The shareholders jointly work out the bylaw;
- (4)The company has a name and its organizational structure complies with that of a limited liability company; and
- (5)The company has a domicile.

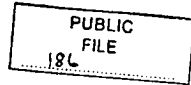
Article 24 A limited liability company shall be established by no more than 50 shareholders that make capital contributions.

Article 25 A limited liability company shall state the following items:

- (1)The name and domicile of the company;
- (2) Business Scope of the company;
- (3)Registered capital of the company;
- (4)Names of shareholders;
- (5) Forms, amount and date of capital contributions made by shareholders;
- (6)The organizations of the company and its formation, their functions and rules of procedure;
- (7)Legal representative of the company;
- (8)Other matters deemed necessary by shareholders.

The shareholders should affix their signatures or seals to the bylaw of the company.

Article 26 The registered capital of a limited liability company shall be the total amount of capital contributions subscribed to by all the shareholders registered in the company registration authority. The amount of the initial capital contributions made by all shareholders shall not be less than 20% of the registered capital, nor less than the statutory minimum amount of registered capital, the margin shall be paid off by the shareholders within 2 years from the day when the company is established; for an investment company, it may be paid off within 5 years. The minimum amount of registered capital of a limited liability company shall be RMB 30, 000 yuan. If any law or administrative regulation prescribes a relatively higher minimum amount of registered capital of a limited liability company, the provisions of that law or administrative regulation shall be followed.



Article 27 A shareholder may make capital contributions in cash, in kind, or intellectual property right, land use right, or other non-monetary properties that may be assessed on the basis of currency and may be transferred according to the law, excluding the properties that shall not be treated as capital contributions under any law or administrative regulation.

The value of the non-monetary properties as capital contributions shall be assessed and verified, which shall not be over-valued or under-valued. If any law or administrative regulations provides for the value assessment, such law or administrative regulation shall be followed.

The amount of the capital contributions in cash paid by all the shareholders shall be no less than 30% of the registered capital of the limited liability company.

Article 28 Each shareholder shall make full payment for the capital contributions he has subscribed to according to the bylaw. If a shareholder makes his capital contribution in cash, he shall deposit the full amount of such cash capital contribution into a temporary bank account opened for the limited liability company. If any capital contributions are made in non-monetary properties, the appropriate transfer procedures for the property rights therein shall be followed according to law.

Where a shareholder fails to make his capital contribution as specified in the preceding paragraph, he shall not only make full payment to the company but also bear the liabilities for breach of contract to the shareholders who have made full payment of capital contributions on schedule.

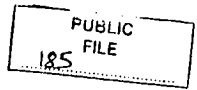
Article 29 The capital contributions made by the shareholders shall be verified by a lawfully established capital verification institution and the institute shall issue a certification to prove the contribution.

Article 30 After the initial capital contributions made by the shareholders have been verified by a lawfully established capital verification institution, the representative designated by all the shareholders or the agent entrusted by all the shareholders shall apply for establishment registration by submitting a company registration application, bylaw, capital verification and other documents to the company registration authority.

Article 31 After the establishment of a limited liability company, if the actual value of the capital contributions in non-monetary properties is found to be apparently lower than that set forth in the bylaw of the company, the difference shall be made up by the shareholder who offered them, and the other shareholders of the company who established the company shall bear several and joint liabilities.

Article 32 After the establishment of a limited liability company, each shareholder shall be issued a capital contribution certificate, which shall specify the following:

- (1) The name of the company;
- (2) The date of establishment of the company;
- (3) The company's registered capital;



(4) The name of the shareholder, the amount of his capital contribution, and the day when the capital contribution is made; and

(5) The serial number and date of issuance of the capital contribution certificate. The capital contribution certificate shall bear the seal of the company.

Article 33 A limited liability company shall prepare a registry of shareholders and the registry shall record the following information:

(1) The names of all shareholders and their domiciles thereof;

(2) The amount of capital contributions made by each shareholder;

(3) The serial numbers for all capital contribution certificates.

The shareholders recorded in the registry of shareholders may, pursuant to the registry of shareholders, claim to and exercise the shareholder's rights.

A company shall register each shareholder's name and its amount of capital contributions in the company registration authority. Where any of the registered items is changed, the company shall modify the registration. If the company fails to do so, it shall not, on the basis of the unregistered or un-modified registration item, stand up to any third party.

Article 34 Every shareholder shall be entitled to review and duplicate the company's bylaw, the minutes of the shareholders' meetings, the resolutions of the board of directors' meetings, the resolutions of the board of supervisors' meetings, as well as the financial reports.

Every shareholder may request to review the accounting books of the company. Where a shareholder requests to review the accounting books of the company, it shall submit a written request, which shall state his motives. If the company, has the legitimate reason to believe that the shareholder's requests to review the accounting books has an improper motive and may impair the legitimate interests of the company, it may reject the request of the shareholder to review the books and shall, within in 15 days after the shareholder submits a written request, give the shareholder a written reply, which shall include an explanation. If the company reject the request of any shareholder to review the accounting books, the shareholder may plead a people's court to demand the company to open the books for his review.

Article 35 Shareholders shall be distributed with the dividends based on the percentages of the capital that they actually contributed. When a company is going to increase the capital, its shareholders have the preemptive right to subscribe to the new capitals based on the same percentages of the old capital that they contributed. The exception shall be given if all shareholders agree that they will not be distributed with the dividends or have the preemptive right to subscribe to the new capitals based on the percentages of the old capital that they contributed.

Article 36 After the establishment of a company, no shareholder may illegally take away the registered capital.

Section 2 Organization Structure

Article 37 The shareholders' meeting of a limited liability company shall be composed of all the shareholders. It is the authority of the company and shall exercise its powers according to this Law.

Article 38 The shareholders' meeting shall exercise the following functions:

- (1) Determining the company's operational guidelines and investment plans;
- (2) Electing and changing the directors and supervisors assumed by non-representatives of the employees and deciding the matters relating to their salaries and compensations;
- (3) Deliberating and approving reports of the board of directors;
- (4) Deliberating and approving reports of the board of supervisors or the supervisor;
- (5) Deliberating and approving annual financial budget plans and final account plans of the company;
- (6) Deliberating and approving company profit distribution plans and loss recovery plans;
- (7) Making resolutions about the increase or reduction of the company's registered capital;
- (8) Making resolutions about the issuance of corporate bonds;
- (9) Adopting resolutions about the assignment, split-up, change of company form, dissolution, liquidation of the company;
- (10) Revising the bylaw of the company;
- (11) Other functions as specified in the bylaw.

If all the shareholders consent to any of the matters listed in the preceding paragraph by writing, they do not need to hold a shareholders' meeting and may make decisions and have the decisions signed and sealed by all the shareholders.

Article 39 The first shareholders' meeting shall be convened and presided over by the shareholder who made the largest capital contributions, and he shall exercise his powers according to this Law.

Article 40 The shareholders' meetings shall be classified into regular meetings and interim meetings. The regular meetings shall be timely held according to the bylaw. Where an interim meeting is proposed by the shareholders representing 1/10 of the voting rights or more, or by directors representing 1/3 of the voting rights or more, or by the board of supervisors, or by the supervisors of the company with no board of supervisors, an interim meeting shall be held.

Article 41 Where a limited liability company has set up a board of directors. The shareholders' meetings shall be convened by the board of directors and presided over by the chairman of the board of directors. If the chairman is unable or fails to perform his duties, the meetings thereof shall be presided over by the deputy chairman of the board of

directors. If the deputy chairman of the board of directors is unable or fails to perform his duties, the meetings shall be presided over by a director jointly recommended by half or more of the directors.

For a limited liability company with no board of directors, the shareholders' meetings shall be convened and presided over by the executive director.

If the board of directors or the executive director is unable or fails to fulfill the duties of convening the shareholders' meeting, the board of supervisors or the supervisor of the company with no board of supervisors may convene and preside over such meetings. If the board of supervisors or supervisor does not convene or preside over such meetings, the shareholders representing 1 / 10 or more of the voting rights may convene and preside over such meetings on their own initiatives.

Article 42 Every shareholder shall be given a notice 15 days before a shareholders' meeting is held unless it is otherwise specified by the bylaw or it is otherwise stipulated by all the shareholders.

A shareholders' meeting shall make the minutes for the decisions about the matters discussed at the meeting. The shareholders who attended the meeting shall affix their signatures to the minutes.

Article 43 The shareholders shall exercise their voting rights at the shareholders' meetings based on their respective percentage of the capital contributions unless it is otherwise prescribed by the bylaw.

Article 44 Unless it is otherwise provided for by this Law, the discussion methods and voting procedures of the shareholders' meeting shall be provided for in the bylaw.

A resolution made at a shareholders' meeting on revising the bylaw, increasing or reducing the registered capital, merger, split-up, dissolution or change of the company form shall be adopted by the shareholders representing 2 / 3 or more of the voting rights.

Article 45 The board of directors established by a limited liability company shall be composed of 3 up to 13 members unless it is otherwise provided by Article 51 of this Law.

If a limited liability company established by 2 or more state-owned enterprises or other state-owned investors, the board of directors shall include representatives of the employees of the companies. The board of directors of any other limited liability company may also include representatives of the employees of the company concerned. The employees' representatives who are to serve as board directors shall be democratically elected by the employees of the company through the general assembly of the representatives of employees, employees' assembly of the company or in any other way. The board of directors shall have one chairman and may have one or more deputy chairmen. The appointment of the chairman and deputy chair shall be specified in the bylaw.

Article 46 The term of office of the directors shall be provided for by the bylaw, but each term of office shall not exceed 3 years. The directors may, after the expiry of their term of

office, hold a consecutive term upon re-election. If no reelection is timely carried out after the expiry of the term of office of the directors, or if the number of the members of the board of directors is less than the quorum due to the resignation of some directors from the board of directors prior to the expiry of their term of office, the original directors shall, before the newly elected directors assume their posts, perform the powers of the directors according to the laws, administrative regulations, as well as the bylaw.

Article 47 The board of directors shall be responsible for the shareholders' meeting and exercise the following functions:

- (1) Convening shareholders' meetings and presenting reports thereto;
- (2) Implementing the resolutions made at the shareholders' meetings;
- (3) Determining the company's business and investment plans;
- (4) Working out the company's annual financial budget plans and final account plans;
- (5) Working out the company's profit distribution plans and loss recovery plans;
- (6) Working out the company's plans on the increase or reduction of registered capital, as well as on the issuance of corporate bonds;
- (7) Working out the company's plans on merger, split, change of the company form, or dissolution, etc.;
- (8) Making decisions on the establishment of the company's internal management departments;
- (9) Making decisions on hiring or dismissing the company's manager and his salary and compensation, and, according to the nomination of the manager, deciding on the hiring or dismissal of vice manager(s) and the persons in charge of finance as well as their salaries and compensations;
- (10) Working out the company's basic management system, and
- (11) Other functions as specified in the bylaw.

Article 48 A meeting of the board of directors shall be convened and presided over by the chairman of the board of directors. If the chairman of the board of directors is unable or fails to perform his duties, it may be convened or presided over by the deputy chairman of the board of directors. If the deputy chairman of the board of directors is unable or fails to perform his duties, it may be convened or presided over by a director whom is jointly recommended by half or more of the directors.

Article 49 Unless it is otherwise provided for by this Law, the discussion methods and voting procedures of the board of directors shall be specified by the bylaw.

The board of directors shall make minutes of the decisions about the matters discussed at the meetings thereof. The shareholders who attend the meeting shall affix their signatures to the minutes.

In the voting on a resolution of the board of directors, every director shall have one vote.

Article 50 A limited liability company may have a manager, who shall be hired or dismissed upon decision of the board of directors. The manager shall be responsible for the board of directors and shall exercise the following powers:

- (1) Taking charge of the management of the production and business operations of the company, organizing the implementation of the resolutions of the board of directors;
- (2) Organizing the execution of the company's annual business plans and investment plans;
- (3) Drafting plans on the establishment of the company's internal management departments;
- (4) Drafting the company's basic management system;
- (5) Formulating the company's specific rules and policies;
- (6) Proposing to hire or dismiss the company's vice manager(s) and the person in charge of finance;
- (7) Deciding on the hiring or dismissal of the persons-in-charge other than those who shall be decided by the board of directors; and
- (8) Other powers conferred by the board of directors.

If the bylaw provides otherwise for the powers of managers, the bylaw shall be followed. The manager attends the meetings of the board of directors as a non-voting representative.

Article 51 For a limited liability company with a relatively small number of shareholders or for a relatively small limited liability company, it may have an executive director and no board of directors. The executive director may concurrently hold the post of the company's manager.

The powers of the executive director shall be specified in the bylaw.

Article 52 A limited liability company may set up a board of supervisors, which shall be composed of at least 3 persons. For a limited liability company in which there is a relatively small number of shareholders or which is relatively small in scale, it may have 1 or 2 supervisors and does not have to establish a board of supervisors. The board of supervisors shall include shareholders' representatives and representatives of the employees' of the company at an appropriate ratio to be specifically prescribed in the bylaw. The employees' representatives who are to serve as members of the board of supervisors shall be democratically elected by the employees of the company through the assembly of the employees' representatives, or employees' assembly or by any other means. The board of supervisors shall have one chairman, who shall be elected by half or more of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman of supervisors is

unable or fails to perform his duties, the supervisor recommended by half or more of the supervisors shall convene and preside over the meetings of the board of supervisors.

No director or senior manager may concurrently serve as a supervisor.

Article 53 Each term of office of the supervisors shall be 3 years. The supervisors may, after the expiry of their term of office, hold a consecutive term upon reelection. If no reelection is timely carried out after the expiry of the term of office of the supervisors, or if the number of the members of the board of directors is less than the quorum due to the resignation of some directors from the board of supervisors prior to the expiry of their term of office, the original supervisors shall, before the newly elected supervisors assume their posts, exercise the powers of the supervisors according to laws, administrative regulations, as well as the bylaw.

Article 54 The board of supervisors or supervisor of a company with no board of supervisors may exercise the following powers:

- (1) To check the financial affairs of the company;
- (2) To supervise the duty-related acts of the directors and senior managers, to put forward proposals on the removal of any director or senior manager who violates any law, administrative regulation, the bylaw or any resolution of the shareholders' meeting;
- (3) To demand any director or senior manager to make corrections if his act has injured the interests of the company;
- (4) To propose to call interim shareholders' meetings, to call and preside over shareholders' meetings when the board of directors does not exercise the function of calling and presiding over shareholders' meetings as prescribed in this Law;
- (5) To put forward proposals at shareholders' meetings;
- (6) To initiate actions against directors or senior managers according to Article 152 of this Law; and
- (7) Other duties as provided for by the bylaw.

Article 55 The supervisors may attend the meetings of the board of directors as non-voting attendees, and may raise questions or suggestions about the meeting agenda discussed by the board of directors.

If the board of supervisors or the supervisors of the company that does not have a board of supervisors find that the company is running abnormally, they may conduct an investigation. Where necessary, they may hire an accounting firm to help them with the investigation and the related expenses shall be born by the company.

Article 56 The board of supervisors shall hold meetings at least once a year. Any supervisors may propose to hold interim meetings of the board of supervisors.

The discussion methods and voting procedures of the board of supervisors shall be specified in the bylaw unless it is otherwise provided by this Law.

A resolution of the board of supervisors shall be approved by more than half of the supervisors.

The board of supervisors shall scribe the minutes for the resolutions about the agenda and have the minutes signed by the supervisors in presence.

Article 57 The expenses necessary for the board of supervisors or the supervisor of a company that does not have a board of supervisors to perform their duties shall be borne by the company.

Section 3 Special Provisions on One-person Limited Liability Companies

Article 58 The provisions of this Section shall apply to the establishment and the organizational structure of a one-person limited liability. For any matter not touched by this Section, it shall be governed by Sections 1 and 2 of this Chapter.

The term "one-person limited liability company" as mentioned in this Law refers to a limited liability company with only one natural person shareholder or legal person shareholder.

Article 59 The minimum amount of registered capital of a one-person limited liability company shall be RMB 100, 000 yuan. The shareholder shall, in a lump sum, pay the capital contributions as specified in the bylaw.

One natural person is allowed to establish merely an one-person limited liability company, which shall not establish any more one-person limited liability company.

Article 60 An one-person limited liability company shall, in the company registration, give a clear indication that it is solely-funded by one natural person or legal person and the same shall be specified in the business license of the company.

Article 61 The bylaw of an one-person limited liability company shall be formulated by the shareholder.

Article 62 An one-person limited liability company has no board of directors. When the shareholder make a decision on any of the matters as listed in Article 38 of this Law, he shall make it in writing, sign it, and keep it in the company.

Article 63 An one-person limited liability company shall make a financial report by the end of every fiscal year and have the report audited by an accounting firm.

Article 64 If the shareholder of a one-person limited liability company is unable to prove that the property of the one-person limited liability company is independent from his own property, he shall bear joint liabilities for the debts of the company.

Section 4 Special Provisions on Wholly State-owned Companies

Article 65 The provisions of this Chapter shall apply to the establishment and organizational structure of the wholly state-owned companies. Any matter not covered by this Chapter shall be governed by the provisions of Sections 1 and 2 of this Chapter.

A "wholly state-owned company" as mentioned in this Law refers to a limited liability company invested wholly by the state, for which the State Council or the local people's government authorizes the state-owned assets supervision and administration institution of the people's government at the same level to perform the rights and obligations of the capital contributor.

Article 66 The bylaw of a wholly state-owned company shall be formulated by the state-owned assets supervision and administration institution, or shall be drafted by the board of directors and then be submitted to the state-owned assets supervision and administration institution for approval.

Article 67 Wholly state-owned company does not have shareholders' meeting. The state-owned assets supervision and administration institution shall exercise the functions of the shareholders' meeting. The state-owned assets supervision and administration institution may authorize the company's board of directors to exercise some of the functions of the shareholders' meeting and decide on the important matters of the company, excluding those that must be decided by the state-owned assets supervision and administration, such as merger, split-up, dissolution of the company, increase or reduction of registered capital as well as the issuance of corporate bonds. For the merger, split-up, dissolution or application for bankruptcy of an important wholly state-owned company, it shall, be subject to the examination of the state-owned assets supervision and administration institution, and then be submitted to the people's government at the same level for approval.

The term "important wholly state-owned company" as mentioned in the preceding paragraph shall be determined according to the provisions of the State Council.

Article 68 A wholly state-owned company shall establish a board of directors, which shall exercise its functions according to Articles 47 and 67 of this Law. Each term of office of the directors shall not exceed 3 years. The board of directors shall include representatives of the employees. The members of the board of directors shall be appointed by the state-owned assets supervision and administration institution, but of whom the representatives of the employees shall be elected through the assembly of the representatives of the employees of the company. The board of directors shall have one chairman and may have deputy chairmen. The chairman and deputy chairmen shall be designated by the state-owned assets supervision and administration institution from the members of the board of directors.

Article 69 A wholly state-owned company shall have a manager, whom shall be hired or dismissed by the board of directors. The manager shall exercise his powers according to Article 50 of this Law. Upon consent of the state-owned assets supervision and administration institution, the members of the board of directors may concurrently hold the post of manager.

Article 70 None of the chairman, deputy chairmen, directors and senior managers of a wholly state-owned company may concurrently take up a post in any other limited liability

company, joint stock limited company or any other economic organization unless it is so consented by the state-owned assets supervision and administration institution.

Article 71 The board supervisors of a wholly state-owned company shall be composed of at least 5 members, of whom the employees' representatives shall account for no less than 1/3, the specific percentage shall be specified by the bylaw.

The members of the board of supervisors shall be appointed by the state-owned assets supervision and administration institution, however, the employee representative members of the board of supervisors shall be elected by the assembly of the employee representatives of the company. The chairman of the board of supervisors shall be designated by the state-owned assets supervision and administration institution from the members of the board of supervisors. The board of supervisors shall exercise the functions as mentioned in Article 54 (1) through (3) of this Law and those provided for by the State Council.

Chapter III Transfer of Stock Right of A Limited Liability Company

Article 72 All or some of the stock rights of the shareholders of a limited liability company may be transferred among the shareholders.

Where a shareholder intends to transfer his/its stock rights to any one other than the shareholders, he shall obtain the consent from more than half of the other shareholders. The shareholder shall give the other shareholders a written notice about the matters related to the transfer of stock rights for their consent. If any of the other shareholders fails to give it a reply within 30 days after it receives a written notice, it shall be deemed to have consented to the transfer. If half or more of the other shareholders disagree to the transfer, the shareholders who disagree to the transfer shall purchase the stock rights to be transferred. If they refuse to purchase these stock rights, they shall be deemed to have consented to the transfer. Under the same conditions, the other shareholders have a preemptive right to purchase the stock rights to be transferred upon their consent. If two or more shareholders claim the preemptive right, they shall determine their respective purchase percentage through negotiation. If they fail to reach an agreement during the negotiation, they shall exercise the preemptive right on the basis of their respective percentage of capital contributions.

Unless it is otherwise provided for the transfer of stock rights in the bylaw, the bylaw shall be followed.

Article 73 When the people's court transfers the stock rights of a shareholder pursuant to the mandatory enforcement procedure as provided in laws, the court shall notify the company and all the shareholders that the other shareholders have a preemptive right under the same conditions. If any of the other shareholders fails to exercise the preemptive right within 20 days after he/it receives the notice of the court, it shall be deemed to have waived his preemptive right.

Article 74 After a company transfers its stock rights according to Articles 72 and 73 of this Law, it shall cancel the capital contribution certificate of the former shareholder, issue a

capital contribution certificate to the new shareholder and modify the shareholders and their capital contributions in the bylaw and the registry of shareholders. No voting of the shareholders' meeting is needed for the modification of the bylaw regarding the transfer of stock rights.

Article 75 Under any of the following circumstances, a shareholder, who votes against the resolution of the shareholders' meeting, may request the company to purchase its stock rights at a reasonable price:

- (1)The company that has made profits for five consecutive years has failed to distribute any dividends to the shareholders for 5 consecutive years and conforms to the profit distribution conditions as prescribed in this Law;
- (2)The company is going to merge with others, to be split up, or transfer the major properties of the company to others;
- (3)When the business term as specified in the bylaw expires or other reasons for dissolution as prescribed in the bylaw occur, the shareholders' meeting makes the company exist continuously by adopting a resolution to modify the bylaw.

Within 60 days after the resolution is adopted at the shareholders' meeting, if the shareholder and the company fails to reach an agreement on the purchase of stock rights, the shareholder may initiate a lawsuit in the people's court within 90 days after the resolution is adopted at the shareholders' meeting.

Article 76 After the death of a natural-person shareholder, his lawful inheritor may inherit the shareholder's qualifications unless it is otherwise provided for by the bylaw.

Chapter IV Establishment and Organizational structure of A Joint Stock Limited Company

Section 1 Establishment

Article 77 The establishment of a joint stock limited company shall satisfy the following conditions:

- (1)The number of promoters meets the quorum requirement;
- (2)The capital stock subscribed to by the promoters and raised by stock floatation reaches the minimum amount of the statutory capital;
- (3)The issuance of shares and the preparatory work conform to the provisions of laws;
- (4)The bylaw is formulated by the promoters, and is adopted at the establishment meeting if the company is to be launched by stock floatation;
- (5)The company has a name and its organizational structure complies with that of a joint stock limited company
- (6)The company has a domicile.

Article 78 A joint stock limited company may be established by the way of promotion or stock floatation.

The establishment of a company by promotion means that the promoters establish a company by subscribing to all of the shares that should be issued by the company.

The establishment of a company by stock flotation means that the promoters establish a company by subscribing to some of the shares that should be issued by the company and offering the remaining shares to the general public or to a group of specified people for subscription.

Article 79 To establish a joint stock limited company, there shall not be less than 2 but not more than 200 promoters, of whom half or more shall have a domicile within the territory of China.

Article 80 The promoters of a joint stock limited company shall undertake the preparatory work of the company.

They shall conclude a promoter's agreement to clarify their respective rights and obligations during the course of establishing the company.

Article 81 Where a joint stock limited company is established by promotion, its registered capital shall be the total capital stocks subscribed by all the promoters with the company registration authority. The minimum amount of initial capital contributions to be made by all promoters shall be not less than 20% of the total registered capital, the remaining amount shall be paid by the promoters within 2 years from the day when the company is established, while for an investment company, the remaining amount may be paid within 5 years. Before the registered capital is paid, no stock may be offered to others for subscription.

Where a joint stock limited company is established by stock flotation, its registered capital shall be the total actually paid capital stocks registered with the company registration authority. The minimum amount of the registered capital of a joint stock limited company shall be RMB 5 million yuan. If any law or administrative regulation provides a relatively higher minimum amount of registered capital, such provision shall be followed.

Article 82 The bylaw of a joint stock limited company shall specify the following matters:

- (1) The name and address of the company;
- (2) The business scope of the company;
- (3) The form of company establishment;
- (4) Total shares, par value of each share, and the amount of registered capital of the company;
- (5) The name of each promoter, the shares it has subscribed to, as well as the form and date of capital contributions;
- (6) The composition, powers, term of office, and rules of procedure of the board of directors;
- (7) The legal representative of the company;



(8)The composition, powers, term of office, and rules of procedure of the supervisory board;

(9)The method for profit distribution of the company;

(10)The reasons for dissolution of the company and liquidation methods;

(11)The methods for issuing notices or public announcements of the company; and

(12)Other matters deemed necessary by the meetings of shareholders' assembly.

Article 83 The form of capital contributions of promoters shall be governed by the provisions of Article 27 of this Law.

Article 84 When establishing a joint stock company limited by promotion, the promoters shall subscribe, in writing, to the full amount of shares provided in the bylaw. In the case of paying the capital contributions at one time, the promoters shall make the payment in a lump sum; in the case of paying the capital contributions by installments, the promoters shall make the down payment immediately. In the case of making capital contributions in non-monetary properties, the promoters shall go through the procedures for the transfer of property rights according to laws.

If any of the promoters fails to make capital contributions by following the provisions of the preceding paragraph, it shall bear the liabilities for breach of contract under the stipulations in the promoter's agreement.

After the promoters have made their down payment, they should elect the board of directors and board of supervisors. The board of directors shall file a registration application with the company registration authority and submit thereto the bylaw, the capital verification certification as issued by a lawfully established capital verification institution, as well as other documents as provided for by the laws and administrative regulations.

Article 85 For a joint stock limited company established by stock flotation, the shares subscribed by the promoters shall not be less than 35 % of the total shares. However, if it is otherwise provided for by any law or administrative regulation, such law or administrative regulation shall prevail.

Article 86 For the public offer shares, the promoters shall publish a prospectus and prepare share subscription forms. The share subscription form shall contain the items listed in Article 87, and a subscriber shall fill in the number and amount of shares he subscribes to and his domicile, and shall affix his signature or seal thereto. A subscriber shall pay the shares according to the number of shares he has subscribed to.

Article 87 The prospectus shall be accompanied by the bylaw formulated by the promoters and shall state the following:

(1)The number of shares subscribed to by the promoters;

(2) The par value and issuing price of each share;

(3) The total number of unregistered stocks issued;

(4) The purposes for the fund raising;

(5) The rights and obligations of the subscribers; and

(6) The beginning and ending dates for the public offering and a statement to indicate that the subscribers may revoke their subscriptions if the offered stocks cannot be fully subscribed at the closing time of the public offering.

Article 88 The public offer shares shall be underwritten by a lawfully established securities company and an underwriting agreement shall be concluded.

Article 89 For the public offer shares, the promoters shall sign an agreement with the bank receiving the funds to purchase the shares.

The receiving bank shall receive and hold as agent the payments for shares according to the agreement, produce receipts to subscribers who have made the payments, and shall be obliged to produce evidence of receipt of payments to the relevant departments.

Article 90 After full payments have been made for the public offer shares, they shall be verified by a lawfully established capital verification institution and a certification shall be issued thereby. The promoters shall hold a company establishment meeting within 30 days, which shall be composed of the subscribers. If the public offer shares are not fully subscribed to at the expiration of the time limit prescribed in the prospectus, or if the promoters fail to hold an establishment meeting within 30 days after full payment for the public offer shares is made, the subscribers may demand the promoters to make repayments for the public offer shares plus an interest calculated at the bank deposit interest rate for the same period.

Article 91 The promoters shall notify each subscriber of the date of the establishment meeting or make a public announcement about the meeting 15 days in advance. The establishment meeting may not be held unless subscribers representing at least half of the shares appear. The establishment meeting shall exercise the following powers:

- (1) Deliberating the report on the pre-establishment activities prepared by the sponsors;
- (2) Adopting the bylaw;
- (3) Electing members of the board of directors;
- (4) Electing members of the board of supervisors;
- (5) Verifying expenses incurred for the establishment of the company;
- (6) Verifying the value of the assets contributed by the promoters in lieu of pecuniary payment for the shares;

(7) Where the force majeure or a material change of the operational conditions makes the establishment of a company impossible, the promoters may decide not to establish the company.

A resolution adopted at the establishment meeting on any of the matters as mentioned in the previous paragraph requires affirmative votes by subscribers representing more than half of the votes of those attending the meeting.

Article 92 The promoters and subscribers shall not withdraw their share capital after making payments for the shares they have subscribed to or after making capital contributions by using non-monetary properties, unless the public offer shares have not been fully subscribed within the time limit, the promoters fail to convene the establishment meeting within the time limit, or the establishment meeting has decided not to set up the company.

Article 93 The board of directors shall, within 30 days after the establishment meeting ends, file a registration application with the company registration authority and submit thereto the following documents:

- (1) A company registration application;
- (2) The minutes of the establishment meeting;
- (3) The bylaw;
- (4) A capital verification certification;
- (5) The appointment documents and identity certificates of the legal representative, directors, supervisors;
- (6) The promoters' certifications of the legal person or the identifications of natural persons, and
- (7) The certification for the domicile of the company.

For a joint stock limited company established by stock floatation that makes public stock offerings, besides the aforementioned documents, it shall submit to the company registration authority the approval documents issued by the securities regulatory institution of the State Council.

Article 94 After the establishment of a joint stock limited company, if any of the promoters fail to make full payments for the capital contributions as stipulated in the bylaw, they shall make up the arrears and the other promoters shall bear several and joint liabilities.

After the establishment of a joint stock limited company, if it is found that the actual value of the non-monetary properties used as capital contributions for the establishment of the company is obviously lower than as the value stipulated in the bylaw, the promoter who made such a capital contribution shall make up the difference and the other promoters shall bear several and joint liabilities.

Article 95 The promoters of a joint stock limited company shall bear the following liabilities:

- (1) In the event of failure to establish the company, being jointly and severally liable for the debts and expenses incurred from the activities related to the company establishment;
- (2) In the event of failure to establish the company, being jointly and severally liable for refunding the subscribers with their paid capital plus the interests calculated according to the bank interest rate for the same period of time; and
- (3) If the company's interest is injured in the course of its establishment due to the negligence of the promoters, being liable for making compensations to the company.

Article 96 Where a limited liability company is changed into a joint stock limited company, the total amount of the paid capital shall not be less than the total amount of the net assets. Where a limited liability company is changed into a joint stock limited company, the public offer stocks issued for the purpose of increasing the capital shall comply with the law.

Article 97 A joint stock limited company shall make and keep the bylaw, the register of the shareholders, the stubs of corporate bonds, the minutes of the shareholders' assembly meetings, the minutes of the meetings of the board of directors, the minutes of the meetings of the board of supervisors, and the financial reports in the company.

Article 98 The shareholders shall be entitled to review the bylaw, the register of the shareholders, the stubs of corporate bonds, the minutes of the shareholders' assembly meetings, the minutes of the meetings of the board of directors, the minutes of the meetings of the board of supervisors, and the financial reports, and may put forward proposals or raise questions about the business operations of the company.

Section 2 Shareholders' Assembly

Article 99 The shareholders' assembly of a joint stock limited company shall be composed of all the shareholders. It is the company's organ of power, which shall exercise its powers according to this law.

Article 100 The provisions regarding the powers of the shareholders' assembly of a limited liability company as prescribed in the first paragraph of Article 38 of this Law shall apply to the shareholders' assembly of a joint stock limited company.

Article 101 An annual session of the shareholders' assembly shall be held each year. Under any of the following circumstances, an interim shareholders' assembly session shall be held within 2 months:

- (1) The number of directors is less than two-thirds of the number of directors as required by this Law or the number of directors as specified in the bylaw;
- (2) The un-recovered losses of the company reach one-third of the total paid-in capital;
- (3) At the request of the shareholders separately or aggregately holding 10% or more of the company's shares;
- (4) The board of directors deems it necessary;
- (5) At the request of the board of supervisors; and

(6) Other circumstances as specified in the bylaw.

Article 102 A session of the shareholders' assembly shall be convened by the board of directors and shall be presided over by the chairman of the board of directors. If the chairman is unable or fails to perform his duties, the meetings thereof shall be presided over by the deputy chairman of the board of directors. If the deputy chairman of the board of directors is unable or fails to perform his duties, the meetings shall be presided over by a director jointly recommended by half or more of the directors.

If the board of directors or the executive director is unable or fails to fulfill the obligation of convening the meetings of the shareholders' assembly, the board of supervisors shall convene and preside over such meetings. If the board of supervisors does not convene or preside over such meetings, the shareholders separately or aggregately holding 1/10 or more of the shares may convene and preside over such meetings on their own initiative.

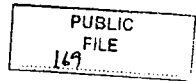
Article 103 For a shareholders' assembly meeting to be held, a notice shall be given to each shareholder 20 days in advance, which shall state the time and place of the meeting, and the matters to be deliberated at the meeting. For an interim meeting of the shareholders' assembly, a notice shall be given to each shareholder 15 days in advance. For the issue of unregistered stocks, the time and place of the meeting and the matters to be deliberated at the meeting shall be announced 30 days in advance.

The shareholders separately or aggregately holding 3% or more of the shares of the company may put forward a written interim proposal to the board of directors 10 days before a shareholders' assembly is held. The board of directors may notify other shareholders within 2 days and submit the interim proposal to the meeting of the shareholders' assembly for deliberation. The contents of an interim proposal shall fall within the scope to be decided by the shareholders' assembly, and the interim proposal shall have a clear topic for discussion and matters to be decided.

The shareholders' assembly shall not make any decision on any matter not listed in the notice as mentioned in the preceding two paragraphs. If the holders of unregistered stocks attend the shareholders' assembly, they shall have their stocks preserved in the company during the period from 5 days before the meeting is held to the day when the shareholders' assembly is closed.

Article 104 When a shareholder attends a meeting of the shareholders' assembly, he shall have one voting right for each share he holds. However, the company has no voting right for its own shares it holds. When any resolution is to be made by the shareholders' assembly, it shall be adopted by shareholders representing more than half of the voting rights of the shareholders in presence. However, when the shareholders' assembly makes a decision to modify the bylaw, or to increase or reduce the registered capital, or a resolution about the merger, split-up, dissolution or change of the company form, such a decision shall be adopted by shareholders representing 2/3 or more of the voting rights of the shareholders in presence.

Article 105 The important matters, such as the company to transfer or accept any significant asset or to provide a guaranty for any other person shall be decided by the



shareholders' assembly according to this Law and the bylaw, the board of directors shall timely call a shareholders' assembly to vote on these matters.

Article 106 A shareholders' assembly may adopt a cumulative voting system to elect the directors or supervisors according to the bylaw or its resolutions.

The term "cumulative voting system" as mentioned in this Law refers to a system of voting by shareholders for the election of directors or supervisors at a meeting of the shareholders' assembly in which the shareholder can multiply his voting rights by the number of candidates and vote them all for one candidate for director or supervisor.

Article 107 A shareholder may entrust an agent to attend a shareholders' assembly. The agent shall present a proxy issued by the shareholder to the company and shall exercise his voting rights within the authorization scope.

Article 108 The shareholders' assembly shall scribe the minutes for the decisions about the matters discussed at the assembly. The chair of the meeting and the directors in presence shall affix their signatures to the minutes, which shall be preserved together with the book of signatures of the shareholders in presence as well as the power of attorney thereof.

Section 3 The Board of Directors and Manager

Article 109 A joint stock limited company shall set up a board of directors, which shall be composed of 5-19 persons.

The board of directors may include representatives of the company's employees. The representatives of the employees who serve as board directors shall be democratically elected through the assembly of the representatives of the employees, the assembly of employees, or other methods.

The provisions in Article 46 of this Law on the term of office of the directors of a limited liability company shall apply to the director of a joint stock limited company.

The provisions in Article 47 of this Law on the functions of the board of directors of a limited liability company shall apply to the board of directors of a joint stock limited company.

Article 110 The board of directors shall have one chairman and may have a deputy chairman. The chairman and deputy chairmen shall be elected by more than half of all the directors.

The chairman of the board of directors shall call and preside over the meetings of the board of directors and check the implementation of the resolutions of the board of directors. The deputy chairman shall assist the chairman to work. If the chairman is unable or fails to perform his duties, the deputy chairman shall perform such duties. If the deputy chairman of the board of directors is unable or fails to perform his duties, a director who is jointly recommended by half or more of the directors shall perform such duties.

Article 111 The board of directors shall convene at least two meetings every year and shall give a notice to all directors and supervisors 10 days before it holds a meeting.

The shareholders representing 1/10 or more of the voting rights, or 1/3 of the directors, or the board of supervisors may put forward a proposal to hold an interim meeting of the board of directors. The chairman of the board of directors shall, within 10 days after he receives such a proposal, call and preside over a meeting of the board of directors. If the board of directors holds an interim meeting, it may separately decide the method and time limit for the notification about convening meetings of the board of directors.

Article 112 No meeting of the board of directors may be held unless more than half of the directors are present. When the board of directors makes a resolution, it shall be adopted by more than half of all the directors.

For the voting on a resolution of the board of directors, each director shall have one vote only.

Article 113 The meetings of the board of directors shall be attended by the directors in person. Where any director is unable to attend the meeting for a certain reason, he may, by issuing a written proxy, entrust another director to attend the meeting on his behalf, and the proxy shall state the scope of authorization.

The board of directors shall prepare minutes regarding the resolutions on the matters discussed at the meeting, which shall be signed by the directors in presence. The directors shall be responsible for the resolutions of the board of directors. Where a resolution of the board of directors is in violation of any law, administrative regulation, bylaw, or resolution of the shareholders' assembly and causes any serious loss to the company, the directors who participate in adopting the resolution shall make compensation. However, if a director is proven to have expressed his objection to the vote on such resolution and his objection was recorded in the minutes, then the director may be exempted from liability.

Article 114 A joint stock limited company may have a manager whom may be hired or dismissed by the board of directors.

The provisions of Article 50 of this Law on the powers of the manager of a limited liability company shall apply to the manager of a joint stock limited company.

Article 115 The board of directors of a company may decide to appoint a member of the board of directors to concurrently take up the post of the manager.

Article 116 No company may, directly or via its subsidiary, lend money to any of its directors, supervisors, or senior managers.

Article 117 A Company shall regularly disclose to its shareholders with the information about remunerations received by the directors, supervisors and senior managers from the company.

Section 4 Board of Supervisors

Article 118 A joint stock limited company shall set up a board of supervisors, which shall be composed of at least 3 persons.

The board of supervisors shall include representatives of shareholders and an appropriate percentage of representatives of the company's employees. The percentage of the representatives of employees shall account for no less than 1/3 of all the supervisors, but the concrete percentage shall be specified in the bylaw. The representatives of employees who serve as members of the board of supervisors shall be democratically elected through the assembly of representatives of the company's employees, the shareholders' assembly or by other means. The board of supervisors shall have one chairman and may have a deputy chairman. The chairman and deputy chairman shall be elected by more than half of all the supervisors. The chairman of the board of supervisors shall call and preside over the meetings of the board of supervisors. If the chairman of the board of supervisors is unable or fails to perform his duties, the deputy chairman of the board of supervisors shall call and preside over the meeting of the board of supervisors. If the deputy chairmen of the board of supervisors are unable or fail to perform their duties, a supervisor jointly recommended by half or more of the supervisors shall call and preside over the meetings of the board of supervisors.

No director or senior manager may concurrently act as a supervisor.

The provisions of Article 53 of this Law on the term of office of the supervisors of a limited liability company shall apply to the supervisors of a joint stock limited company.

Article 119 The provisions of Articles 54 and 55 of this Law on the functions of a limited liability company shall apply to the board of supervisors of a joint stock limited company/

The expenses necessary for the board of supervisors to exercise its functions shall be borne by the company.

Article 120 The board of supervisors shall hold at least one meeting every 6 months. The supervisors may propose to call interim meetings of the board of supervisors.

The discussion methods and voting procedures of the board of supervisors shall be specified in the bylaw unless it is otherwise provided for by this Law.

The board of supervisors shall prepare minutes for the decisions about the matters discussed at the meeting, which shall be signed by the supervisors in presence.

Section 5 Special Provisions on the Organizational structure of A Listed Company

Article 121 The term "listed company" as mentioned in this Law refers to the joint stock limited companies whose stocks are listed and traded in a stock exchange.

Article 122 Where a listed company purchases or sells any important asset, or provides guaranties that exceed 30% of the company's total assets within a year, such actions shall be authorized the resolutions made by the shareholders' assembly and adopted by the shareholders representing 2/3 of the voting rights of the shareholders who attend the assemblies.

Article 123 A listed company shall have independent directors. The concrete measures shall be formulated by the State Council.

Article 124 A listed company may have a secretary of the board of directors, who shall be responsible for the preparation of the sessions of shareholders' assembly and meetings of the board of directors, the preservation of documents, the management of the company's stock rights, and the information of disclosure, etc.

Article 125 Where any of the directors has any relationship with the enterprise involved in the matter to be decided at the meeting of the board of directors, he shall not vote on this resolution, nor may he vote on behalf of any other person. The meeting of the board of directors shall not be held unless more than half of the unrelated directors are present at the meeting. A resolution of the board of directors shall be adopted by more than half of the unrelated directors. If the number of unrelated directors in presence is less than 3 persons, the matter shall be submitted to the shareholders' assembly of the listed company for deliberation.

Chapter V Issuance and Transfer of Shares of A Joint Stock Limited Company

Section 1 Issuance of Shares

Article 126 The capital of a joint stock limited company shall be divided into shares and all the shares shall be of equal value.

The shares of a company are represented by stocks. A stock is a certificate issued by the company to certify the share held by a shareholder.

Article 127 The issuance of shares shall comply with the principle of fairness and impartiality. The shares of the same class shall have the same rights and benefits. The stocks issued at the same time shall be equal in price and shall be subject to the same conditions. The price of each share purchased by any organization or individual shall be the same.

Article 128 The stocks may be issued at a price equal to or in excess of par value, but not below par value.

Article 129 The stocks shall be in paper form or in other forms prescribed by the securities regulatory institution of the State Council.

A stock shall state the following major items:

- (1) The company name;
- (2) The company's date of establishment;
- (3) The class and par value of the stock, as well as the number of shares it represents; and
- (4) The serial number of the stock.

The stock shall bear the signature of the legal representative and the seal of the company.

The stocks held by the promoters shall be marked with the words "promoters' stocks".

Article 130 The stocks issued by a company may be registered stocks or unregistered stocks.

The stocks issued to promoters or legal persons shall be registered stocks, which shall state the names of such promoters or legal persons, and shall not be registered in any other person's name or the names of any representative.

Article 131 A company that issues registered stocks shall prepare a register of shareholders, which shall state the following:

- (1) The name and domicile of each shareholder;
- (2) The number of shares held by each shareholder;
- (3) The serial numbers of the stocks held by each shareholder; and
- (4) The date on which each shareholder acquired his shares.

A company issuing unregistered stocks shall record the amount, serial numbers and issuance date of the stocks.

Article 132 For the company's issuance of other shares not provided for in this Law, the State Council may formulate separate provisions.

Article 133 After a joint stock limited company is established, it shall formally deliver the stocks to the shareholders. No company may deliver any stock to the shareholders prior to its establishment.

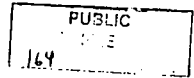
Article 134 Where a company intends to issue new stocks, it shall, under its bylaw, make a resolution about the following matters through the shareholders' assembly or board of directors:

- (1) The class and amount of new stocks;
- (2) The issuing price of the new stocks;
- (3) The beginning and ending dates for the issuance of new stocks; and
- (4) The class and amount of the new stocks to be issued to the original shareholders.

Article 135 When a company publicly issues new stocks upon approval of the securities regulatory institution, it shall publish a new stock prospectus and its financial reports, and shall make a stock subscription form.

The provisions of Articles 88 and 89 of this Law shall apply to the public offering of new stocks of a company.

Article 136 When a company issues new stocks, it may make a pricing plan according to its business operations and financial status.



Article 137 After a company raises enough capital, it shall go through modification registration in the company registration authority and make an public announcement.

Section 2 Transfer of Shares

Article 138 The shares held by the stockholders may be transferred according to laws.

Article 139 Where a stockholder intends to transfer its shares, it shall transfer its shares in a lawfully established stock exchange or by any other means as prescribed by the State Council.

Article 140 Registered stocks may be assigned by their stockholders' endorsement or by any other means prescribed by the relevant laws or administrative regulations. After the assignment, the company shall record the name and domicile of the transferee in the register of shareholders. Within 20 days before an assembly of shareholders is held, or within 5 days prior to the benchmark date decided by the company for the distribution of dividends, no modification registration may be made to the register of shareholders as mentioned in the preceding paragraph. However, if any law provides otherwise for the modification registration of the register of shareholders of listed companies, the latter shall prevail.

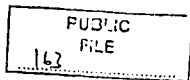
Article 141 The transfer of an unregistered stock takes effect as soon as the stockholder delivers the stock to the transferee.

Article 142 The shares of a company held by the promoters of this company shall not be transferred within 1 year after the date of the establishment of the company. The shares issued before the company publicly issues shares shall not be transferred within 1 year from the day when the stocks of the company get listed and are traded in a stock exchange.

The directors, supervisors and senior managers of the company shall declare to the company the shares held by them and the changes thereof. During the term of office, the shares transferred by any of them each year shall not exceed 25% of the total shares of the company he holds. The shares of the company held by the aforesaid persons shall not be transferred within 1 year from the day when the stocks of the company get listed and are traded in a stock exchange. After any of the aforesaid persons is removed from his post, he shall not transfer the shares of the company he holds. The bylaw may have other restrictions on the transfer of shares held by the directors, supervisors and senior managers.

Article 143 A company shall not purchase its own shares except under any of the following circumstances:

- (1) To decrease the registered capital of the company;
- (2) To merge another company holding shares of this company;
- (3) To award the employees of this company with shares; or



(4) It is requested by any shareholder to purchase his shares because this shareholder objects to the company's resolution on merger or split-up made by the assembly of shareholders.

Where a company needs to purchase its own shares for any of the reasons as mentioned in Items (1) through (3) of the preceding paragraph, it shall be subject to a resolution of the shareholders' assembly. After the company purchases its own shares pursuant to the provisions of the preceding paragraph, it shall, under the circumstance as mentioned in Item (1), write them off within 10 days after the purchase; while under either circumstance as mentioned in Item (2) or (4), transfer them or write them off within 6 months.

The shares purchased by the company according to Item (3) of the preceding paragraph shall not exceed 5% of the total shares already issued by this company. The fund used for the share acquisition shall be paid from the after-tax profits of the company. The shares purchased by the company shall be transferred to the employees within 1 year.

No company may accept any subject matter taking the stocks of this company as a pledge.

Article 144 Where any registered stocks are stolen, lost or destroyed, the shareholder may request the people's court to declare these stocks invalid according to the public notice procedure prescribed in the Civil Procedural Law of the People's Republic of China. After the people's court has invalidated these stocks, the shareholder may file an application to the company for the issuance of new stocks.

Article 145 The stocks of a listed company shall get listed and traded according to the relevant laws, administrative regulations, as well as the trading rules of the stock exchange.

Article 146 A listed company shall, in pursuance of the laws and administrative regulations, publicize its financial status, business operations and important lawsuits, and shall publish its financial reports once every six months in each fiscal year.

Chapter VI Qualifications and Obligations of the Directors, Supervisors and Senior Managers of A Company

Article 147 Anyone who is under any of the following circumstances shall not assume the post of a director, supervisor or senior manager of a company:

- (1) Being without civil capacity or with only limited civil capacity;
- (2) Having been sentenced to any criminal penalty due to an offence of corruption, bribery, encroachment of property, misappropriation of property or disrupting the economic order of the socialist market and 5 years have not elapsed since the completion date of the execution of the penalty; or he has ever been deprived of his political rights due to any

crime and 3 years have not elapsed since the completion date of the execution of the penalty;

(3) He was a former director, factory director or manager of a company or enterprise which was bankrupt and liquidated, whereby he was personally liable for the bankruptcy of such company or enterprise, and three years have not elapsed since the date of completion of the bankruptcy and liquidation of the company or enterprise;

(4) He was the legal representative of a company or enterprise, but the business license of this company or enterprise was revoked and this company or enterprise was ordered to close due to a violation of the law, whereby he is personally liable for the revocation, and three years have not elapsed since the date of the revocation of the business license thereof;

(5) He has a relatively large amount of debt which is due but has not been paid.

Where a company elects or appoints any director or supervisor, or hires any senior manager by violating the provisions in the preceding paragraph, such elections, appointments, or hiring shall be invalid. Where any director, supervisor or senior manager, during his term of office, is under any of the circumstances as mentioned in the preceding paragraph, the company shall remove him from his post.

Article 148 The directors, supervisors and senior managers shall comply with the laws, administrative regulations, and bylaw. They shall bear the obligations of fidelity and diligence to the company.

No director, supervisor or senior manager may accept any bribe or other illegal gains by taking the advantage of his powers, or encroach on the property of the company.

Article 149 No director or senior manager may commit any of the following acts:

(1) Misappropriating the company's fund;

(2) Depositing the company's fund into an account under his own name or any other individual's name;

(3) Without consent of the shareholders' meeting, shareholders' assembly, or the board of directors, loaning the company's fund to others or providing any guaranty to any other person by using the company's property as in violation of the bylaw;

(4) Entering a contract or trading with this company by violating the bylaw or without consent of the shareholders' meeting or shareholders' assembly;

(5) Without consent of the shareholders' meeting or shareholders' assembly, seeking business opportunities that belong to the company for himself or any other persons by taking advantages of his powers, or operating similar business of the company for which he works for himself or for any other persons;

(6) Taking commissions on the transactions between others and the company into his own pocket;



(7) Illegally disclosing the company's confidential information;

(8) Other acts inconsistent with the obligation of fidelity to the company. The income of any director or senior manager from any act in violation of the preceding paragraph shall belong to the company.

Article 150 Where any director, supervisor or senior manager violates any law, administrative regulation, or the bylaw during the course of performing his duties, if any loss is caused to the company, he shall be liable for compensation.

Article 151 If the shareholder's meeting or shareholders' assembly demands a director, supervisor or senior manager to attend the meeting as a non-voting representative, he shall do so and shall answer the shareholders' inquiries.

The directors and senior managers shall faithfully offer relevant information and materials to the board of supervisors or the supervisor of a limited liability company that does not have a board of supervisors, none of them may impede the board of supervisors or supervisor from exercising their powers.

Article 152 Where a director or senior manager is under the circumstance as mentioned in Article 150 of this Law, the shareholder(s) of the limited liability company or joint stock limited company separately or aggregately holding 1% or more of the total shares of the company for 180 consecutive days or more may request in writing the board of supervisors or the supervisor of the limited liability company with no board of supervisors to initiate a lawsuit in the people's court. If the supervisor is under the circumstance as mentioned in Article 150 of this Law, the aforesaid shareholder(s) may request in writing the board of directors or the executive director of the limited liability company with no board of directors to lodge an action in the people's court.

If the board of supervisors, or supervisor of a limited liability company with no board of supervisors, or board of directors or executive director refuses to lodge a lawsuit after receiving a written request as mentioned in the preceding paragraph, or if they fail to initiate a lawsuit within 30 days after receiving the request, or if, in an emergency, the failure to lodge an action immediately will cause unrecoverable damages to the interests of the company, the shareholder(s) as listed in the preceding paragraph may, on their own behalf, directly lodge a lawsuit in the people's court.

If the legitimate rights and interests of a company are impaired and any losses are caused to the company, the shareholders as mentioned in the preceding paragraph may initiate a lawsuit in the people's court according to the provisions of the preceding two paragraphs.

Article 153 If any director or senior manager damages the shareholders' interests by violating any law, administrative regulation, or the bylaw, the shareholders may lodge a lawsuit in the people's court.

Chapter VII Corporate Bonds

Article 154 The term "corporate bonds" as mentioned in this Law refers to the negotiable instruments that are issued by a company under the statutory procedures with guaranteed

payment of the principal plus interest by a specified future date. To issue corporate bonds, a company shall satisfy the issuance requirements of the Securities Law of the People's Republic of China.

Article 155 After an application for issuing corporate bonds has been approved by the department authorized by the State Council, the company shall publish its bond issuance plan, which shall mainly state:

- (1) the company's name;
- (2) the purposes of use of the corporate bonds;
- (3) the total amount of corporate bonds and par value thereof;
- (4) the method for determining the interest rate of the bonds;
- (5) the time limit and method for paying the principal plus interest;
- (6) guaranty of the bonds;
- (7) issuing price of the bonds, beginning and ending dates of the issuance;
- (8) net assets of the company;
- (9) total amount of corporate bonds having been issued but not yet due; and
- (10) underwriters of the corporate bonds.

Article 156 The physical bonds issued by a company shall state the company's name, par value, interest rate, time limit for repayment, etc., and shall bear the signature of legal representative and seal of the company.

Article 157 The corporate bonds may be registered or unregistered bonds.

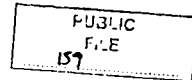
Article 158 A company shall prepare and keep the stubs of corporate bonds.

If the company issues registered corporate bonds, the stubs thereof shall state:

- (1) the name and domicile of the bondholders;
- (2) the dates on which the bondholder acquires the bonds and the serial number of the bonds;
- (3) the total amount of the bonds, par value, interest rate, time limit and method for repayment of principal plus interest; and
- (4) the date on which the bonds are issued.

If the company issues unregistered corporate bonds, the stubs thereof shall state the total amount of the bonds, interest rate, time limit and method for repayment, issuance date and serial numbers of the bonds.

Article 159 The registration and settlement institution of registered corporate bonds shall establish bylaws on the registration, preservation, interest payment and acceptance of bonds.



Article 160 The corporate bonds may be transferred. The transfer price shall be negotiated between the transferor and transferee.

The transfer of any corporate bonds, which get listed and are traded in a stock exchange, shall follow the trading rules of the stock exchange.

Article 161 Registered corporate bonds may be assigned by the bondholders' endorsement or by other methods prescribed by the relevant laws and administrative regulations.

In the case of transfer of registered bonds, the company shall record the transferee's name and domicile in the stub of corporate bonds.

The transfer of unregistered corporate bonds becomes effective as soon as the bondholder delivers the bonds to the transferee.

Article 162 A listed company may, upon a resolution of the shareholders' assembly, issue corporate bonds that may be converted into stocks and shall work out concrete conversion measures in the corporate bond issuance plan. To issue corporate bonds that may be converted into stocks, a listed company shall file an application with the securities regulatory institution for examination and approval. The corporate bonds that may be converted into stocks shall be marked with the words "convertible corporate bonds" and the number of convertible company bonds shall be specified in the company's record of bondholders.

Article 163 Where any convertible company bonds are issued, the company shall exchange its stocks for the bonds held by the bondholders in the prescribed method of conversion, provided that the bondholders have the option on whether or not to convert their bonds.

Chapter VIII Financial Affairs and Accounting of A Company

Article 164 A company shall establish its own financial and accounting bylaws according to the laws; administrative regulations, and provisions of the treasury department of the State Council.

Article 165 A company shall, after the end of each fiscal year, formulate a financial report and shall have it audited by an accounting firm. The financial report shall be work out according to the laws, administrative regulations, and provisions of the treasury department of the State Council.

Article 166 A limited liability company shall submit the financial report to each shareholder within the time limit as prescribed in the bylaw. The financial report of a joint stock limited company shall be ready for the consultation of the shareholders at the company 20 days before the annual meeting of the shareholders' assembly is held. A joint stock limited company of public offer stocks shall make a public announcement about its financial report.

Article 167 Where a company distributes its after-tax profits of the current year, it shall draw 10 percent of the profits as the company's statutory common reserve. The company may stop drawing the profits if the aggregate balance of the common reserve has already accounted for over 50 percent of the company's registered capital.

If the aggregate balance of the company's statutory common reserve is not enough to make up for the losses of the company of the previous year, the current year's profits shall first be used for making up the losses before the statutory common reserve is drawn according to the provisions of the preceding paragraph.

After the company has drawn statutory common reserve from the after-tax profits, it may, upon a resolution made by the shareholders' assembly, draw a discretionary common reserve from the after-tax profits. After the losses have been made up and common reserves have been drawn, the remaining profits shall be distributed to shareholders according to Article 35 of this Law in the case of a limited liability company and according to the number of shares held by shareholders as in the case of a joint stock company limited.

If the shareholders' meeting, shareholders' assembly or board of directors distributes the profits by violating the provisions of the preceding paragraph before the losses are made up and the statutory common reserves are drawn, the profits distributed must be refunded to the company. No profit may be distributed for the company's shares held by this company.

Article 168 The premium of a joint stock limited company from the issuance of stocks at a price above the par value of the stocks, and other incomes listed in the capital reserve under provisions of the treasury department of the State Council shall be listed as the company's capital reserve.

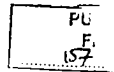
Article 169 The company's common reserves shall be used for making up losses, expanding the production and business scale or increasing the registered capital of the company, but the capital common reserve shall not be used for making up the company's losses.

When the statutory common reserve is changed to capital, the remainder of the common reserve shall not be less than 25 % of the registered capital prior to the increase.

Article 170 Where a company plans to hire or dismiss any accounting firms to undertake the auditing of the company, a resolution shall be made by the shareholders' meeting, the shareholders' assembly, or the board of directors according to the provisions of the bylaw.

When the shareholders' meeting, the shareholders' assembly, or the board of directors carries out a vote to dismiss an accounting firm, the accounting firm shall be allowed to state its own opinions.

Article 171 A company shall provide the accounting firm it hires with truthful and complete accounting vouchers, accounting books, financial and accounting statements, and other



accounting materials, and shall not refuse to do so, conceal any of these materials, or make any false statements.

Article 172 Except for the statutory account books, no company may set up other accounting books.

No company asset may be deposited into any individual's account.

Chapter IX Merger and Split-up of Company; Increase and Deduction of Registered Capital

Article 173 The mergers of companies may take the form of mergers by absorption or mergers by new establishment.

In the case of mergers by absorption, a company absorbs other companies and the absorbed company is dissolved. In the case of mergers by new establishment, two or more companies combine together for the establishment of a new one, and the pre-merger companies are dissolved.

Article 174 To carry out a corporate merger, both parties to the merger shall conclude an agreement with each other and formulate balance sheets and checklists of properties. The companies involved shall, within ten days after making the decision of merger, notify the creditors, and shall make a public announcement on a newspaper within 30 days. The creditors may, within 30 days after receiving the notice or within 45 days after the issuance of the public announcement if it fails to receive a notice, demand the company to clear off its debts or to provide corresponding guaranties.

Article 175 To carry out a merger, the credits and debts of the companies involved shall be succeeded by the company that survives the merger or by the newly established company.

Article 176 To split a company, the properties thereof shall be divided accordingly. To split the company, balance sheets and checklists of properties shall be worked out. The company shall, within 10 days after the decision of split-up is made, inform the creditors and make a public announcement on a newspaper within 30 days.

Article 177 The post-split companies shall bear several and joint liabilities for the debts of the company before its split unless it is otherwise prescribed in a written agreement reached by the company and the creditors before the split regarding the debt pay-off.

Article 178 Where a company finds it necessary to reduce its registered capital, it must work out balance sheets and checklists of properties.

The company shall, within ten days after the decision of reducing registered capital, notify the creditors and make a public announcement on a newspaper within 30 days. The creditors shall, within 30 days after receiving the notice or within 45 days after the issuance of the public announcement if it fails to receive the notice, be entitled to demand the company to pay off the debts or to provide respective guaranties.

The registered capital of the company after reducing its registered capital shall not be lower than the minimum amount required by laws.

Article 179 Where a limited liability company increases its registered capital, the capital contributions of the shareholders for the increased amount shall be governed by the relevant provisions of this Law regarding the capital contribution for the establishment of a limited liability company.

Where a joint stock limited company issues new stocks for increasing its registered capital, the subscription to new stocks by shareholders shall be governed by the relevant provisions of the present Law regarding the payment of stock premium for the establishment of a joint stock limited company.

Article 180 Where, in the process of company merger or split, any of the registered items is changed, the companies shall go through modification registration with the company registration authority. Where a company is dissolved, it shall be deregistered according to law. If a new company is established, it shall go through the procedures for company establishment according to law.

In the case of increasing or reducing its registered capital, a company shall go through modification registration with the company registration authority according to law.

Chapter X Dissolution and Liquidation of Company

Article 181 A company may be dissolved under one of the following circumstances:

- (1) the term of business operation as prescribed by the bylaw expires or any of the situations for dissolution prescribed in the company's bylaw occurs;
- (2) the shareholders' meeting or the shareholders' assembly decides to dissolve the company;
- (3) it is necessary to be dissolved due to merger or split of the company;
- (4) the business license is canceled, or it is ordered to close down or to be dissolved according to laws; or
- (5) it is decided by the people's court to be dissolved according to Article 183 of this Law.

Article 182 Where any of the circumstances as prescribed in Article 181 (1) of this Law occurs, a company may continue to exist by amending its bylaw.

To amend its bylaw according to the provisions of the preceding paragraph, the consent of the shareholders who hold two thirds or more of the voting rights shall be obtained if it is a limited liability company, and the consent of two thirds or more of the voting rights the shareholders who attend the meeting of the shareholders assembly shall be obtained if it is a joint stock limited company.

Article 183 Where any company meets any serious difficulty in its operations or management so that the interests of the shareholders will face heavy loss if the company continues to exist and the difficulty cannot be solved by any other means, the

shareholders who hold ten percent or more of the voting rights of all the shareholders of the company may plead the people's court to dissolve the company.

Article 184 Where any company is dissolved according to the provisions of Article 181 (1), (2), (4), or (5) of this Law, a liquidation group shall be formed within fifteen days after the occurrence of the cause of dissolution so as to carry out a liquidation. The liquidation group of a limited liability company shall be composed of the shareholders, while that of a joint stock limited company shall be composed of the directors or any other people as determined by the shareholders' assembly. Where no liquidation group is formed within the time limit, the creditors may plead the people's court to designate relevant persons to form a liquidation group. The people's court shall accept such request and form a liquidation group so as to carry out the liquidation in a timely manner.

Article 185 The liquidation group may exercise the following functions during the process of liquidation:

- (1) liquidating the properties of the company, producing balance sheets and asset checklists;
- (2) notifying creditors by mail or public announcement;
- (3) handling and liquidating the unfinished business of the company;
- (4) paying off the outstanding taxes and the taxes incurred in the process of liquidation;
- (5) claiming credits and paying off debts;
- (6) disposing the remaining properties after all the debates being paid off; and
- (7) participating in the civil proceedings of the company.

Article 186 The liquidation group shall, notify the creditors within ten days after its formation and make a public announcement on newspapers within 60 days after its formation. The creditors shall, within thirty days after receiving the notice or within 45 days after the issuance of the public announcement in the case of failing to receiving a notice, declare their credits before the liquidation group.

To declare credits, a creditor shall describe the relevant matters and provide relevant evidential materials.

The liquidation group shall record the declared credits and may not pay off any debts to any creditors during the period of credit declaration.

Article 187 The liquidation group shall, after liquidating the properties of the company and producing balance sheets and checklists of properties, make a plan of liquidation and report the report to the shareholders' meeting, the shareholders' assembly, or the people's court for confirmation.

After paying off the liquidation expenses, wages of employees, social insurance premiums and legal indemnities, the outstanding taxes and the debts of the company, the remaining properties may, in the case of a limited liability company, be distributed according to the

proportion of capital contribution of the shareholders, or, in the case of a joint stock limited company, distributed according to the proportion of stocks held by the shareholders. During the liquidation, the company continues to exist but may not carry out any business operation that has nothing to do with liquidation. None of the properties of the company may be distributed to any shareholder before they are used for debate payoff as described in the preceding paragraph.

Article 188 If the liquidation group finds that the properties of the company is not sufficient for paying off the debts after liquidating the properties of the company and producing balance sheets and checklists of properties, it shall file an application to the people's court for bankruptcy.

Once the people's court makes a ruling declaring the company bankrupt, the liquidation group shall hand over the liquidation matters to the people's court.

Article 189 After the liquidation of the company is completed, the liquidation group shall made a liquidation report and submit the report to the shareholders' meeting, the shareholders' assembly, the people's court for confirmation, and the company registration authority to deregister the company. The liquidation group shall also make a public announcement regarding the cease of the company.

Article 190 The members of the liquidation group shall devote themselves to their duties and perform their obligations of liquidation according to law.

None of the members of the liquidation group may take advantage of his position to take any bribe or any other illegal proceeds, nor may he misappropriate any of the properties of the company.

Where any of the members of the liquidation group causes any loss to the company or any creditor by intention or due to gross negligence, he shall make respective compensations.

Article 191 Where a company is declared bankrupt according to law, it shall carry out a bankruptcy liquidation according to the legal provisions concerning bankruptcy liquidation.

Chapter XI Branches of Foreign Companies

Article 192 The term "foreign company" as mentioned in this Law refers to a company established beyond the territory of China according to any foreign law.

Article 193 A foreign company which plans to establish any branch within the territory of China shall submit an application to the competent authority of China and other relevant documents such as the articles of incorporation, the company registration certificate issued by the country where the foreign company was established. After the application is approved, the foreign company shall go through registration formalities with the company registration authority according to law and obtain a business license.

The measures for the examination and approval of the branches of foreign companies shall be separately formulated by the State Council.

Article 194 Where a foreign company establishes any branch within the territory of China, it must designate a representative or agent within the territory of China to take charge of the branch, and shall allocate to the branch funds which are in match with the business activities it is engaged in.

Article 195 The branch of a foreign company shall indicate in its name the nationality and the form of liability of the foreign company concerned.

The branch of a foreign company shall keep a copy of the bylaw of the foreign company at its office.

Article 196 The branch of a foreign company established within the territory of China does not have the status of a legal person.

A foreign company shall bear civil liabilities for the business operations of its branches carried out within the territory of China.

Article 197 The branches of foreign companies which are established upon approval shall abide by the laws of China in their business activities within the territory of China, and may not injure the social public interests of China, and the lawful rights and interests thereof shall be protected by Chinese law.

Article 198 Where a foreign company relinquishes any of its branches within the territory of China, it must clear off the debts thereof according to law, and shall carry out a liquidation according to the provisions of this Law regarding the procedures for the liquidation of companies. Before the debts are cleared off, it may not transfer any of the properties of the branch out of China.

Chapter XII Legal Liabilities

Article 199 Where anyone obtains the registration of a company by fabricating a registered capital, submitting false materials or by any other fraudulent means to conceal any important facts, he shall be ordered by the company registration authority to make a rectification. In the case of fabricating a registered capital, he shall be fined not less than 5% but not more than 15% of the fabricated registered capital; in the case of submitting false materials or by any other fraudulent means so that any important facts are concealed, he shall be fined not less than 5,000 yuan but not more than 50,000 yuan; if the circumstances are serious, the company registration certificate shall be revoked or the business license shall be canceled.

Article 200 Any of the promoters or shareholders of a company who makes any false capital contribution or fails to deliver or fails to deliver in good time the money or non-monetary properties used as capital contribution shall be ordered by the company registration authority to make a rectification and shall be fined not less than 5% but not more than 15% of the sum of false capital contribution.

Article 201 Where any promoter or shareholder unlawfully withdraws his capital contribution after the company is established, he shall be ordered by the company

registration authority to make a rectification, and shall be fined not less than 5% but not more than 15% of the capital contribution he has unlawfully taken away.

Article 202 Any company which establishes another set of accounting books apart from legally prescribed accounting books in violation of this Law shall be ordered by the treasury department of the people's government at the county level or above to make a rectification, and shall be fined not less than 50,000 yuan but not more than 500, 000 yuan.

Article 203 Where any company makes any false records or conceals any important facts in such materials as financial and accounting statements submitted to the relevant departments in charge, the relevant department in charge shall impose a fine of not more than 30, 000 yuan but not more than 300, 000 yuan upon the directly liable persons in charge and other directly liable persons.

Article 204 Where any company fails to draw legal accumulative funds according to this Law, it shall be ordered by the treasury department of the people's government at the county level or above to make up the amount it is due, and may be fined up to 200, 000 yuan.

Article 205 Where any company fails to notify its creditors by notice or by public announcement in the process of merger, split, reducing its registered capital or liquidation, the company shall be ordered by the company registration authority to make a rectification, and may be fined not less than 10, 000 yuan but not more than 100, 000 yuan.

Where, in the process of liquidation, any company hides any of its properties or makes any false record in its balance sheet or property checklist or distributes any of the company's property before clearing off its debts, it shall be ordered by the company registration authority to make a rectification, and may be fined not less than 5% but not more than 10% of the value of the company properties it has hidden or distributed prior to the clearing of company debts, and the directly liable person-in-charge as well other directly liable persons may be fined not less than 10, 000 yuan but not more than 100, 000 yuan.

Article 206 Where, in the process of liquidation, any company carries out any business activity which has nothing to do with the liquidation, it shall be admonished by the company registration authority and its illegal proceeds shall be confiscated.

Article 207 Where a liquidation group fails to submit a liquidation report to the company registration authority according to the provisions of this Law or where any important fact is concealed or there is any important omission in the liquidation report it submits, it shall be ordered by the company registration authority to make a rectification.

Where any member of the liquidation group takes advantage of his power to seek unlawful benefits for himself or any of his relatives, procures any unlawful gains, or misappropriates any of the company's properties, the company registration authority may order him to return the company property and confiscate his illegal gains, and may also impose a fine of between 1 and 5 times of the illegal proceeds on him.

Article 208 Where any institution that undertakes the appraisal or verification of assets or the verification of certificates provides any false materials, the company registration authority may confiscate its illegal proceeds and impose a fine between 1 and 5 times of the illegal proceeds, and the competent administrative department may also order the institution to suspend its business operation or revoke the qualifications certificates of the directly liable persons and its business license.

Where any institution that undertakes the appraisal or verification of assets or the verification of certificates has any important omission in the report it submits, the company registration authority may order the institution to make a rectification; if the circumstances are serious, it shall be fined between 1 and 5 times of the proceeds it has obtained, and the competent administrative department may order the institution to suspend its business operation and revoke the qualifications certificate of the directly liable persons and its business license.

Where the appraisal result or proof of asset verification or certificate verification as provided by any institution that undertakes the appraisal or verification of assets or the verification of certificates is proved to be untrue and has caused any loss to the creditors of the company, the institution shall bear the compensation liabilities within the sum that is found to be untrue, unless it could prove that the loss is not the result of its fault.

Article 209 Where any company registration authority registers any application that does not meet the conditions as provided by this Law or fails to register any application that meets the conditions as prescribed by this Law, the directly liable person-in-charge and other directly liable persons shall be given an administrative sanction.

Article 210 Where the superior organ of any company registration authority forces the latter to register any application that does not meet the conditions as prescribed in this Law, decline any application that meets the conditions as provided for in this Law, or covers up for any illegal registration, the directly liable person-in-charge and other directly liable persons shall be given an administrative sanction according to law.

Article 211 Where anyone who fails to register as a limited liability company or joint stock limited company according to law but carries out its business operations in the name of the limited liability company or joint stock limited company or who fails to register as a subsidiary of any limited liability company or joint stock limited company according to law but carries out its business operations in the name of the subsidiary of any limited liability company or joint stock limited company, the company registration authority may order him to make a rectification or close down his business, and may also impose a fine of no more than 100,000 yuan on him.

Article 212 Where any company fails to start its business operations six months after it is established without justifiable reasons or suspends its business operations on its own initiative for consecutively six months after it has started business operations, its business license may be canceled by the company registration authority.

Where any registered item of any company changes, and the company fails to go through the corresponding modification procedures according to this Law, it shall be ordered by

the company registration authority to make modification registration within a time limit; if it still fails to make the registration, it shall be fined not less than 10, 000 yuan but not more than 100, 000 yuan.

Article 213 Where any foreign company violates this Law by unlawfully establishing a branch within China, the company registration authority may order the company to make a rectification or to close down its branch, and may also impose a fine of not less than 50,000 yuan but not more than 200, 000 yuan on the company.

Article 214 Where a company conducts any serious illegal activities in the name of the company, which may endanger the security of the state or the public interest of the society, the business license of the company shall be revoked.

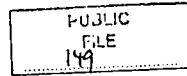
Article 215 Where any company violates any provision of this Law, it shall bear the respective civil liabilities of compensation and pay the respective fines and pecuniary penalties; if its property is not enough to pay for all the liabilities, it shall pay for the civil liabilities first.

Article 216 Where any company that violates this Law and any crime is constituted, it shall be investigated for criminal liabilities.

Chapter XIII Supplementary Provisions

Article 217 Definitions of the following terms:

- (1) The "senior management persons" refer to the manager, vice managers, chief financial officers, the secretary of the board of directors of a listed company, or any other persons provided in the bylaw.
- (2) A "controlling shareholder" refers to a shareholder whose capital contribution occupies 50% or more in the total capital of a limited liability company or a shareholder whose stocks occupies more than 50% of the total equity stocks of a joint stock limited company or a shareholder whose capital contribution or proportion of stock is less than 50% but who enjoys a voting right according to its capital contribution or the stocks it holds is large enough to impose an big impact upon the resolution of the shareholders' meeting or the shareholders' assembly.
- (3) An "actual controller" refers to anyone who is not a shareholder but is able to hold actual control of the acts of the company by means of investment relations, agreements or any other arrangements.
- (4) "Connection relationship" refers to the relationship between the controlling shareholders, actual controllers, directors, supervisors, or senior management persons of a company and the enterprise directly or indirectly controlled thereby and any other relationship that may lead to the transfer of any interest of the company. However, the enterprises controlled by the state do not incur a connection relationship simply because their shares are controlled by the state.



Article 218 The limited liability companies and joint stock limited companies invested by foreign investors shall be governed by this Law. Where there are otherwise different provisions in any law regarding foreign investment, such provisions shall prevail.

Article 219 This Law shall become effective on January 1, 2006.

中华人民共和国主席令

(第 42 号)

《中华人民共和国公司法》已由中华人民共和国第十届全国人民代表大会常务委员会第十八次会议于 2005 年 10 月 27 日修订通过，现将修订后的《中华人民共和国公司法》公布，自 2006 年 1 月 1 日起施行。

中华人民共和国主席 胡锦涛

2005 年 10 月 27 日

中华人民共和国公司法

(1993 年 12 月 29 日第八届全国人民代表大会常务委员会第五次会议通过 根据 1999 年 12 月 25 日第九届全国人民代表大会常务委员会第十三次会议《关于修改〈中华人民共和国公司法〉的决定》第一次修正 根据 2004 年 8 月 28 日第十届全国人民代表大会常务委员会第十一次会议《关于修改〈中华人民共和国公司法〉的决定》第二次修正 2005 年 10 月 27 日第十届全国人民代表大会常务委员会第十八次会议修订)

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第一章 总则

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

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

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

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

第四条 【股东权利】公司股东依法享有资产收益、参与重大决策和选择管理者等权利。

第五条 【合法经营和合法权益受保护】公司从事经营活动，必须遵守法律、行政法规，遵守社会公德、商业道德，诚实守信，接受政府和社会公众的监督，承担社会责任。

公司的合法权益受法律保护，不受侵犯。

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

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

公众可以向公司登记机关申请查询公司登记事项，公司登记机关应当提供查询服务。

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

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

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

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

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

第九条 【公司形式变更的准则主义与债权债务承继】有限责任公司变更为股份有限公司，应当符合本法规定的股份有限公司的条件。股份有限公司变更为有限责任公司，应当符合本法规定的有限责任公司的条件。

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

第十条 【公司的住所】公司以其主要办事机构所在地为住所。

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

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

公司的经营范围中属于法律、行政法规规定须经批准的项目，应当依法经过批准。

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

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

公司可以设立子公司，子公司具有法人资格，依法独立承担民事责任。

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

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

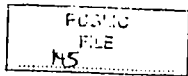
公司为公司股东或者实际控制人提供担保的，必须经股东会或者股东大会决议。

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

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

公司应当采用多种形式，加强公司职工的职业教育和岗位培训，提高职工素质。

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



公司依照宪法和有关法律的规定，通过职工代表大会或者其他形式，实行民主管理。

公司研究决定改制以及经营方面的重大问题、制定重要的规章制度时，应当听取公司工会的意见，并通过职工代表大会或者其他形式听取职工的意见和建议。

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

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

公司股东滥用股东权利给公司或者其他股东造成损失的，应当依法承担赔偿责任。

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

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

违反前款规定，给公司造成损失的，应当承担赔偿责任。

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

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

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

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

第二章 有限责任公司的设立和组织机构

第一节 设立

第二十三条 【有限责任公司的设立条件】设立有限责任公司，应当具备下列条件：

- (一) 股东符合法定人数；
- (二) 股东出资达到法定资本最低限额；
- (三) 股东共同制定公司章程；
- (四) 有公司名称，建立符合有限责任公司要求的组织机构；
- (五) 有公司住所。

第二十四条 【有限责任公司的股东人数限制】有限责任公司由五十个以下股东出资设立。

第二十五条 【有限责任公司章程的法定事项】 有限责任公司章程应当载明下列事项:

- (一) 公司名称和住所;
- (二) 公司经营范围;
- (三) 公司注册资本;
- (四) 股东的姓名或者名称;
- (五) 股东的出资方式、出资额和出资时间;
- (六) 公司的机构及其产生办法、职权、议事规则;
- (七) 公司法定代表人;
- (八) 股东会会议认为需要规定的其他事项。

股东应当在公司章程上签名、盖章。

第二十六条 【有限责任公司的注册资本及其最低限额】 有限责任公司的注册资本为在公司登记机关登记的全体股东认缴的出资额。公司全体股东的首次出资额不得低于注册资本的百分之二十,也不得低于法定的注册资本最低限额,其余部分由股东自公司成立之日起两年内缴足;其中,投资公司可以在五年内缴足。

有限责任公司注册资本的最低限额为人民币三万元。法律、行政法规对有限责任公司注册资本的最低限额有较高规定的,从其规定。

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

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

全体股东的货币出资金额不得低于有限责任公司注册资本的百分之三十。

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

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

第二十九条 【股东出资的验资证明】 股东缴纳出资后,必须经依法设立的验资机构验资并出具证明。

第三十条 【有限责任公司的设立登记】 股东的首次出资经依法设立的验资机构验资后,由全体股东指定的代表或者共同委托的代理人向公司登记机关报送公司登记申请书、公司章程、验资证明等文件,申请设立登记。

第三十一条 【非货币财产出资违约责任】 有限责任公司成立后,发现作为设立公司出资的非货币财产的实际价额显著低于公司章程所定价额的,应当由交付该出资的股东补足其差额;公司设立时的其他股东承担连带责任。

第三十二条 【股东出资证明书】有限责任公司成立后，应当向股东签发出资证明书。

出资证明书应当载明下列事项：

- (一) 公司名称；
- (二) 公司成立日期；
- (三) 公司注册资本；
- (四) 股东的姓名或者名称、缴纳的出资额和出资日期；
- (五) 出资证明书的编号和核发日期。

出资证明书由公司盖章。

第三十三条 【股东名册】有限责任公司应当置备股东名册，记载下列事项：

- (一) 股东的姓名或者名称及住所；
- (二) 股东的出资额；
- (三) 出资证明书编号。

记载于股东名册的股东，可以依股东名册主张行使股东权利。

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

第三十四条 【股东的查阅权】股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。

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

第三十五条 【股东分红权和优先认购权】股东按照实缴的出资比例分取红利；公司新增资本时，股东有权优先按照实缴的出资比例认缴出资。但是，全体股东约定不按照出资比例分取红利或者不按照出资比例优先认缴出资的除外。

第三十六条 【股东不得抽回出资】公司成立后，股东不得抽逃出资。

第二节 组织机构

第三十七条 【股东会】有限责任公司股东会由全体股东组成。股东会是公司的权力机构，依照本法行使职权。

第三十八条 【股东会的职权】股东会行使下列职权：

- (一) 决定公司的经营方针和投资计划；
- (二) 选举和更换非由职工代表担任的董事、监事，决定有关董事、监事的报酬事项；

- (三) 审议批准董事会的报告;
- (四) 审议批准监事会或者监事的报告;
- (五) 审议批准公司的年度财务预算方案、决算方案;
- (六) 审议批准公司的利润分配方案和弥补亏损方案;
- (七) 对公司增加或者减少注册资本作出决议;
- (八) 对发行公司债券作出决议;
- (九) 对公司合并、分立、解散、清算或者变更公司形式作出决议;
- (十) 修改公司章程;
- (十一) 公司章程规定的其他职权。

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

第三十九条 【股东会的首次会议】首次股东会会议由出资最多的股东召集和主持,依照本法规定行使职权。

第四十条 【股东会的会议制度】股东会会议分为定期会议和临时会议。

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

第四十一条 【股东会会议的召集与组织】有限责任公司设立董事会的,股东会会议由董事会召集,董事长主持;董事长不能履行职务或者不履行职务的,由副董事长主持;副董事长不能履行职务或者不履行职务的,由半数以上董事共同推举一名董事主持。

有限责任公司不设董事会的,股东会会议由执行董事召集和主持。

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

第四十二条 【股东会会议的通知期限和会议记录】召开股东会会议,应当于会议召开十五日前通知全体股东;但是,公司章程另有规定或者全体股东另有约定的除外。

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

第四十三条 【股东的表决权】股东会会议由股东按照出资比例行使表决权;但是,公司章程另有规定的除外。

第四十四条 【股东会的议事方式和表决程序】股东会的议事方式和表决程序,除本法有规定的外,由公司章程规定。

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

第四十五条 【董事会及其成员构成及董事长法律地位】有限责任公司设**董事会**，其成员为三人至十三人；但是，本法第五十一条另有规定的除外。

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

董事会设**董事长**一人，可以设**副董事长**。**董事长**、**副董事长**的产生办法由**公司章程**规定。

第四十六条 【董事的任职期限】董事任期由**公司章程**规定，但每届任期不得超过三年。董事任期届满，连选可以连任。

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

第四十七条 【董事会的职权】董事会对股东会负责，行使下列职权：

- (一) 召集股东会会议，并向股东会报告工作；
- (二) 执行股东会的决议；
- (三) 决定公司的经营计划和投资方案；
- (四) 制订公司的年度财务预算方案、决算方案；
- (五) 制订公司的利润分配方案和弥补亏损方案；
- (六) 制订公司增加或者减少注册资本以及发行公司债券的方案；
- (七) 制订公司合并、分立、解散或者变更公司形式的方案；
- (八) 决定公司内部管理机构的设置；
- (九) 决定聘任或者解聘公司经理及其报酬事项，并根据经理的提名决定聘任或者解聘公司副经理、财务负责人及其报酬事项；
- (十) 制定公司的基本管理制度；
- (十一) 公司章程规定的其他职权。

第四十八条 【董事会会议的召集和主持】董事会会议由**董事长**召集和主持；**董事长**不能履行职务或者不履行职务的，由**副董事长**召集和主持；**副董事长**不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事召集和主持。

第四十九条 【董事会的议事方式和表决程序】董事会的议事方式和表决程序，除本法有规定的外，由**公司章程**规定。

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

董事会决议的表决，实行一人一票。

第五十条 【经理的职权】有限责任公司可以设**经理**，由**董事会**决定聘任或者解聘。经理对**董事会**负责，行使下列职权：

- (一) 主持公司的生产经营管理工作，组织实施**董事会**决议；

- (二) 组织实施公司年度经营计划和投资方案;
- (三) 拟订公司内部管理机构设置方案;
- (四) 拟订公司的基本管理制度;
- (五) 制定公司的具体规章;
- (六) 提请聘任或者解聘公司副经理、财务负责人;
- (七) 决定聘任或者解聘除应由董事会决定聘任或者解聘以外的负责管理人员;
- (八) 董事会授予的其他职权。

公司章程对经理职权另有规定的,从其规定。

经理列席董事会会议。

第五十一条 【执行董事】 股东人数较少或者规模较小的有限责任公司,可以设一名执行董事,不设董事会。执行董事可以兼任公司经理。

执行董事的职权由公司章程规定。

第五十二条 【监事会和监事】 有限责任公司设监事会,其成员不得少于三人。股东人数较少或者规模较小的有限责任公司,可以设一至二名监事,不设监事会。

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

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

董事、高级管理人员不得兼任监事。

第五十三条 【监事的任职期限】 监事的任期每届为三年。监事任期届满,连选可以连任。

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

第五十四条 【监事会或监事的一般职权】 监事会,不设监事会的公司的监事行使下列职权:

- (一) 检查公司财务;
- (二) 对董事、高级管理人员执行公司职务的行为进行监督,对违反法律、行政法规、公司章程或者股东会决议的董事、高级管理人员提出罢免的建议;
- (三) 当董事、高级管理人员的行为损害公司的利益时,要求董事、高级管理人员予以纠正;
- (四) 提议召开临时股东大会会议,在董事会不履行本法规定的召集和主持股东会会议职责时召集和主持股东会会议;

(五) 向股东会会议提出提案;

(六) 依照本法第一百五十二条的规定, 对董事、高级管理人员提起诉讼;

(七) 公司章程规定的其他职权。

第五十五条 【监事的质询建议权与调查权】监事可以列席董事会会议, 并对董事会决议事项提出质询或者建议。

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

第五十六条 【监事会会议】监事会每年度至少召开一次会议, 监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序, 除本法有规定的外, 由公司章程规定。

监事会决议应当经半数以上监事通过。

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

第五十七条 【监事行使职权的费用承担】监事会、不设监事会的公司的监事行使职权所必需的费用, 由公司承担。

第三节 一人有限责任公司的特别规定

第五十八条 【一人有限责任公司的定义、设立、组织机构】一人有限责任公司的设立和组织机构, 适用本节规定; 本节没有规定的, 适用本章第一节、第二节的规定。

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

第五十九条 【一人有限责任公司的投资限制与注册资本最低限额】一人有限责任公司的注册资本最低限额为人民币十万元。股东应当一次足额缴纳公司章程规定的出资额。

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

第六十条 【公司登记与营业执照中的投资者身份注明】一人有限责任公司应当在公司登记中注明自然人独资或者法人独资, 并在公司营业执照中载明。

第六十一条 【一人有限责任公司的章程】一人有限责任公司章程由股东制定。

第六十二条 【股东决定重大事项的书面形式要求】一人有限责任公司不设股东会。股东作出本法第三十八条第一款所列决定时, 应当采用书面形式, 并由股东签名后置备于公司。

第六十三条 【年度审计】一人有限责任公司应当在每一会计年度终了时编制财务会计报告, 并经会计师事务所审计。

第六十四条 【股东对公司债务的连带责任】一人有限责任公司的股东不能证明公司财产独立于股东自己的财产的, 应当对公司债务承担连带责任。

第四节 国有独资公司的特别规定

第六十五条 【国有独资公司的定义】国有独资公司的设立和组织机构，适用本节规定；本节没有规定的，适用本章第一节、第二节的规定。

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

第六十六条 【国有独资公司章程的制定或批准】国有独资公司章程由国有资产监督管理机构制定，或者由董事会制订报国有资产监督管理机构批准。

第六十七条 【国有独资公司重大事项的决定】国有独资公司不设股东会，由国有资产监督管理机构行使股东会职权。国有资产监督管理机构可以授权公司董事会行使股东会的部分职权，决定公司的重大事项，但公司的合并、分立、解散、增加或者减少注册资本和发行公司债券，必须由国有资产监督管理机构决定；其中，重要的国有独资公司合并、分立、解散、申请破产的，应当由国有资产监督管理机构审核后，报本级人民政府批准。

前款所称重要的国有独资公司，按照国务院的规定确定。

第六十八条 【国有独资公司的董事会】国有独资公司设董事会，依照本法第四十七条、第六十七条的规定行使职权。董事每届任期不得超过三年。董事会成员中应当有公司职工代表。

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

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

第六十九条 【国有独资公司经理】国有独资公司设经理，由董事会聘任或者解聘。经理依照本法第五十条规定行使职权。

经国有资产监督管理机构同意，董事会成员可以兼任经理。

第七十条 【高级职员的兼职禁止】国有独资公司的董事长、副董事长、董事、高级管理人员，未经国有资产监督管理机构同意，不得在其他有限责任公司、股份有限公司或者其他经济组织兼职。

第七十一条 【国有独资公司的监督管理】国有独资公司监事会成员不得少于五人，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。

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

监事会行使本法第五十四条第（一）项至第（三）项规定的职权和国务院规定的其他职权。

第三章 有限责任公司的股权转让

第七十二条 【股权转让的一般规定】有限责任公司的股东之间可以相互转让其全部或者部分股权。

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

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

公司章程对股权转让另有规定的，从其规定。

第七十三条 【强制执行程序下的股权转让】人民法院依照法律规定的强制执行程序转让股东的股权时，应当通知公司及全体股东，其他股东在同等条件下有优先购买权。其他股东自人民法院通知之日起满二十日不行使优先购买权的，视为放弃优先购买权。

第七十四条 【股权转让对出资证明书、公司章程和股东名册的影响】依照本法第七十二条、第七十三条转让股权后，公司应当注销原股东的出资证明书，向新股东签发出资证明书，并相应修改公司章程和股东名册中有关股东及其出资额的记载。对公司章程的该项修改不需再由股东会表决。

第七十五条 【异议股东请求公司收购股权的情形】有下列情形之一的，对股东会该项决议投反对票的股东可以请求公司按照合理的价格收购其股权：

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

（二）公司合并、分立、转让主要财产的；

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

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

第七十六条 【股东资格的继承】自然人股东死亡后，其合法继承人可以继承股东资格；但是，公司章程另有规定的除外。

第四章 股份有限公司的设立和组织机构

第一节 设立

第七十七条 【设立条件】设立股份有限公司，应当具备下列条件：

（一）发起人符合法定人数；

（二）发起人认购和募集的股本达到法定资本最低限额；

（三）股份发行、筹办事项符合法律规定；

（四）发起人制订公司章程，采用募集方式设立的经创立大会通过；

（五）有公司名称，建立符合股份有限公司要求的组织机构；

(六) 有公司住所。

第七十八条 【设立方式】股份有限公司的设立，可以采取发起设立或者募集设立的方式。

发起设立，是指由发起人认购公司应发行的全部股份而设立公司。

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

第七十九条 【设立发起人的限制】设立股份有限公司，应当有二人以上二百人以下为发起人，其中须有半数以上的发起人在中国境内有住所。

第八十条 【发起人筹办公司的义务】股份有限公司发起人承担公司筹办事务。

发起人应当签订发起人协议，明确各自在公司设立过程中的权利和义务。

第八十一条 【注册资本与发起人的出资限额】股份有限公司采取发起设立方式设立的，注册资本为在公司登记机关登记的全体发起人认购的股本总额。公司全体发起人的首次出资额不得低于注册资本的百分之二十，其余部分由发起人自公司成立之日起两年内缴足；其中，投资公司可以在五年内缴足。在缴足前，不得向他人募集股份。

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

股份有限公司注册资本的最低限额为人民币五百万元。法律、行政法规对股份有限公司注册资本的最低限额有较高规定的，从其规定。

第八十二条 【股份有限公司章程的法定事项】股份有限公司章程应当载明下列事项：

- (一) 公司名称和住所；
- (二) 公司经营范围；
- (三) 公司设立方式；
- (四) 公司股份总数、每股金额和注册资本；
- (五) 发起人的姓名或者名称、认购的股份数、出资方式 and 出资时间；
- (六) 董事会的组成、职权和议事规则；
- (七) 公司法定代表人；
- (八) 监事会的组成、职权和议事规则；
- (九) 公司利润分配办法；
- (十) 公司的解散事由与清算办法；
- (十一) 公司的通知和公告办法；
- (十二) 股东大会会议认为需要规定的其他事项。

第八十三条 【发起人的出资方式要求】发起人的出资方式，适用本法第二十七条的规定。

第八十四条 【发起人出资义务的履行、出资违约及设立登记申请】以发起设立方式设立股份有限公司的，发起人应当书面认足公司章程规定其认购的股份；一次缴纳的，应即缴纳全部出资；分期缴纳的，应即缴纳首期出资。以非货币财产出资的，应当依法办理其财产权的转移手续。

发起人如果不依照前款规定缴纳出资的，应当按照发起人协议承担违约责任。

发起人首次缴纳出资后，应当选举董事会和监事会，由董事会向公司登记机关报送公司章程、由依法设定的验资机构出具的验资证明以及法律、行政法规规定的其它文件，申请设立登记。

第八十五条 【对募集设立发起人认购股份的要求】以募集设立方式设立股份有限公司的，发起人认购的股份不得少于公司股份总数的百分之三十五；但是，法律、行政法规另有规定的，从其规定。

第八十六条 【募集股份公告和认股书内容】发起人向社会公开募集股份，必须公告招股说明书，并制作认股书。认股书应当载明本法第八十七条所列事项，由认股人填写认购股数、金额、住所，并签名、盖章。认股人按照所认购股数缴纳股款。

第八十七条 【招股说明书的主要内容】招股说明书应当附有发起人制订的公司章程，并载明下列事项：

- (一) 发起人认购的股份数；
- (二) 每股的票面金额和发行价格；
- (三) 无记名股票的发行总数；
- (四) 募集资金的用途；
- (五) 认股人的权利、义务；
- (六) 本次募股的起止期限及逾期未募足时认股人可以撤回所认股份的说明。

第八十八条 【发起人向社会募集股份的方式】发起人向社会公开募集股份，应当由依法设立的证券公司承销，签订承销协议。

第八十九条 【缴纳股款方式】发起人向社会公开募集股份，应当同银行签订代收股款协议。

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

第九十条 【发起人召开公司创立大会的义务】发行股份的股款缴足后，必须经依法设立的验资机构验资并出具证明。发起人应当自股款缴足之日起三十日内主持召开公司创立大会。创立大会由发起人、认股人组成。

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

第九十一条 【创立大会的召集职权和表决程序】发起人应当在创立大会召开十五日前将会议日期通知各认股人或者予以公告。创立大会应有代表股份总数过半数的发起人、认股人出席，方可举行。

创立大会行使下列职权：

(一) 审议发起人关于公司筹办情况的报告；

(二) 通过公司章程；

(三) 选举董事会成员；

(四) 选举监事会成员；

(五) 对公司的设立费用进行审核；

(六) 对发起人用于抵作股款的财产的作价进行审核；

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

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

第九十二条 【股本抽回的限制】发起人、认股人缴纳股款或者交付抵作股款的出资后，除未按期募足股份、发起人未按期召开创立大会或者创立大会决议不设立公司的情形外，不得抽回其股本。

第九十三条 【申请设立登记文件】董事会应于创立大会结束后三十日内，向公司登记机关报送下列文件，申请设立登记：

(一) 公司登记申请书；

(二) 创立大会的会议记录；

(三) 公司章程；

(四) 验资证明；

(五) 法定代表人、董事、监事的任职文件及其身份证明；

(六) 发起人的法人资格证明或者自然人身份证明；

(七) 公司住所证明。

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

第九十四条 【发起人的出资补缴责任】股份有限公司成立后，发起人未按照公司章程的规定缴足出资的，应当补缴；其他发起人承担连带责任。

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

第九十五条 【公司设立过程中的发起人责任】股份有限公司的发起人应当承担下列责任：

(一) 公司不能成立时, 对设立行为所产生的债务和费用负连带责任;

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

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

第九十六条 【有限责任公司变更为股份有限公司的资产额要求及募股要求】有限责任公司变更为股份有限公司时, 折合的实收股本总额不得高于公司净资产额。有限责任公司变更为股份有限公司, 为增加资本公开发行股份时, 应当依法办理。

第九十七条 【重要资料的置备】股份有限公司应当将公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议记录、监事会会议记录、财务会计报告置备于本公司。

第九十八条 【股东的查阅权与建议质询权】股东有权查阅公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议决议、监事会会议决议、财务会计报告, 对公司的经营提出建议或者质询。

第二节 股东大会

第九十九条 【股东大会的地位与组成】股份有限公司股东大会由全体股东组成。股东大会是公司的权力机构, 依照本法行使职权。

第一百条 【股东大会的职权】本法第三十八条第一款关于有限责任公司股东会职权的规定, 适用于股份有限公司股东大会。

第一百零一条 【股东大会及临时股东大会的召开】股东大会应当每年召开一次年会。有下列情形之一的, 应当在两个月内召开临时股东大会:

- (一) 董事人数不足本法规定人数或者公司章程所定人数的三分之二时;
- (二) 公司未弥补的亏损达实收股本总额三分之一时;
- (三) 单独或者合计持有公司百分之十以上股份的股东请求时;
- (四) 董事会认为必要时;
- (五) 监事会提议召开时;
- (六) 公司章程规定的其他情形。

第一百零二条 【股东大会的召集】股东大会会议由董事会召集, 董事长主持; 董事长不能履行职务或者不履行职务的, 由副董事长主持; 副董事长不能履行职务或者不履行职务的, 由半数以上董事共同推举一名董事主持。

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

第一百零三条 【股东大会的通知期限、临时议案和股票交付制度】召开股东大会会议, 应当将会议召开的时间、地点和审议的事项于会议召开二十日前通知各股东; 临时股东大会

应当于会议召开十五日前通知各股东；发行无记名股票的，应当于会议召开三十日前公告会议召开的时间、地点和审议事项。

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

股东大会不得对前款通知中未列明的事项作出决议。

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

第一百零四条 【表决权与股东大会议事规则】 股东出席股东大会会议，所持每一股份有一表决权。但是，公司持有的本公司股份没有表决权。

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

第一百零五条 【股东大会的法定召集及表决事项】 本法和公司章程规定公司转让、受让重大资产或者对外提供担保等事项必须经股东大会作出决议的，董事会应当及时召集股东大会会议，由股东大会就上述事项进行表决。

第一百零六条 【累积投票制】 股东大会选举董事、监事，可以依照公司章程的规定或者股东大会的决议，实行累积投票制。

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

第一百零七条 【表决权的代理行使】 股东可以委托代理人出席股东大会会议，代理人应当向公司提交股东授权委托书，并在授权范围内行使表决权。

第一百零八条 【股东大会的会议记录】 股东大会应当对所议事项的决定作成会议记录，主持人、出席会议的董事应当在会议记录上签名。会议记录应当与出席股东的签名册及代理出席的委托书一并保存。

第三节 董事会、经理

第一百零九条 【董事会设立及其职权】 股份有限公司设董事会，其成员为五人至十九人。

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

本法第四十六条关于有限责任公司董事任期的规定，适用于股份有限公司董事。

本法第四十七条关于有限责任公司董事会职权的规定，适用于股份有限公司董事会。

第一百一十条 【董事会的组成】 董事会设董事长一人，可以设副董事长。董事长和副董事长由董事会以全体董事的过半数选举产生。

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

第一百一十一条 【董事会的召开】董事会每年度至少召开两次会议，每次会议应当于会议召开十日前通知全体董事和监事。

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

董事会召开临时会议，可以另定召集董事会的通知方式和通知时限。

第一百一十二条 【董事会的议事规则】董事会会议应有过半数的董事出席方可举行。董事会作出决议，必须经全体董事的过半数通过。

董事会决议的表决，实行一人一票。

第一百一十三条 【董事会的出席与代理出席、会议记录与责任承担】董事会会议，应由董事本人出席；董事因故不能出席，可以书面委托其他董事代为出席，委托书中应载明授权范围。

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

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

第一百一十四条 【经理及其职权】股份有限公司设经理，由董事会决定聘任或者解聘。

本法第五十条关于有限责任公司经理职权的规定，适用于股份有限公司经理。

第一百一十五条 【董事会成员兼任经理】公司董事会可以决定由董事会成员兼任经理。

第一百一十六条 【禁止向高级职员提供借款】公司不得直接或者通过子公司向董事、监事、高级管理人员提供借款。

第一百一十七条 【定期披露高级职员报酬】公司应当定期向股东披露董事、监事、高级管理人员从公司获得报酬的情况。

第四节 监事会

第一百一十八条 【监事会的设立与组成】股份有限公司设监事会，其成员不得少于三人。

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

监事会设主席一人，可以设副主席。监事会主席和副主席由全体监事过半数选举产生。监事会主席召集和主持监事会会议；监事会主席不能履行职务或者不履行职务的，由监事会

副主席召集和主持监事会会议；监事会副主席不能履行职务或者不履行职务的，由半数以上监事共同推举一名监事召集和主持监事会会议。

董事、高级管理人员不得兼任监事。

本法第五十三条关于有限责任公司监事任期的规定，适用于股份有限公司监事。

第一百一十九条 【监事会的职权】本法第五十四条、第五十五条关于有限责任公司监事会职权的规定，适用于股份有限公司监事会。

监事会行使职权所必需的费用，由公司承担。

第一百二十条 【监事会的会议制度】监事会每六个月至少召开一次会议。监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经半数以上监事通过。

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

第五节 上市公司组织机构的特别规定

第一百二十一条 【上市公司的定义】本法所称上市公司，是指其股票在证券交易所上市交易的股份有限公司。

第一百二十二条 【重大资产买卖与重要担保的议事规则】上市公司在一年内购买、出售重大资产或者担保金额超过公司资产总额百分之三十的，应当由股东大会作出决议，并经出席会议的股东所持表决权的三分之二以上通过。

第一百二十三条 【独立董事的设立】上市公司设立独立董事，具体办法由国务院规定。

第一百二十四条 【董事会秘书的设立及其职权】上市公司设董事会秘书，负责公司股东大会和董事会会议的筹备、文件保管以及公司股东资料的管理，办理信息披露事务等事宜。

第一百二十五条 【关联关系董事回避与相关事项议事规则】上市公司董事与董事会会议决议事项所涉及的企业有关联关系的，不得对该项决议行使表决权，也不得代理其他董事行使表决权。该董事会会议由过半数的无关联关系董事出席即可举行，董事会会议所作决议须经无关联关系董事过半数通过。出席董事会的无关联关系董事人数不足三人的，应将该事项提交上市公司股东大会审议。

第五章 股份有限公司的股份发行和转让

第一节 股份发行

第一百二十六条 【股份有限公司的股份及其形式】股份有限公司的资本划分为股份，每一股的金額相等。

公司的股份采取股票的形式。股票是公司签发的证明股东所持股份的凭证。

第一百二十七条 【股份有限公司股份发行的原则】股份的发行，实行公平、公正的原则，同种类的每一股份应当具有同等权利。

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

第一百二十八条 【股票发行的价格】股票发行价格可以按票面金额，也可以超过票面金额，但不得低于票面金额。

第一百二十九条 【股票形式与应载明的事项】股票采用纸质形式或者国务院证券监督管理机构规定的其他形式。

股票应当载明下列主要事项：

- (一) 公司名称；
- (二) 公司成立日期；
- (三) 股票种类、票面金额及代表的股份数；
- (四) 股票的编号。

股票由法定代表人签名，公司盖章。

发起人的股票，应当标明发起人股票字样。

第一百三十条 【股票种类】公司发行的股票，可以为记名股票，也可以为无记名股票。

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

第一百三十一条 【股东名册的置备及内容】公司发行记名股票的，应当置备股东名册，记载下列事项：

- (一) 股东的姓名或者名称及住所；
- (二) 各股东所持股份数；
- (三) 各股东所持股票的编号；
- (四) 各股东取得股份的日期。

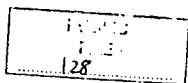
发行无记名股票的，公司应当记载其股票数量、编号及发行日期。

第一百三十二条 【其他种类股票】国务院可以对公司发行本法规定以外的其他种类的股份，另行作出规定。

第一百三十三条 【向股东交付股票的时间】股份有限公司成立后，即向股东正式交付股票。公司成立前不得向股东交付股票。

第一百三十四条 【发行新股的决议事项】公司发行新股，股东大会应当对下列事项作出决议：

- (一) 新股种类及数额；
- (二) 新股发行价格；



(三) 新股发行的起止日期;

(四) 向原有股东发行新股的种类及数额。

第一百三十五条 【新股发行公告、募股方式及缴纳股款方式】公司经国务院证券监督管理机构核准公开发行新股时,必须公告新股招股说明书和财务会计报告,并制作认股书。

本法第八十八条、第八十九条的规定适用于公司公开发行新股。

第一百三十六条 【新股作价方案的确定】公司发行新股,可以根据公司经营情况和财务状况,确定其作价方案。

第一百三十七条 【新股募足后的变更登记及公告】公司发行新股募足股款后,必须向公司登记机关办理变更登记,并公告。

第二节 股份转让

第一百三十八条 【股份可依法转让】股东持有的股份可以依法转让。

第一百三十九条 【转让股份的场所】股东转让其股份,应当在依法设立的证券交易场所进行或者按照国务院规定的其他方式进行。

第一百四十条 【记名股票的转让】记名股票,由股东以背书方式或者法律、行政法规规定的其他方式转让;转让后由公司受让人的姓名或者名称及住所记载于股东名册。

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

第一百四十一条 【无记名股票的转让】无记名股票的转让,由股东将该股票交付给受让人后即发生转让的效力。

第一百四十二条 【转让本公司股份的限制】发起人持有的本公司股份,自公司成立之日起一年内不得转让。公司公开发行股份前已发行的股份,自公司股票在证券交易所上市交易之日起一年内不得转让。

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

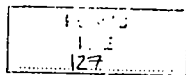
第一百四十三条 【禁止收购本公司股份及其例外】公司不得收购本公司股份。但是,有下列情形之一的除外:

(一) 减少公司注册资本;

(二) 与持有本公司股份的其他公司合并;

(三) 将股份奖励给本公司职工;

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



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

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

公司不得接受本公司的股票作为质押权的标的。

第一百四十四条 【公示催告程序】记名股票被盗、遗失或者灭失，股东可以依照《中华人民共和国民事诉讼法》规定的公示催告程序，请求人民法院宣告该股票失效。人民法院宣告该股票失效后，股东可以向公司申请补发股票。

第一百四十五条 【上市公司的股票交易】上市公司的股票，依照有关法律、行政法规及证券交易所交易规则上市交易。

第一百四十六条 【上市公司的信息披露公开制度】上市公司必须依照法律、行政法规的规定，公开其财务状况、经营情况及重大诉讼，在每会计年度内半年公布一次财务会计报告。

第六章 公司董事、监事、高级管理人员的资格和义务

第一百四十七条 【不得担任高级职员的情形】有下列情形之一的，不得担任公司的董事、监事、高级管理人员：

（一）无民事行为能力或者限制民事行为能力；

（二）因贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序，被判处刑罚，执行期满未逾五年，或者因犯罪被剥夺政治权利，执行期满未逾五年；

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

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

（五）个人所负数额较大的债务到期未清偿。

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

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

第一百四十八条 【高级职员的一般义务】董事、监事、高级管理人员应当遵守法律、行政法规和公司章程，对公司负有忠实义务和勤勉义务。

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

第一百四十九条 【高级职员的禁止行为】董事、高级管理人员不得有下列行为：

- (一) 挪用公司资金；
- (二) 将公司资金以其个人名义或者以其他个人名义开立账户存储；
- (三) 违反公司章程的规定，未经股东会、股东大会或者董事会同意，将公司资金借贷给他人或者以公司财产为他人提供担保；
- (四) 违反公司章程的规定或者未经股东会、股东大会同意，与本公司订立合同或者进行交易；
- (五) 未经股东会或者股东大会同意，利用职务便利为自己或者他人谋取属于公司的商业机会，自营或者为他人经营与所任职公司同类的业务；
- (六) 接受他人与公司交易的佣金归为己有；
- (七) 擅自披露公司秘密；
- (八) 违反对公司忠实义务的其他行为。

董事、高级管理人员违反前款规定所得的收入应当归公司所有。

第一百五十条 【高级职员对公司的赔偿责任】董事、监事、高级管理人员执行公司职务时违反法律、行政法规或者公司章程的规定，给公司造成损失的，应当承担赔偿责任。

第一百五十一条 【高级职员对股东会及监事会行使知情权的配合】股东会或者股东大会要求董事、监事、高级管理人员列席会议的，董事、监事、高级管理人员应当列席并接受股东的质询。

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

第一百五十二条 【股东维护公司利益的起诉权】董事、高级管理人员有本法第一百五十条规定的情形的，有限责任公司的股东、股份有限公司连续一百八十日以上单独或者合计持有公司百分之一以上股份的股东，可以书面请求监事会或者不设监事会的有限责任公司的监事向人民法院提起诉讼；监事有本法第一百五十条规定的情形的，前述股东可以书面请求董事会或者不设董事会的有限责任公司的执行董事向人民法院提起诉讼。

监事会、不设监事会的有限责任公司的监事，或者董事会、执行董事收到前款规定的股东书面请求后拒绝提起诉讼，或者自收到请求之日起三十日内未提起诉讼，或者情况紧急、不立即提起诉讼将会使公司利益受到难以弥补的损害的，前款规定的股东有权为了公司的利益以自己的名义直接向人民法院提起诉讼。

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

第一百五十三条 【股东与监事维护个人利益的起诉权】董事、高级管理人员违反法律、行政法规或者公司章程的规定，损害股东利益的，股东可以向人民法院提起诉讼。

第七章 公司债券

第一百五十四条 【公司债券的定义及发行条件】本法所称公司债券，是指公司依照法定程序发行、约定在一定期限还本付息的有价证券。

公司发行公司债券应当符合《中华人民共和国证券法》规定的发行条件。

第一百五十五条 【公司债券募集的核准和公告】发行公司债券的申请经国务院授权的部门核准后，应当公告公司债券募集办法。

公司债券募集办法中应当载明下列主要事项：

- (一) 公司名称；
- (二) 债券募集资金的用途；
- (三) 债券总额和债券的票面金额；
- (四) 债券利率的确定方式；
- (五) 还本付息的期限和方式；
- (六) 债券担保情况；
- (七) 债券的发行价格、发行的起止日期；
- (八) 公司净资产额；
- (九) 已发行的尚未到期的公司债券总额；
- (十) 公司债券的承销机构。

第一百五十六条 【公司债券票面必须载明的事项】公司以实物券方式发行公司债券的，必须在债券上载明公司名称、债券票面金额、利率、偿还期限等事项，并由法定代表人签名，公司盖章。

第一百五十七条 【债券的种类】公司债券，可以为记名债券，也可以为无记名债券。

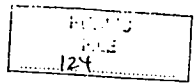
第一百五十八条 【债券存根簿的置备及其应载明的事项】公司发行公司债券应当置备公司债券存根簿。

发行记名公司债券的，应当在公司债券存根簿上载明下列事项：

- (一) 债券持有人的姓名或者名称及住所；
- (二) 债券持有人取得债券的日期及债券的编号；
- (三) 债券总额，债券的票面金额、利率、还本付息的期限和方式；
- (四) 债券的发行日期。

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

第一百五十九条 【债券登记结算机构的制度要求】记名公司债券的登记结算机构应当建立债券登记、存管、付息、兑付等相关制度。



第一百六十条 【公司债券的转让场所与转让价格】公司债券可以转让，转让价格由转让人与受让人约定。

公司债券在证券交易所上市交易的，按照证券交易所的交易规则转让。

第一百六十一条 【公司债券的转让方式】记名公司债券，由债券持有人以背书方式或者法律、行政法规规定的其他方式转让；转让后由公司将受让人的姓名或者名称及住所记载于公司债券存根簿。

无记名公司债券的转让，由债券持有人将该债券交付给受让人后即发生转让的效力。

第一百六十二条 【可转换债券的发行及载明事项】上市公司经股东大会决议可以发行可转换为股票的公司债券，并在公司债券募集办法中规定具体的转换办法。上市公司发行可转换为股票的公司债券，应当报国务院证券监督管理机构核准。

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

第一百六十三条 【可转换债券的转换】发行可转换为股票的公司债券的，公司应当按照其转换办法向债券持有人换发股票，但债券持有人对转换股票或者不转换股票有选择权。

第八章 公司财务、会计

第一百六十四条 【公司财务、会计制度的建立】公司应当依照法律、行政法规和国务院财政部门的规定建立本公司的财务、会计制度。

第一百六十五条 【财务会计报告的制作和年审制】公司应当在每一会计年度终了时编制财务会计报告，并依法经会计师事务所审计。

财务会计报告应当依照法律、行政法规和国务院财政部门的规定制作。

第一百六十六条 【财务会计报告送交股东及公告】有限责任公司应当依照公司章程规定的期限将财务会计报告送交各股东。

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

第一百六十七条 【公司税后利润的分配】公司分配当年税后利润时，应当提取利润的百分之十列入公司法定公积金。公司法定公积金累计额为公司注册资本的百分之五十以上的，可以不再提取。

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

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

公司弥补亏损和提取公积金后所余税后利润，有限责任公司依照本法第三十五条的规定分配；股份有限公司按照股东持有的股份比例分配，但股份有限公司章程规定不按持股比例分配的除外。

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

公司持有的本公司股份不得分配利润。

第一百六十八条 【资本公积金】股份有限公司以超过股票票面金额的发行价格发行股份所得的溢价款以及国务院财政部门规定列入资本公积金的其他收入，应当列为公司资本公积金。

第一百六十九条 【公积金的用途及限制】公司的公积金用于弥补公司的亏损、扩大公司生产经营或者转为增加公司资本。但是，资本公积金不得用于弥补公司的亏损。

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

第一百七十条 【公司对会计师事务所的聘用及解聘】公司聘用、解聘承办公司审计业务的会计师事务所，依照公司章程的规定，由股东会、股东大会或者董事会决定。

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

第一百七十一条 【公司对会计师事务所的诚实义务】公司应当向聘用的会计师事务所提供真实、完整的会计凭证、会计账簿、财务会计报告及其他会计资料，不得拒绝、隐匿、谎报。

第一百七十二条 【禁止另立账簿及开立个人帐户】公司除法定的会计账簿外，不得另立会计账簿。

对公司资产，不得以任何个人名义开立账户存储。

第九章 公司合并、分立、增资、减资

第一百七十三条 【公司合并的种类】公司合并可以采取吸收合并或者新设合并。

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

第一百七十四条 【公司合并程序和债权人异议权】公司合并，应当由合并各方签订合并协议，并编制资产负债表及财产清单。公司应当自作出合并决议之日起十日内通知债权人，并于三十日内在报纸上公告。债权人自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，可以要求公司清偿债务或者提供相应的担保。

第一百七十五条 【公司合并的债权债务承继】公司合并时，合并各方的债权、债务，应当由合并后存续的公司或者新设的公司承继。

第一百七十六条 【公司分立的通知义务】公司分立，其财产作相应的分割。

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

第一百七十七条 【公司分立的债务承继】公司分立前的债务由分立后的公司承担连带责任。但是，公司在分立前与债权人就债务清偿达成的书面协议另有约定的除外。

第一百七十八条 【减少注册资本的程序要求及限制】公司需要减少注册资本时，必须编制资产负债表及财产清单。

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

公司减资后的注册资本不得低于法定的最低限额。

第一百七十九条 【增加注册资本的规定】有限责任公司增加注册资本时，股东认缴新增资本的出资，依照本法设立有限责任公司缴纳出资的有关规定执行。

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

第一百八十条 【公司合并、分立、增资、减资的登记要求】公司合并或者分立，登记事项发生变更的，应当依法向公司登记机关办理变更登记；公司解散的，应当依法办理公司注销登记；设立新公司的，应当依法办理公司设立登记。

公司增加或者减少注册资本，应当依法向公司登记机关办理变更登记。

第十章 公司解散和清算

第一百八十一条 【公司解散的原因】公司因下列原因解散：

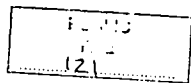
- (一) 公司章程规定的营业期限届满或者公司章程规定的其他解散事由出现；
- (二) 股东会或者股东大会决议解散；
- (三) 因公司合并或者分立需要解散；
- (四) 依法被吊销营业执照、责令关闭或者被撤销；
- (五) 人民法院依照本法第一百八十三条的规定予以解散。

第一百八十二条 【为使公司存续而修改章程的议事规则】公司有本法第一百八十一条第(一)项情形的，可以通过修改公司章程而存续。

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

第一百八十三条 【股东请求法院解散公司的情形】公司经营管理发生严重困难，继续存续会使股东利益受到重大损失，通过其他途径不能解决的，持有公司全部股东表决权百分之十以上的股东，可以请求人民法院解散公司。

第一百八十四条 【清算组的成立与组成】公司因本法第一百八十一条第(一)项、第(二)项、第(四)项、第(五)项规定而解散的，应当在解散事由出现之日起十五日内成立清算组，开始清算。有限责任公司的清算组由股东组成，股份有限公司的清算组由董事或



者股东大会确定的人员组成。逾期不成立清算组进行清算的，债权人可以申请人民法院指定有关人员组成清算组进行清算。人民法院应当受理该申请，并及时组织清算组进行清算。

第一百八十五条 【清算组的职权】清算组在清算期间行使下列职权：

- (一) 清理公司财产，分别编制资产负债表和财产清单；
- (二) 通知、公告债权人；
- (三) 处理与清算有关的公司未了结的业务；
- (四) 清缴所欠税款以及清算过程中产生的税款；
- (五) 清理债权、债务；
- (六) 处理公司清偿债务后的剩余财产；
- (七) 代表公司参与民事诉讼活动。

第一百八十六条 【清算期间的债权申报】清算组应当自成立之日起十日内通知债权人，并于六十日内在报纸上公告。债权人应当自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，向清算组申报其债权。

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

在申报债权期间，清算组不得对债权人进行清偿。

第一百八十七条 【清算方案的制定与公司财产的处理】清算组在清理公司财产、编制资产负债表和财产清单后，应当制定清算方案，并报股东会、股东大会或者人民法院确认。

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

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

第一百八十八条 【宣告破产】清算组在清理公司财产、编制资产负债表和财产清单后，发现公司财产不足清偿债务的，应当依法向人民法院申请宣告破产。

公司经人民法院裁定宣告破产后，清算组应当将清算事务移交给人民法院。

第一百八十九条 【清算报告的报送及公司注销登记】公司清算结束后，清算组应当制作清算报告，报股东会、股东大会或者人民法院确认，并报送公司登记机关，申请注销公司登记，公告公司终止。

第一百九十条 【清算组成员的义务】清算组成员应当忠于职守，依法履行清算义务。

清算组成员不得利用职权收受贿赂或者其他非法收入，不得侵占公司财产。

清算组成员因故意或者重大过失给公司或者债权人造成损失的，应当承担赔偿责任。

第一百九十一条 【破产清算的法律依据】公司被依法宣告破产的，依照有关企业破产的法律实施破产清算。

第十一章 外国公司的分支机构

第一百九十二条 【外国公司的定义】本法所称外国公司是指依照外国法律在中国境外设立的公司。

第一百九十三条 【外国公司分支机构的设立申请及审批】外国公司在中国境内设立分支机构，必须向中国主管机关提出申请，并提交其公司章程、所属国的公司登记证书等有关文件，经批准后，向公司登记机关依法办理登记，领取营业执照。

外国公司分支机构的审批办法由国务院另行规定。

第一百九十四条 【外国公司分支机构的设立及资金要求】外国公司在中国境内设立分支机构，必须在中国境内指定负责该分支机构的代表人或者代理人，并向该分支机构拨付与其所从事的经营活动相适应的资金。

对外国公司分支机构的经营资金需要规定最低限额的，由国务院另行规定。

第一百九十五条 【外国公司分支机构的名称要求及章程置备】外国公司的分支机构应当在其名称中标明该外国公司的国籍及责任形式。

外国公司的分支机构应当在本机构中置备该外国公司章程。

第一百九十六条 【外国公司分支机构不具有中国法人资格】外国公司在中国境内设立的分支机构不具有中国法人资格。

外国公司对其分支机构在中国境内进行经营活动承担民事责任。

第一百九十七条 【外国公司分支机构的合法经营义务及合法权益的保护】经批准设立的外国公司分支机构，在中国境内从事业务活动，必须遵守中国的法律，不得损害中国的社会公共利益，其合法权益受中国法律保护。

第一百九十八条 【外国公司撤销分支机构的条件】外国公司撤销其在中国境内的分支机构时，必须依法清偿债务，依照本法有关公司清算程序的规定进行清算。未清偿债务之前，不得将其分支机构的财产移至中国境外。

第十二章 法律责任

第一百九十九条 【公司登记违法的法律责任】违反本法规定，虚报注册资本、提交虚假材料或者采取其他欺诈手段隐瞒重要事实取得公司登记的，由公司登记机关责令改正，对虚报注册资本的公司，处以虚报注册资本金额百分之五以上百分之十五以下的罚款；对提交虚假材料或者采取其他欺诈手段隐瞒重要事实的公司，处以五万元以上五十万元以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

第二百条 【公司的发起人、股东出资违法的法律责任】公司的发起人、股东虚假出资，未交付或者未按期交付作为出资的货币或者非货币财产的，由公司登记机关责令改正，处以虚假出资金额百分之五以上百分之十五以下的罚款。

第二百零一条 【公司的发起人、股东抽逃出资的法律责任】公司的发起人、股东在公司成立后，抽逃其出资的，由公司登记机关责令改正，处以所抽逃出资额百分之五以上百分之十五以下的罚款。

第二百零二条 【公司另立会计账簿的法律责任】公司违反本法规定，在法定的会计账簿以外另立会计账簿的，由县级以上人民政府财政部门责令改正，处以五万元以上五十万元以下的罚款。

第二百零三条 【提交财务会计报告违法的法律责任】公司在依法向有关主管部门提供的财务会计报告等材料上作虚假记载或者隐瞒重要事实的，由有关主管部门对直接负责的主管人员和其他直接责任人员处以三万元以上三十万元以下的罚款。

第二百零四条 【违法提取法定公积金的法律责任】公司不依照本法规定提取法定公积金的，由县级以上人民政府财政部门责令如数补足应当提取的金额，可以对公司处以二十万元以下的罚款。

第二百零五条 【公司在合并、分立、减少注册资本和清算中的违法行为及其法律责任】公司在合并、分立、减少注册资本或者进行清算时，不依照本法规定通知或者公告债权人的，由公司登记机关责令改正，对公司处以一万元以上十万元以下的罚款。

公司在进行清算时，隐匿财产，对资产负债表或者财产清单作虚假记载或者在未清偿债务前分配公司财产的，由公司登记机关责令改正，对公司处以隐匿财产或者未清偿债务前分配公司财产金额百分之五以上百分之十以下的罚款；对直接负责的主管人员和其他直接责任人员处以一万元以上十万元以下的罚款。

第二百零六条 【公司在清算期间违法经营的法律责任】公司在清算期间开展与清算无关的经营活动的，由公司登记机关予以警告，没收违法所得。

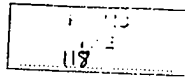
第二百零七条 【清算组及其成立对其违法行为的法律责任】清算组不依照本法规定向公司登记机关报送清算报告，或者报送清算报告隐瞒重要事实或者有重大遗漏的，由公司登记机关责令改正。

清算组成员利用职权徇私舞弊、谋取非法收入或者侵占公司财产的，由公司登记机关责令退还公司财产，没收违法所得，并可以处以违法所得一倍以上五倍以下的罚款。

第二百零八条 【资产评估、验资或验证机构对其违法行为的法律责任】承担资产评估、验资或者验证的机构提供虚假材料的，由公司登记机关没收违法所得，处以违法所得一倍以上五倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因过失提供有重大遗漏的报告的，由公司登记机关责令改正，情节较重的，处以所得收入一倍以上五倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因其出具的评估结果、验资或者验证证明不实，给公司债权人造成损失的，除能够证明自己没有过错的外，在其评估或者证明不实的金额范围内承担赔偿责任。



第二百零九条 【登记机关违法行为的法律责任】公司登记机关对不符合本法规定条件的登记申请予以登记,或者对符合本法规定条件的登记申请不予登记的,对直接负责的主管人员和其他直接责任人员,依法给予行政处分。

第二百一十条 【登记机关上级部门违法行为的法律责任】公司登记机关的上级部门强令公司登记机关对不符合本法规定条件的登记申请予以登记,或者对符合本法规定条件的登记申请不予登记的,或者对违法登记进行包庇的,对直接负责的主管人员和其他直接责任人员依法给予行政处分。

第二百一十一条 【假冒公司的违法行为及其法律责任】未依法登记为有限责任公司或者股份有限公司,而冒用有限责任公司或者股份有限公司名义的,或者未依法登记为有限责任公司或者股份有限公司的分公司,而冒用有限责任公司或者股份有限公司的分公司名义的,由公司登记机关责令改正或者予以取缔,可以并处十万元以下的罚款。

第二百一十二条 【不当停业及不依法办理变更登记的法律責任】公司成立后无正当理由超过六个月未开业的,或者开业后自行停业连续六个月以上的,可以由公司登记机关吊销营业执照。

公司登记事项发生变更时,未依照本法规定办理有关变更登记的,由公司登记机关责令限期登记;逾期不登记的,处以一万元以上十万元以下的罚款。

第二百一十三条 【外国公司擅自在中国境内设立分支机构的法律责任】外国公司违反本法规定,擅自在中国境内设立分支机构的,由公司登记机关责令改正或者关闭,可以并处五万元以上二十万元以下的罚款。

第二百一十四条 【危害国家安全与社会公共利益的法律责任】利用公司名义从事危害国家安全、社会公共利益的严重违法行为的,吊销营业执照。

第二百一十五条 【民事赔偿优先原则】公司违反本法规定,应当承担民事赔偿责任和缴纳罚款、罚金的,其财产不足以支付时,先承担民事赔偿责任。

第二百一十六条 【刑事责任的追究】违反本法规定,构成犯罪的,依法追究刑事责任。

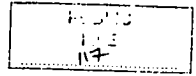
第十三章 附则

第二百一十七条 【本法所涉相关用语的含义】本法下列用语的含义:

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

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

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



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

第二百一十八条 【本法在外商投资领域的适用及例外】外商投资的有限责任公司和股份有限公司适用本法；有关外商投资的法律另有规定的，适用其规定。

第二百一十九条 【生效施行日期】本法自 2006 年 1 月 1 日起施行。

ATTACHMENT II

PUBLIC
FILE

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Catalogue of Investment Projects Reviewed by the Government (Text 2004)

Brief Introduction:

1. The projects listed in this Catalogue shall refer to the major and restricted fixed assets investment projects invested and constructed by enterprises without using government capital.

2. Except for investment projects that are prohibited by the state laws and regulations and the special provisions of the State Council, if any enterprise invests to construct the projects outside this Catalogue without using the government capital, it shall be subject to recording.

3. The relevant provisions shall be applied by analogy to the examination and review of projects as specified by the state laws and regulations and the State Council.

4. The Catalogue has made prescription on the power of review of the government, of which:

(1) The projects "reviewed by the competent investment department of the State Council" as specified in the Catalogue shall be subject to review by the competent investment department of the State Council together with the competent trade department, of which the major projects shall be subject to the review of the State Council.

(2) The projects "reviewed by the competent investment department of local government" as prescribed by the Catalogue shall be subject to review by the competent investment department of local government together with the competent trade departments at the corresponding level. The provincial government may divide the power of review of the competent investment department of local governments at various level according to the circumstances of the locality and nature of projects, but the power of review shall not be transferred to the lower level competent department in case the Catalogue unambiguously provides that the projects shall be subject to review by the competent investment department of provincial government.

(3) Special authorization shall be made to the decision-making right for investment to the large enterprise according to the need of economic development and actual circumstances of different industry.

5. This Catalogue is the 2004 text, which may be adjusted to keep in pace with the change of circumstances.

I. Agriculture, Forestry and Water Conservancy

Agriculture: The projects concerning the opening up of wasteland shall be subject to the review of the competent investment departments of the provincial governments.

Reservoir: The reservoir projects in the international rivers and trans-province (district, city) rivers shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment department of local governments.

Other Projects of Water Affairs: The international rivers and projects concerning the allocation and adjustments of trans-province (district, or city) water resources, which need to be coordinated by the Central Government shall be subject to the review of the competent investment department of the State Council, and other projects shall be subject to the review of the competent investment department of local government.

II. Energy Sources

1. Electric Power

Hydropower stations: Projects constructed on the major rivers and projects with the total installed capacity of 250,000 kilowatt or more shall be subject to the review of the competent investment departments of the State Council, and other projects shall be subject to the review of the competent investment departments of local governments.

Pumped-storage power stations: shall be subject to the review of the competent investment department of the State Council.

Thermal power stations: shall be subject to the review of the competent investment department of the State Council.

Steam Power Plants: among which fire coal projects shall be subject to the review of the competent investment department of the State Council, and other projects shall be subject to the review of the competent investment department of local governments.

Wind power stations: The projects with the total installed capacity of 50,000 kilowatt or more shall be subject to the review of the competent investment department of the State Council, and other projects shall be subject to the review of the competent investment department of local governments.

Nuclear power stations: shall be subject to the review of the State Council.

Power grid projects: Power grid projects with the grade of voltage of 330 kv. or more shall be subject to the review of the competent investment departments of the State Council, other projects shall be reviewed by the competent investment departments of the local government.

2. Coal

Coal Mines: The coal development projects within the state planned mining areas shall be subject to the review of the competent investment department of the State Council, other general coal development projects shall be subject to the review of the competent investment department of local governments.

Coal liquefactions: Projects with the annual production of 500,000 tons or more shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment department of local governments.

3. Petroleum and Natural Gas

Crude oil: Projects of new oil field development with the annual production of 100 million tons or more shall be subject to the review of the competent investment department of the State Council, other projects shall be determined by the enterprises which have the right to prospect oil on their own initiatives, and shall be put on archives at the competent investment department of the State Council.

Natural Gas: The projects with the annual production of 2 billion cubic meters or more shall be subject to the review of the competent investment department of the State Council, other projects shall be determined by the enterprises which have the right to prospect the natural gas on their own initiatives, and shall be put on archives at the competent investment department of the State Council.

Facilities for Receiving and Storage of Liquefied Petroleum Gas (Excluding the Projects Matching with the Oil and Gas Fields and Refineries): shall be subject to the review of the competent investment department of provincial governments.

Facilities for Receiving and Storage of Imported Liquefied Natural Gas (LNG): shall be subject to the review of the competent investment department of the State Council.

State Crude Oil Storage Facilities: shall be subject to the review of the competent investment department of the State Council.

Petroleum Pipelines Network (Excluding Oil Field Gathering and Transportation Pipeline Networks): projects of trans-province (district or city) trunk pipe network shall be subject to the review of the competent investment department of the State Council.

Gas Pipelines Network (Excluding Oil Field Gathering and Transportation Pipeline Network): Trans-province (district or city) projects or projects with the annual gas transportation capacity of 0.5 billion cubic meters or more shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment department of provincial governments.

III. Transportation

1. Railway.

Newly-built (including Additionally Built) Railways: Trans-province (district and city) projects or projects of 100 kilometers or more shall be subject to the review of the competent investment department of the State Council, other projects shall be reviewed separately by the competent trade department of the State Council or the competent investment department of the provincial governments according to the subordinated relations.

2. Highways.

Highways: Projects of trunk lines of national highways, trunk lines of highways for the development of western areas, national speedway networks, and trans-province (district or city) projects shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment departments of local governments.

Independent Highway Bridges and Tunnels: Trans-boundary, trans-gulf, and trans-big river projects (areas open to navigation) shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment department of local governments.

3. Water Carriage.

Special Berths Used for Coal, Ore, and Oil and Gas: Newly-built harbors and projects with annual loading and unloading capacity of 2 million tons or more shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment department of the provincial governments.

Special Wharfs for Container Use: shall be subject to the review of the competent investment department of the State Council.

Inland River Shipping: Projects of buildings open to navigation with more than one thousand tons shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent investment department of the local government.

4. Civil Aviation

Newly-built Airports: shall be subject to the review of the State Council.

Airports Expanded: Projects with the total investment of 1 billion or more shall be subject to the review of the competent investment department of the State Council, other projects shall be subject to the review of the competent trade departments of the State Council or the competent investment departments of local governments according to the subordinate relations.

Expanded Airports Used Jointly by the civilians and armies: shall be subject to the review of the competent investment department of the State Council together with the relevant departments of the army troops.

IV. Information Industry

Telecommunications: Domestic trunk transmission networks (including broadcast and television network), international telecommunications transmission circuits, international pass, international communications facilities for special telecommunication networks, and other projects of telecommunication infrastructure involving information safety shall be subject to the review of the competent investment department of the State Council.

Post: Projects of international pass and other projects of post infrastructure facilities involving information safety shall be subject to the review of the competent investment department of the State Council.

Electronic Information Product Manufacturing: Satellite television receiver and critical components, and product projects of mobile communication system and terminal devices

as prescribed specially by the state shall be subject to the review of the competent investment department of the State Council.

V. Raw Materials

Steel: Iron ore exploitation projects with the proved industry reserve of 50 million tons or more and the projects of iron-smelting, steel-making and steel rolling with newly added production capacity shall be subject to the review of the competent investment department of the State Council, other iron ore development projects shall be subject to the review of the competent investment department of the provincial government.

Non-ferrous: Projects of electrolytic aluminum with newly added productive capacity, and project of newly added aluminum, as well as the mine exploitation projects with the total investment of RMB 500 million Yuan or more shall be subject to the review of the competent investment department of the State Council, other mine exploitation projects shall be subject to the review of the competent investment department of the provincial government.

Petrochemical: Projects of newly built oil refining and expanded one-time oil refining project, newly built ethylene projects of and ethylene projects rebuilt and expanded with the newly added annual production capacity of 200 thousand tons shall be subject to the review of the competent investment department of the State Council.

Chemical Materials: Newly built PTA, PX, MDI, TDI projects and projects with the PTA and PX reconstruction capacity exceeding 100 thousand tons for annual production, shall be subject to the review of the competent investment department of the State Council.

Fertilizer: Project of kalium fertilizer with the annual production of 500 thousand tons or more shall be subject to the review of the competent investment department of the State Council, other phosphor and kalium projects shall be subject to the review of the competent investment department of the local government.

Cement: Except for prohibited projects, shall be subject to the review of the competent investment department of the provincial government.

Rare Earth: projects of mine exploitation, separation of smelting and projects of deep processing of rare earth with the total investment of RMB 0.1 billion Yuan or more shall be subject to the review of the competent investment department of the State Council, other rare earth deep processing projects shall be subject to the review of the competent investment department of the provincial governments.

Gold: Projects with the daily mining and selection of gold mines of 500 tons or more shall be subject to the review of the competent investment department of the State Council, other projects of mining and selection shall be subject to the review of the competent investment department of the provincial government.

VI. Machinery Manufacture

Automobiles: shall be subject to the special provisions reviewed by the State Council.

Ship: Projects for the production of newly-built shipbuilding facilities (slipway, boatyard) over 100 thousand tons or more and projects of low speed diesel engine in civil ships shall be subject to the review of the competent investment department of the State Council.

Urban Rapid Rail Transit: Projects for the building of urban rail vehicles, beaconages, traction and transmission system shall be subject to the review of the competent investment department of the State Council.

VII. Light Industry and Tobacco

Paper Pulp: Paper pulp projects with the annual production of 100 thousand tons shall be subject to the review of the competent investment department of the State Council, paper pulp projects with the annual production of 34 thousand tons up to 100 thousand tons (not including 100 thousand tons) shall be subject to the review of the competent investment department of the provincial government, the construction of other paper pulp projects shall be prohibited.

Denaturalized Fuel – ethanol: shall be subject to the review of the competent investment department of the State Council.

Polyester: Projects with the daily production of 300 tons or more shall be subject to the review of the competent investment department of the State Council.

Salt Manufacturing: shall be subject to the review of the competent investment department of the State Council.

Sugar: Projects with the daily disposal of sugar materials of 1500 tons or more shall be subject to the review of the competent investment department of the provincial government, other sugar projects shall be prohibited to construct.

Tobacco: Projects of cigarettes, cellulose acetate for the cigarette use shall be subject to the review of the competent investment department of the State Council.

VIII. High and New Technology

Civil Aviation and Aerospace: Projects for the manufacture of civil airplane (including helicopters), civil satellite manufacture, construction of ground stations of civil remote sensing satellites shall be subject to the review of the competent investment department of the State Council.

IX. City Construction

Urban Rapid Rail Transit: shall be subject to the review of the State Council.

Urban Water Supply: Trans-province (district, city) projects of water diversion with the daily water diverted of 500 thousand tons or more shall be subject to the review of the competent investment department of the State Council, other urban water supply projects shall be subject to the review of the competent investment department of the local government.

Urban Road and Bridges: Projects of trans-large river (at the place open to navigation), bridge of major gulfs, and tunnels shall be subject to the review of the competent investment department of the State Council.

Other Urban Construction Projects: shall be subject to the review of the competent investment department of the State Council.

X. Public Welfares

Education, Health, Culture, and Radio, Film and Television: Projects for the construction of university city, medical city, and other garden and district construction shall be subject to the review of the competent investment department of the State Council.

Tourism: Projects of tourism development and resource protection facilities within the areas of major state places of interest, state natural protection areas, and the major cultural relic protection entities of the state with the total investment of RMB 500 million Yuan or more, projects within the world natural and cultural heritage protection areas shall be subject to the review of the competent investment department of the State Council.

Physical Culture: Projects of F1 racing field shall be subject to the review of the competent investment department of the State Council.

Entertainment: Project of large theme parks shall be subject to the review of the State Council.

Other Public Welfare Projects: shall be subject to the review of the competent trade department of the State Council or the competent investment department of the local government.

XI. Finance

Projects of printing bank notes, coinage and papers for paper money shall be subject to the review of the competent investment department of the State Council.

XII. Foreign Investment

The projects in the class of encouragement and permission with the total investment (including capital increase) of 0.1 billion Dollars or more as prescribed in the Catalogue of Industries for Guiding Foreign Investment shall be subject to the review of the National Development and Reform Commission.

The projects in the restricted class with the total investment (including capital increase) of 50 million Dollars or more as prescribed in the Catalogue of Industries for Guiding Foreign Investment shall be subject to the review of the National Development and Reform Commission.

The items for the establishment and alteration of foreign funded enterprises, whose investment is above the state prescribed quotas and to whom the investment is restricted and which concerns the quota and license administration; the major matters being altered (including increase and decrease of capital, transfer of shares and incorporation) as prescribed by the contract, articles of association of the large foreign-funded projects and

laws, shall be subject to the review of the Ministry of Commerce. Other foreign-funded projects apart from the aforesaid projects shall be reviewed by the local governments in accordance with the relevant laws and regulations.

XIII. Overseas Investment

Chinese party's overseas investment projects of resource development with the total investment of 30 million Dollars or more shall be subject to the review of the National Development and Reform Commission. The Chinese party's overseas investment projects of non-resource category with the amount of foreign exchange used 10 million Dollars or more shall be subject to the review of the National Development and Reform Commission. Other overseas investment projects apart from the aforesaid projects, and the projects invested by the enterprises under the Central Government shall be put on archives at the National Development and Reform Commission and the Ministry of Commerce; and the review for the projects invested by other enterprises shall be handled by the local governments according to the relevant laws and regulations. In case a domestic enterprise opens enterprise (excluding the finance enterprise) in a foreign country, it shall be subject to the review of the Ministry of Commerce.

政府核准的投资项目目录(2004 年本)

简要说明：

(一) 本目录所列项目，是指企业不使用政府性资金投资建设的重大和限制类固定资产投资项目。

(二) 企业不使用政府性资金投资建设本目录以外的项目，除国家法律法规和国务院专门规定禁止投资的项目以外，实行备案管理。

(三) 国家法律法规和国务院有专门规定的项目的审批或核准，按有关规定执行。

(四) 本目录对政府核准权限作出了规定。其中：

1. 目录规定“由国务院投资主管部门核准”的项目，由国务院投资主管部门会同行业主管部门核准，其中重要项目报国务院核准。

2. 目录规定“由地方政府投资主管部门核准”的项目，由地方政府投资主管部门会同同级行业主管部门核准。省级政府可根据当地情况和项目性质，具体划分各级地方政府投资主管部门的核准权限，但目录明确规定“由省级政府投资主管部门核准”的，其核准权限不得下放。

3. 根据促进经济发展的需要和不同行业的实际情况，可对特大型企业的投资决策权限特别授权。

(五) 本目录为 2004 年本。根据情况变化，将适时调整。

一、农林水利

农业：涉及开荒的项目由省级政府投资主管部门核准。

水库：国际河流和跨省（区、市）河流上的水库项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

其他水事工程：需中央政府协调的国际河流、涉及跨省（区、市）水资源配置调整的项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

二、能源

（一）电力。

水电站：在主要河流上建设的项目和总装机容量 25 万千瓦及以上项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

抽水蓄能电站：由国务院投资主管部门核准。

火电站：由国务院投资主管部门核准。

热电站：燃煤项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

风电站：总装机容量 5 万千瓦及以上项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

核电站：由国务院核准。

电网工程：330 千伏及以上电压等级的电网工程由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

（二）煤炭。

煤矿：国家规划矿区内的煤炭开发项目由国务院投资主管部门核准，其余一般煤炭开发项目由地方政府投资主管部门核准。

煤炭液化：年产 50 万吨及以上项目由国务院投资主管部门核准，其他项目由地方政府投资主管部门核准。

(三) 石油、天然气。

原油：年产 100 万吨及以上的新油田开发项目由国务院投资主管部门核准，其他项目由具有石油开采权的企业自行决定，报国务院投资主管部门备案。

天然气：年产 20 亿立方米及以上新气田开发项目由国务院投资主管部门核准，其他项目由具有天然气开采权的企业自行决定，报国务院投资主管部门备案。

液化石油气接收、存储设施（不含油气田、炼油厂的配套项目）：由省级政府投资主管部门核准。

进口液化天然气接收、储运设施：由国务院投资主管部门核准。

国家原油存储设施：由国务院投资主管部门核准。

输油管网（不含油田集输管网）：跨省（区、市）干线管网项目由国务院投资主管部门核准。

输气管网（不含油气田集输管网）：跨省（区、市）或年输气能力 5 亿立方米及以上项目由国务院投资主管部门核准，其余项目由省级政府投资主管部门核准。

三、交通运输

(一) 铁道。

新建（含增建）铁路：跨省（区、市）或 100 公里及以上项目由国务院投资主管部门核准，其余项目按隶属关系分别由国务院行业主管部门或省级政府投资主管部门核准。

(二) 公路。

公路：国道主干线、西部开发公路干线、国家高速公路网、跨省（区、市）的项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

独立公路桥梁、隧道：跨境、跨海湾、跨大江大河（通航段）的项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

(三) 水运。

煤炭、矿石、油气专用泊位：新建港区 and 年吞吐能力 200 万吨及以上项目由国务院投资主管部门核准，其余项目由省级政府投资主管部门核准。

集装箱专用码头：由国务院投资主管部门核准。

内河航运：千吨级以上通航建筑物项目由国务院投资主管部门核准，其余项目由地方政府投资主管部门核准。

(四) 民航。

新建机场：由国务院核准。

扩建机场：总投资 10 亿元及以上项目由国务院投资主管部门核准，其余项目按隶属关系由国务院行业主管部门或地方政府投资主管部门核准。

扩建军民合用机场：由国务院投资主管部门会同军队有关部门核准。

四、信息产业

电信：国内干线传输网（含广播电视网）、国际电信传输电路、国际关口站、专用电信网的国际通信设施及其他涉及信息安全的电信基础设施项目由国务院投资主管部门核准。

邮政：国际关口站及其他涉及信息安全的邮政基础设施项目由国务院投资主管部门核准。

电子信息产品制造：卫星电视接收机及关键件、国家特殊规定的移动通信系统及终端等生产项目由国务院投资主管部门核准。

五、原材料

钢铁：已探明工业储量 5000 万吨及以上规模的铁矿开发项目和新增生产能力的炼铁、炼钢、轧钢项目由国务院投资主管部门核准，其他铁矿开发项目由省级政府投资主管部门核准。

有色：新增生产能力的电解铝项目、新建氧化铝项目和总投资 5 亿元及以上的矿山开发项目由国务院投资主管部门核准，其他矿山开发项目由省级政府投资主管部门核准。

石化：新建炼油及扩建一次炼油项目、新建乙烯及改扩建新增能力超过年产 20 万吨乙烯项目，由国务院投资主管部门核准。

化工原料：新建 PTA、PX、MDI、TDI 项目，以及 PTA、PX 改造能力超过年产 10 万吨的项目，由国务院投资主管部门核准。

化肥：年产 50 万吨及以上钾矿肥项目由国务院投资主管部门核准，其他磷、钾矿肥项目由地方政府投资主管部门核准。

水泥：除禁止类项目外，由省级政府投资主管部门核准。

稀土：矿山开发、冶炼分离和总投资 1 亿元及以上稀土深加工项目由国务院投资主管部门核准，其余稀土深加工项目由省级政府投资主管部门核准。黄金：日采选矿石 500 吨及以上项目由国务院投资主管部门核准，其他采选矿项目由省级政府投资主管部门核准。

六、机械制造

汽车：按照国务院批准的专项规定执行。船舶：新建 10 万吨级以上造船设施（船台、船坞）和民用船舶中、低速柴油机生产项目由国务院投资主管部门核准。

城市轨道交通：城市轨道交通车辆、信号系统和牵引传动控制系统制造项目由国务院投资主管部门核准。

七、轻工烟草

纸浆：年产 10 万吨及以上纸浆项目由国务院投资主管部门核准，年产 3.4（含）万吨—10（不含）万吨纸浆项目由省级政府投资主管部门核准，其他纸浆项目禁止建设。

变性燃料乙醇：由国务院投资主管部门核准。聚酯：日产 300 吨及以上项目由国务院投资主管部门核准。

制盐：由国务院投资主管部门核准。糖：日处理糖料 1500 吨及以上项目由省级政府投资主管部门核准，其他糖料项目禁止建设。烟草：卷烟、烟用二醋酸纤维素及丝束项目由国务院投资主管部门核准。

八、高新技术

民用航空航天：民用飞机（含直升机）制造、民用卫星制造、民用遥感卫星地面站建设项目由国务院投资主管部门核准。

九、城建

城市快速轨道交通：由国务院核准。城市供水：跨省（区、市）日调水 50 万吨及以上项目由国务院投资主管部门核准，其他城市供水项目由地方政府投资主管部门核准。

城市道路桥梁：跨越大江大河（通航段）、重要海湾的桥梁、隧道项目由国务院投资主管部门核准。其他城建项目：由地方政府投资主管部门核准。

十、社会事业

教育、卫生、文化、广播电影电视：大学城、医学城及其他园区性建设项目由国务院投资主管部门核准。旅游：国家重点风景名胜区、国家自然保护区、国家重点文物保护单位区域内总投资 5000 万元及以上旅游开发和资源保护设施，世界自然、文化遗产保护区内总投资 3000 万元及以上项目由国务院投资主管部门核准。体育：F1 赛车场由国务院投资主管部门核准。娱乐：大型主题公园由国务院核准。其他社会事业项目：按隶属关系由国务院行业主管部门或地方政府投资主管部门核准。

十一、金融

印钞、造币、钞票纸项目由国务院投资主管部门核准。

十二、外商投资

《外商投资产业指导目录》中总投资（包括增资）1 亿美元及以上鼓励类、允许类项目由国家发展和改革委员会核准。

《外商投资产业指导目录》中总投资（包括增资）5000 万美元及以上限制类项目由国家发展和改革委员会核准。

国家规定的限额以上、限制投资和涉及配额、许可证管理的外商投资企业的设立及其变更事项；大型外商投资项目的合同、章程及法律特别规定的重大变更（增资减资、转股、合并）事项，由商务部核准。上述项目之外的外商投资项目由地方政府按照有关法规办理核准。

十三、境外投资

中方投资 3000 万美元及以上资源开发类境外投资项目由国家发展和改革委员会核准。

中方投资用汇额 1000 万美元及以上的非资源类境外投资项目由国家发展和改革委员会核准。上述项目之外的境外投资项目，中央管理企业投资的项目报国家发展和改革委员会、商务部备案；其他企业投资的项目由地方政府按照有关法规办理核准。国内企业对外投资开办企业（金融企业除外）由商务部核准。

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Interim Regulation of the People's Republic of China on Value Added Tax

(Promulgated by Order No. 134 of the State Council of the People's Republic of China on December 13, 1993 Amended and adopted at the 34th executive meeting of the State Council on November 5, 2008)

Article 1 Entities and individuals engaged in the sale of goods, supply of processing, repair and replacement services, and import of goods within the territory of the People's Republic of China are taxpayers of value added tax (hereinafter referred to as "taxpayers"), and shall pay VAT in accordance with this Regulation.

Article 2 VAT rates:

1. For taxpayers selling or importing goods, other than those as specified in Items 2 and 3 of this Article, the tax rate shall be 17%.

2. For taxpayers selling or importing the following goods, the tax rate shall be 13%.

(1) food grains, edible vegetable oil;

(2) tap water, heating, air conditioning, hot water, coal gas, liquefied petroleum gas, natural gas, methane, and coal/ charcoal products for household use.

(3) books, newspapers, magazines;

(4) feed, fertilizer, pesticide, agricultural machinery and agricultural film; and

(5) other goods as prescribed by the State Council.

3. For taxpayers exporting goods, the tax rate shall be zero, except as otherwise prescribed by the State Council.

4. For taxpayers supplying processing, and repair and replacement services (hereinafter referred to as "taxable service"), the tax rate shall be 17 %.

Any adjustments to the tax rates shall be decided by the State Council.

Article 3 For a taxpayer concurrently engaged in goods or taxable services at different tax rates, the sales amounts for goods or taxable services at different tax rates shall be calculated separately, otherwise, the higher tax rate shall apply.

Article 4 Except for the provisions in Article 11 of this Regulation, for a taxpayer engaged in selling goods or supplying taxable services, the payable tax amount shall be the balance after offsetting or deducting the input tax amount for the current period against or

from the output tax amount for the current period. The formula for computing the payable tax amount:

the payable tax amount = the output tax amount for the current period – the input tax amount for the current period

If the output tax amount for the current period is less than and insufficient to offset against or deduct the input tax amount for the current period, the deficiency can be carried forward to the following period for offset or deduction.

Article 5 The VAT tax amount that a taxpayer selling goods or supplying taxable service calculates on the basis of the sales amount and at the tax rate as prescribed in Article 2 of this Regulation and collects from the buyer is the output tax amount. The formula for the calculation of the output tax amount:

the output tax amount = the sales amount × the tax rate

Article 6 The sales amount shall be the full price and ex-price fees that a taxpayer charges the buyer for selling goods or supplying taxable service, but exclude the output tax amount collected.

The sales amount shall be calculated in RMB. Where a taxpayer settles the sales amount in a currency other than RMB, it (he) shall convert it into RMB.

Article 7 If the price of the goods sold or taxable service supplied by a taxpayer is obviously low without a justifiable reason, the competent taxation organ shall verify and determine the sales amount.

Article 8 The VAT amount that a taxpayer pays or bears for buying goods or accepting taxable service is the input tax amount.

The following input tax amounts are allowed to be offset against or be deducted from the input tax amounts:

1. the VAT amount as indicated in the special VAT invoice obtained from the seller;
2. the VAT amount as indicated in the special bill of payment of import VAT obtained from the customs house;
3. for the purchase of agricultural products, besides obtaining the special VAT invoice or customs special bill of payment of import VAT, the input tax amount is calculated on the

basis of the agricultural product purchase price as indicated in the agricultural product purchase invoice or sales invoice and at a deduction rate of 13%. The formula for the calculation of the input tax amount:

the input tax amounts = the purchase price × the deduction rate

4. For the purchase or sale of goods and payments for freight during the production and business operations, the input tax amount is calculated on the basis of the freight amount as indicated in the freight settlement voucher and at the deduction rate of 7%. The formula for the calculation of the input tax:

the input tax amount = the freight amount × the deduction rate

Any adjustments to the allowed deduction items and rates shall be decided by the State Council.

Article 9 For a taxpayer purchasing any goods or taxable service, if the VAT deduction voucher it (he) obtains does not conform to law, administrative regulation, or relevant provisions of the taxation administrative department of the State Council, the input tax amount shall not be offset against or deducted from the output tax amount.

Article 10 The input tax amount on any of the following items shall not be offset against or be deducted from the output tax amount:

1. the purchased goods or taxable services used for non-VAT taxable items, VAT-free items, collective welfare or individual consumption;
2. the abnormally lost purchased goods and relevant taxable services;
3. the abnormally lost purchased goods or taxable services for products under production or finished products;
4. the taxpayer's self-use consumables as prescribed by the finance and taxation administrative departments of the State Council; and
5. the freight of goods and freight of sold tax-free goods as described in Items 1 through 4 of this Article.

Article 11 For selling goods or taxable service of a small-scale taxpayer, a simple approach shall be employed to calculate the taxable amount on the basis of the sales amount and at the tax rate and the input tax amount shall not be offset or deducted. The formula for the calculation of the taxable amount:

the taxable amount = the sales amount × the tax rate

the criteria for small-scale taxpayers shall be formulated by the finance and taxation administrative departments of the State Council.

Article 12 The tax rate for the VAT on small-scale taxpayers shall be 3%.

Any adjustment to the tax rate shall be decided by the State Council.

Article 13 A taxpayer other than a small-scale taxpayer shall apply to the taxation administrative department for determination of its qualification. The concrete determination measures shall be formulated by the taxation administrative department of the State Council.

Where a small-scale taxpayer with independent accounting is able to provide accurate tax-related materials, it may apply to the competent taxation organ for determination of its qualification for not being treated as a small-scale taxpayer in the calculation of the payable tax amount under this Regulation

Article 14 For goods imported by a taxpayer, the payable tax amount shall be calculated on the basis of the composite assessable value and the tax rates as given in Article 2 of this Regulation. The formulas for the calculation of the composite assessable value and the payable tax amount:

the composite assessable value = the customs duty-paid value + the customs duty + the consumption tax

the payable tax amount = the composite assessable value × the tax rate

Article 15 The following items shall be exempted from the VAT:

1. self-produced agricultural products sold by agricultural producers;
2. contraceptive medicines and devices;
3. antique books;
4. apparatus and equipment imported and directly used for scientific research, experiment and teaching;
5. imported materials and equipment from foreign governments and international organizations as gratuitous aid;
6. articles exclusively for persons with disabilities that are directly imported by organizations of persons with disabilities; and
7. self-used articles sold by the seller.

Except for the provisions of the preceding paragraph, the VAT exemption and reduction items shall be prescribed by the State Council. No other region or department shall prescribe any tax exemption or reduction item.

Article 16 For a taxpayer concurrently engaged in VAT-free or VAT reduction items, it (he) shall calculate the sales amounts of the VAT-free or VAT reduction items separately, otherwise, it (he) shall not enjoy the tax exemptions or reductions.

Article 17 If the sales amount of a taxpayer does not reach the VAT threshold as prescribed by the finance and taxation administrative departments of the State Council, it shall be exempted from the VAT. If it reaches the aforesaid threshold, the VAT shall be calculated and paid in full amount on the basis of this Regulation.

Article 18 Where an entity or individual outside the territory of the People's Republic of China supplies taxable services inside the territory of the People's Republic of China, and it (he) has not established a business institution within China, its agent within China shall be the withholding obligor. If it (he) has no agent within China, the purchaser shall be the withholding obligor.

Article 19 The time at which an obligation to pay the VAT arises shall be as follows:

1. For the goods or taxable services sold, it is the date on which the sales price payment is received or the sales voucher as requested is obtained. If an invoice is issued in advance, it shall be the same day when the invoice is issued.
2. For imported goods, it is the date of customs declaration for import.

The time at which an obligation to withhold the VAT arises shall be the same day when an obligation to pay the VAT arises.

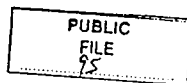
Article 20 The VAT shall be collected by taxation organs and the VAT on imported goods shall be withheld by the customs houses.

The VAT on self-use articles carried or mailed into China by individuals shall be levied together with the customs duties. The specific measures shall be formulated by the Tariff Policy Committee of the State Council in conjunction with relevant departments.

Article 21 The taxpayer of goods or taxable service sold shall issue a special VAT invoice to the buyer requesting for a special VAT invoice and give clear indications of the sales amount and output tax amount on it.

Under any of the following circumstances, no special VAT invoice shall be issued:

1. The goods or taxable services are sold to individual consumers;



2. The tax-free provisions apply to the goods or taxable services sold; and
3. The goods or taxable services are sold by small-scale taxpayers.

Article 22 The VAT payment places:

1. Businesses with a fixed establishment shall file tax returns with the competent taxation organ at the locality where the establishment is located. If the head office and the branch are not situated in the same county (or city), they shall file tax returns separately to their respective local competent taxation organ. The head office may, upon the approval of the finance or taxation administrative department of the State Council or its authorized finance or taxation organ, file tax returns with the competent taxation organ at the locality where the establishment is located on a consolidated basis.

2. Businesses with fixed establishments selling goods or taxable services in different counties (or cities) shall apply for the issuance of an outbound business activities tax administration certificate from the competent taxation authority at the locality where the establishment is located and shall file tax returns with the competent taxation authority at the locality where the establishment is located. If they do not obtain the outbound business activities tax administration certificate, they shall file tax returns with the competent taxation organ at the locality where the sales activities take place or where the taxable services occur. The competent taxation organ at the locality where the establishment is located shall collect the overdue taxes for which no tax return has been filed with the competent taxation organ at the locality where the sales activities take place or where the taxable services occur.

3. Business without a fixed establishment selling goods or taxable services shall file tax returns with the competent taxation organ at the locality where the sales activities take place or where the taxable services occur. If it fails to do so, the competent taxation organ at the locality where it is located or resides shall levy the overdue taxes.

4. For imported goods, tax returns shall be filed with the customs house at the locality where the customs declaration is made.

A withholding obligor shall file tax returns and pay the tax amounts, which it withholds, to the competent taxation organ at the place where its institution or domicile is located.

Article 23 The VAT taxable period shall be one day, three days, five days, 10 days, 15 days, one month or one quarter. The specific taxable period of a taxpayer shall be determined respectively by the competent taxation organ on the basis of the payable tax amount of the taxpayer. If the taxable amount cannot be assessed on a regular period basis, it can be assessed on a transaction-by-transaction basis.

A taxpayer who adopts one month or one quarter as a taxable period shall file tax returns within 15 days after the expiration of such a period. If it (he) adopts one day, three days, five days, 10 days or 15 days as a taxable period, it (he) shall prepay the tax within five

days after the expiration of such a period and within 15 days of the following month, file a tax return and settle the payable tax amount of the immediately previous month.

The time limit for a withholding obligor to deliver tax payment shall be governed by the preceding two paragraphs.

Article 24 A taxpayer of imported goods shall pay the tax within 15 days from the date on which the customs house fills out the special bill of payment of import VAT issued by the customs offices.

Article 25 A taxpayer exporting tax-rebate (exemption) goods shall go through the export formalities in the customs house and within the prescribed time limit for applying for tax rebate (exemption) and on a monthly basis, apply to the competent taxation organ for handling the tax rebate (exemption) for the exported goods on the strength of export declaration forms. The concrete measures shall be formulated by the finance or taxation administrative department of the State Council.

Where any exported goods are returned or a customs declaration is withdrawn after the completion of the tax rebate on the exported goods, the taxpayer shall pay back the said tax rebate according to law.

Article 26 The administration of collection of the VAT shall be governed by the Law of the People's Republic of China on the Administration of Tax Collection and the relevant provisions in this Regulation.

Article 27 This Regulation shall come into force as of January 1, 2009.

中华人民共和国增值税暂行条例

(1993 年 12 月 13 日中华人民共和国国务院令 第 134 号

发布 2008 年 11 月 5 日国务院第 34 次常务会议修订通过)

第一条 在中华人民共和国境内销售货物或者提供加工、修理修配劳务以及进口货物的单位和个人，为增值税的纳税人，应当依照本条例缴纳增值税。

(相关资料: 部门规章 1 篇)

第二条 增值税税率：

(一) 纳税人销售或者进口货物，除本条第 (二) 项、第 (三) 项规定外，税率为 17%。

(二) 纳税人销售或者进口下列货物，税率为 13%：

1. 粮食、食用植物油；
2. 自来水、暖气、冷气、热水、煤气、石油液化气、天然气、沼气、居民用煤炭制品；
3. 图书、报纸、杂志；
4. 饲料、化肥、农药、农机、农膜；
5. 国务院规定的其他货物。

(三) 纳税人出口货物，税率为零；但是，国务院另有规定的除外。

(四) 纳税人提供加工、修理修配劳务(以下称应税劳务),税率为17%。

税率的调整,由国务院决定。

第三条 纳税人兼营不同税率的货物或者应税劳务,应当分别核算不同税率货物或者应税劳务的销售额;未分别核算销售额的,从高适用税率。

(相关资料:裁判文书1篇)

第四条 除本条例第十一条规定外,纳税人销售货物或者提供应税劳务(以下简称销售货物或者应税劳务),应纳税额为当期销项税额抵扣当期进项税额后的余额。应纳税额计算公式:

$$\text{应纳税额} = \text{当期销项税额} - \text{当期进项税额}$$

当期销项税额小于当期进项税额不足抵扣时,其不足部分可以结转下期继续抵扣。

第五条 纳税人销售货物或者应税劳务,按照销售额和本条例第二条规定的税率计算并向购买方收取的增值税额,为销项税额。销项税额计算公式:

$$\text{销项税额} = \text{销售额} \times \text{税率}$$

第六条 销售额为纳税人销售货物或者应税劳务向购买方收取的全部价款和价外费用,但是不包括收取的销项税额。

销售额以人民币计算。纳税人以人民币以外的货币结算销售额的，应当折合成人民币计算。

第七条 纳税人销售货物或者应税劳务的价格明显偏低并无正当理由的，由主管税务机关核定其销售额。

第八条 纳税人购进货物或者接受应税劳务（以下简称购进货物或者应税劳务）支付或者负担的增值税额，为进项税额。

下列进项税额准予从销项税额中抵扣：

（一）从销售方取得的增值税专用发票上注明的增值税额。

（二）从海关取得的海关进口增值税专用缴款书上注明的增值税额。

（三）购进农产品，除取得增值税专用发票或者海关进口增值税专用缴款书外，按照农产品收购发票或者销售发票上注明的农产品买价和 13% 的扣除率计算的进项税额。进项税额计算公式：

进项税额 = 买价 × 扣除率

（四）购进或者销售货物以及在生产经营过程中支付运输费用的，按照运输费用结算单据上注明的运输费用金额和 7% 的扣除率计算的进项税额。进项税额计算公式：

进项税额 = 运输费用金额 × 扣除率

准予抵扣的项目和扣除率的调整，由国务院决定。

第九条 纳税人购进货物或者应税劳务,取得的增值税扣税凭证不符合法律、行政法规或者国务院税务主管部门有关规定的,其进项税额不得从销项税额中抵扣。

第十条 下列项目的进项税额不得从销项税额中抵扣:

(一)用于非增值税应税项目、免征增值税项目、集体福利或者个人消费的购进货物或者应税劳务;

(二)非正常损失的购进货物及相关的应税劳务;

(三)非正常损失的在产品、产成品所耗用的购进货物或者应税劳务;

(四)国务院财政、税务主管部门规定的纳税人自用消费品;

(五)本条第(一)项至第(四)项规定的货物的运输费用和销售免税货物的运输费用。

(相关资料: 地方法规 1 篇)

第十一条 小规模纳税人销售货物或者应税劳务,实行按照销售额和征收率计算应纳税额的简易办法,并不得抵扣进项税额。应纳税额计算公式:

应纳税额 = 销售额 × 征收率

小规模纳税人的标准由国务院财政、税务主管部门规定。

第十二条 小规模纳税人增值税征收率为 3%。

征收率的调整，由国务院决定。

(相关资料: 地方法规 1 篇)

第十三条 小规模纳税人以外的纳税人应当向主管税务机关申请资格认定。具体认定办法由国务院税务主管部门制定。

小规模纳税人会计核算健全，能够提供准确税务资料的，可以向主管税务机关申请资格认定，不作为小规模纳税人，依照本条例有关规定计算应纳税额。

第十四条 纳税人进口货物，按照组成计税价格和本条例第二条规定的税率计算应纳税额。组成计税价格和应纳税额计算公式：

组成计税价格 = 关税完税价格 + 关税 + 消费税

应纳税额 = 组成计税价格 × 税率

第十五条 下列项目免征增值税：

- (一) 农业生产者销售的自产农产品；
- (二) 避孕药品和用具；
- (三) 古旧图书；

(四) 直接用于科学研究、科学试验和教学的进口仪器、设备；

(五) 外国政府、国际组织无偿援助的进口物资和设备；

(六) 由残疾人的组织直接进口供残疾人专用的物品；

(七) 销售的自己使用过的物品。

除前款规定外，增值税的免税、减税项目由国务院规定。任何地区、部门均不得规定免税、减税项目。

第十六条 纳税人兼营免税、减税项目的，应当分别核算免税、减税项目的销售额；未分别核算销售额的，不得免税、减税。

(相关资料: 部门规章 1 篇)

第十七条 纳税人销售额未达到国务院财政、税务主管部门规定的增值税起征点的，免征增值税；达到起征点的，依照本条例规定全额计算缴纳增值税。

(相关资料: 部门规章 1 篇)

第十八条 中华人民共和国境外的单位或者个人在境内提供应税劳务，在境内未设有经营机构的，以其境内代理人为扣缴义务人；在境内没有代理人的，以购买方为扣缴义务人。

(相关资料: 部门规章 2 篇)

第十九条 增值税纳税义务发生时间：

(一) 销售货物或者应税劳务，为收讫销售款项或者取得索取销售款项凭据的当天；先开具发票的，为开具发票的当天。

(二) 进口货物，为报关进口的当天。

增值税扣缴义务发生时间为纳税人增值税纳税义务发生的当天。

第二十条 增值税由税务机关征收，进口货物的增值税由海关代征。

个人携带或者邮寄进境自用物品的增值税，连同关税一并计征。具体办法由国务院关税税则委员会会同有关部门制定。

第二十一条 纳税人销售货物或者应税劳务，应当向索取增值税专用发票的购买方开具增值税专用发票，并在增值税专用发票上分别注明销售额和销项税额。

属于下列情形之一的，不得开具增值税专用发票：

- (一) 向消费者个人销售货物或者应税劳务的；
- (二) 销售货物或者应税劳务适用免税规定的；
- (三) 小规模纳税人销售货物或者应税劳务的。

第二十二条 增值税纳税地点：

(一) 固定业户应当向其机构所在地的主管税务机关申报纳税。总机构和分支机构不在同一县(市)的,应当分别向各自所在地的主管税务机关申报纳税;经国务院财政、税务主管部门或者其授权的财政、税务机关批准,可以由总机构汇总向总机构所在地的主管税务机关申报纳税。

(二) 固定业户到外县(市)销售货物或者应税劳务,应当向其机构所在地的主管税务机关申请开具外出经营活动税收管理证明,并向其机构所在地的主管税务机关申报纳税;未开具证明的,应当向销售地或者劳务发生地的主管税务机关申报纳税;未向销售地或者劳务发生地的主管税务机关申报纳税的,由其机构所在地的主管税务机关补征税款。

(三) 非固定业户销售货物或者应税劳务,应当向销售地或者劳务发生地的主管税务机关申报纳税;未向销售地或者劳务发生地的主管税务机关申报纳税的,由其机构所在地或者居住地的主管税务机关补征税款。

(四) 进口货物,应当向报关地海关申报纳税。

扣缴义务人应当向其机构所在地或者居住地的主管税务机关申报缴纳其扣缴的税款。

(相关资料: 部门规章 1 篇 地方法规 1 篇)

第二十三条 增值税的纳税期限分别为 1 日、3 日、5 日、10 日、15 日、1 个月或者 1 个季度。纳税人的具体纳税期限,由主管税务机关根据纳税人应纳税额的大小分别核定;不能按照固定期限纳税的,可以按次纳税。

纳税人以 1 个月或者 1 个季度为 1 个纳税期的,自期满之日起 15 日内申报纳税;以 1 日、3 日、5 日、10 日或者 15 日为 1 个纳税期的,自期满之日起 5 日内预缴税款,于次月 1 日起 15 日内申报纳税并结清上月应纳税款。

扣缴义务人解缴税款的期限，依照前两款规定执行。

(相关资料: 部门规章 1 篇)

第二十四条 纳税人进口货物，应当自海关填发海关进口增值税专用缴款书之日起 15 日内缴纳税款。

第二十五条 纳税人出口货物适用退(免)税规定的，应当向海关办理出口手续，凭出口报关单等有关凭证，在规定的出口退(免)税申报期内按月向主管税务机关申报办理该项出口货物的退(免)税。具体办法由国务院财政、税务主管部门制定。

出口货物办理退税后发生退货或者退关的，纳税人应当依法补缴已退的税款。

第二十六条 增值税的征收管理，依照《中华人民共和国税收征收管理法》及本条例有关规定执行。

第二十七条 本条例自 2009 年 1 月 1 日起施行。

Regulations of the People's Republic of China on Import and Export Duties

Order of the State Council of the People's Republic of China

No. 392

The Regulations of the People's Republic of China on Import and Export Duties, which were adopted at the 26th executive meeting of the State Council on October 29, 2003, are hereby promulgated and shall be implemented as of January 1, 2004.

Wen Jiabao Premier

November 23, 2004

Regulations of the People's Republic of China on Import and Export Duties

Chapter I. General Provisions

Article 1. For the purposes of implementing the policy of opening to the outside world, promoting the development of foreign economic relations and trade as well as the national economy, the present Regulations are formulated in accordance with the Customs Law of the People's Republic of China (hereinafter referred to as the Customs Law).

Article 2 All goods permitted to be imported into or exported out of and all articles allowed to enter into the People's Republic of China shall, unless otherwise provided for by the State Council, be subject to payment of customs duties on imports or exports in accordance with the present Regulations.

Article 3 The tariff items, tariff nomenclature heading numbers and tariff rates as provided in the Customs Import and Export Tariffs of the People's Republic of China (hereinafter referred to as the Tariffs) and the Import Tariff Rates of the People's Republic of China for Entry Articles (hereinafter referred to as the Import Tariff Rates for Entry Articles) which are formulated by the State Council shall form an integral part of the present Regulations.

Article 4 The Customs Tariff Commission shall be established by the State Council. It is responsible for readjusting and interpreting tariff items, tariff nomenclature heading numbers and tariff rates in the Tariffs and the Import Tariff Rates for Entry Articles, which shall take effect upon the approval of the State Council; it decides on the goods subject to temporary tariff rates, the tariff rates and time limit; it decides on the rate of tariff quota, the imposition of antidumping duties, countervailing duties, duty under safeguard measures, retaliatory duties; decides on the implementation of other measures relating to customs duties and the application of tariff rates under special circumstances, and exercises the other functions as provided for by the State Council.

Article 5 The consignees of imported goods, the consignors of exported goods and the owners of entry articles are obligatory customs duty payers.

Article 6 The customs and the functionaries shall, in accordance with the statutory powers and legal procedures, exercise their functions of collecting the customs duties, safeguard

the interests of the state, protect the legitimate rights and interests of the customs duty payers, and accept supervision in accordance with the law.

Article 7 Any customs duty payer shall be entitled to request the customs office to keep its commercial secrets to itself, and the customs shall do so in accordance with the law.

Article 8 In accordance with relevant regulation, the customs shall award the entities and individuals who disclose or help to find the acts in violation of the present Regulations.

Chapter II. Establishment and Application of Tariff Rates for Import and Export Goods

Article 9 Import tariffs consist of the most-favoured-nation tariff rate, conventional tariff rate, preferential tariff, general tariff rate and quota tariff rate, etc. Temporary tariff rates may be applied to import goods within a certain time limit.

Export tariff rates are set up in export duties. Temporary tariff rates may be applied to export goods within a certain time period.

Article 10 The most-favoured-nation tariff rate shall be applicable to the import goods whose place of origin is a member of the WTO, to whom the clause of the most-favoured-nation is commonly applicable, and the import goods whose place of origin is a country or region that has concluded with the People's Republic of China a bilateral trade agreement that contains clauses reciprocal most-favoured-nation treatment, and the import goods whose place of origin is within the People's Republic of China.

The conventional tariff rate shall be applicable to the import goods whose place of origin is a country or region that has established with the People's Republic of China a trade agreement that contains clauses of preferential duty.

The special tariff rate shall be applicable to the import goods whose place of origin is a country or region that has established with the People's Republic of China a trade agreement that contains clauses of special preferential duty.

The general tariff rate shall be applicable to the import goods other than those as listed in Paragraphs 1 through 3 of this Article and the import goods whose place of origin is unknown.

Article 11 Where a temporary tariff rate is set up for the import goods, to which the most-favored-nation tariff rate applies, the temporary tariff rate shall prevail. For the import goods to which the conventional tariff rate or the preferential tariff rate applies, the lower one shall prevail. With regard to the import goods to which the general tariff rate applies, the temporary tariff rate shall not apply.

Where a temporary tariff rate is set up for the export goods, to which the export tariff rate applies, the temporary tariff rate shall prevail.

Article 12 With regard to the import goods subject to tariff quota management in accordance with the provisions of the state, for those within the tariff quota, the quota tariff

rate shall apply; and for those beyond the tariff quota, the applicable tariff rates shall be in line with Articles 10 and 11 of the present Regulations.

Article 13 With regard to the import goods, against which antidumping, countervailing or safeguard measure are taken in accordance with relevant laws and administrative regulations, the applicable rates shall be in line with the Antidumping Regulations of the People's Republic of China, the Countervailing Regulations of the People's Republic of China and the Regulations on Safeguard Measures of the People's Republic of China.

Article 14 With regard to a country or region that bans, limits, imposes additional duties or takes any other measures that affect the normal trade with the People's Republic of China in violation of the trade agreement or relevant convention established with the People's Republic of China or both parties have joined, a retaliatory duty may imposed on the import goods whose place of origin is the country or region, and the retaliatory duty rate shall apply.

The goods, applicable countries or regions, duty rates, time limits and collection measures shall be decided and announced by the Customs Tariff Commission.

Article 15 With regard to the import and export goods, the valid tariff rate of the day when the customs accepts the import declaration or export declaration shall be applicable.

Where an import declaration is filed before the import goods arrives upon the approval of the customs, the valid tariff rate of the day when an entry declaration is filed for the means of transportation that carries the goods shall apply.

The date of the application of the tariff rate for transit goods shall be separately provided for by the General Administration of Customs.

Article 16 When it is required to pay duties under any of the following circumstances, the tariff rate of the day when the customs accepts the declaration and handles the formalities for the payment of duties shall apply:

- (1) Where, upon approval, the bonded goods are not to be re-carried out of China;
- (2) Where the goods that enjoy exemption or reduction of duties are transferred to others or whose purpose of use is changed upon approval;
- (3) Where, upon approval, the goods that are permitted to enter into China temporarily are not to be re-carried out of China and where, upon approval, the goods that are permitted to exit China temporarily are not to be re-carried into China;
- (4) Where the import goods are leased and the duties are paid by installments.

Article 17 The applicable tariff rates for the makeup or refund of import or export duties shall be determined in accordance with Article 15 or Article 16 of the present Regulations.

Where an obligatory duty payer is required to pay a duty due to violating the present Regulations, the tariff rate of the day when the violation occurs shall apply. If it is unable to determine the exact day when the violation occurs, the tariff rate of the day when the customs discovers the violation shall apply.

Chapter III. Determination of Dutiable Value for Import and Export Goods

Article 18 The dutiable value for import goods shall be examined and determined by the customs on the basis of the transaction value in line with the requirements as prescribed in the Paragraph 3 of this Article, and the freight, the associated expenses and the insurance premiums incurred prior to the arrival and unloading of the goods at the destination within the People's Republic of China.

The transaction value of import goods refers to the actual total amount of the price, including the direct payments and indirect payments, that the buyer within the People's Republic of China shall pay the seller for the goods after readjustments have been made in accordance with Articles 19 and 20 of the present Regulations.

A transaction value of import goods shall meet the following conditions:

- (1) There is no limitation to the disposal and use of the buyer except for the limitations as prescribed in the laws and administrative regulations, the geographic limitation on the resale of goods and those without material impact on the price of goods;
- (2) It isn't unable to determine the transaction value of the goods due to tied sale or other factors;
- (3) The seller shall not directly or indirectly get any yields from the resale, disposal or use of the goods after import, or the seller may have some yields, but adjustments may be made in accordance with Article 19 or 20 of the present Regulations.
- (4) There is no special relationship between the buyer and seller, or although there is any, it does not affect the transaction value.

Article 19 The following expenses on import goods shall be included into the dutiable value:

- (1) The commission and brokerage other than the commission on the purchase of goods that shall be paid by the buyer;
- (2) The expenses that shall be paid by the buyer for the containers that are considered as a integrated part of the goods when the dutiable value is examined and determined;
- (3) The expenses for packing materials and packing labor that shall be paid by the buyer;
- (4) The value of the materials, tools, moulds, consumable materials and like goods that relate to the production of the goods and the sale within the People's Republic of China and that are provided by the buyer gratuitously or at a price lower than the costs and may be apportioned according to a reasonable rate, and the expenses of relevant expenses such as the development and design outside China, etc.;
- (5) The franchise royalties related to the goods that shall be paid by the buyer as a precondition for the sale of goods within the People's Republic of China;
- (6) The yields directly or indirectly procured by the seller from the resale, disposal or use of the goods after import.

Article 20 The following duties, taxes, and expenses specified in the price of the goods in the process of import shall not be included into the dutiable value:

- (1) The expenses of construction, installation, assembly, maintenance and technical services after importing such goods as workshops, machines, and equipments, etc.;
- (2) The freight and related expenses and insurance premiums after the arrival and unloading of the import goods at the destination within the People's Republic of China;
- (3) Import duties and domestic taxes.

Article 21 Where the transaction value of the import goods doesn't meet the requirements as prescribed in Paragraph 3 of Article 18 of the present Regulations, or the transaction value is unable to be determined, the customs shall assess the dutiable value of the goods in light of the following values arranged in descending order of precedence after it has learnt of relevant information and negotiated with the obligatory duty payer about the price:

- (1) The transaction price of the identical goods sold to a buyer within the People's Republic of China at the same time or nearly at the same time;
- (2) The transaction price of the like goods sold to a buyer within the People's Republic of China at the same time or nearly at the same time;
- (3) At the same time or nearly at the same time when the goods is imported, the unit price of the import goods, the identical or like import goods in the maximal quantity sold to the buyer without special relationship in the first link of distribution, in which the items as listed in Article 22 of the present Regulations shall be deducted;
- (4) The price calculated according to the summation of the items, including the costs of the materials in producing the goods, and the processing expenses, the general profit and the general expenses in selling goods of the same grade or like goods to a buyer within the People's Republic of China, the freight, the associated expenses and the insurance premiums incurred prior to the arrival and unloading of the goods at the destination within the People's Republic of China;
- (5) The price assessed by any other reasonable method.

After the obligatory duty payer has submitted relevant materials to the customs, it may file an application to the customs for reversing the applicable order of precedence between Items 3 and 4 of the preceding paragraph.

Article 22 For the dutiable value assessed according to the Item 3 of Paragraph 1 of Article 21 of the present Regulations, the items that shall be deducted refer to:

- (1) The general profit, expenses and commission of the first link of distribution of the goods of identical grade or like goods sold to the buyers within the People's Republic of China;



(2) The freight, the associated expenses and the insurance premiums after the arrival and unloading of the import goods at the destination within the People's Republic of China;

(3) Import duties and domestic taxes.

Article 23 With regard to the goods imported by means of lease, the rent of the goods as verified and determined by the customs shall be the dutiable value.

Where the obligatory duty payer requests to pay the duty in a lump sum, it may choose to have the dutiable value assessed in accordance with Article 21 of the present Regulations or to deem the total amount of rent as verified and determined by the customs as the dutiable value.

Article 24 With regard to the goods carried abroad for processing, if they are declared to the customs and re-carried into China within the time limit as specified by the customs, the dutiable value shall be verified and determined on the basis of the overseas processing fees, the costs of the spare parts and raw materials used, and the freight, the associated expenses and the insurance premiums for re-carrying the goods into China.

Article 25 With regard to the machines, tools, means of transportation or any other goods carried abroad for maintenance, if they are declared to the customs and re-carried into China within the time limit as specified by the customs, the dutiable value shall be verified and determined on the basis of the overseas maintenance fees and the costs of the spare parts and raw materials used.

Article 26 The dutiable value of export goods shall be examined and determined by the customs on the basis of the transaction value of the goods, and the freight, the associated fees and insurance premiums incurred prior to the arrival and unloading of the goods at the destination within the People's Republic of China.

The transaction value of export goods refers to the total amount of the price that shall be directly or indirectly paid by the buyer to the seller for the export goods.

Export duties shall not be included into the dutiable value.

Article 27 Where the transaction value of the export goods is unable to be determined, the customs shall assess the dutiable value of the goods in light of the following prices arranged in descending of precedence after it has learnt of relevant information and negotiated with the obligatory duty payer about the price:

- (1) The transaction price of the identical goods exported to the same country or region at the same time or nearly at the same time;
- (2) The transaction price of the like goods exported to the same country or region at the same time or nearly at the same time;
- (3) The price calculated according to the summation of the items, including the domestic costs of the materials in producing the identical or like goods and the processing

expenses, the general profit and the general expenses, and the freight, associated expenses and insurance premiums incurred within China;

(4) The price assessed by any other reasonable method.

Article 28 The costs, expenses, duties and taxes that are included into or excluded from the dutiable value in accordance with the present Regulations shall be based on objective and quantifiable data.

Chapter IV. The Collection of Import and Export Duties

Article 29 An obligatory duty payer of import goods shall, within 14 days from the day when the means of carriage declares for entry, file a declaration to the customs office of the place of entry. An obligatory duty payer of export goods shall, unless approved otherwise by the customs office, file a declaration to the customs office of the place of exit after the goods arrive at the administrative area of the customs but 24 hours prior to the loading of goods. As for transit import and export goods, the regulations of the General Administration of Customs shall be implemented.

Prior to the arrival of the import goods, the obligatory duty payer may file a declaration in advance upon approval of the customs. The specific measures shall be separately formulated by the General Administration of Customs.

Article 30 In accordance with the law, an obligatory duty payer shall faithfully declare to the customs and provide the materials required for determining the dutiable value, classifying the commodities, determining the place of origin and taking antidumping, countervailing or safeguard measures. Where necessary, the customs may demand the obligatory duty payer to make supplementary declarations.

Article 31 An obligatory duty payer shall, in accordance with the table of contents, stipulations, the general principle of classification, category notes, chapter notes, subheading notes and any other classification notes, classify the import or export goods that it declares, and put them under the corresponding tariff nomenclature heading numbers. The customs shall examine and determine the commodity classification of the goods in accordance with the law.

Article 32 The customs may demand an obligatory duty payer to offer relevant materials required for determining the classification of the commodities. Where necessary, the customs may organize laboratory tests and inspections, and take the results of test and inspection as the basis of determining the classification of the commodities.

Article 33 In order to examine the authenticity and exactness of the declared value, the customs may inquire into and copy the contracts, invoices, account books, evidences of settlement and payment vouchers, instruments, business letters and telephones, audio-visual products and other materials reflecting the relationship between the buyer and seller and the transactions involved.

Where the customs is doubtful about the declared value of an obligatory duty payer and if the amount of the duty involved is quite large, the customs may, upon the approval of the

director of the customs directly under the General Administration of Customs or of the authorized director of its subordinate customs, inquire into the fund flow reflected in the accounts opened by the obligatory duty payer in the banks or any other financial institutions upon the strength of the assistance inquiry account notice in a uniform format of the General Administration of Customs and the employees' cards of the relevant functionaries, and shall inform the banking regulatory institutions of the relevant information.

Article 34 Where the customs office is doubtful about the price declared by an obligatory duty payer, it shall notify the obligatory duty payer the reasons in written form, demand it to make written explanations or provide relevant materials within a prescribed time limit.

If the obligatory duty payer fails to make any explanation or provide relevant materials within the specified time limit, or it is still reasonable for the customs to be doubtful about the authenticity and exactness of the declared value, the customs may refuse to accept the value as declared by the obligatory duty payer, and may assess the dutiable value in accordance with Chapter III of the present Regulations.

Article 35 After the customs has examined and determined the dutiable value of the import or export goods, the obligatory duty payer may request the customs, in written form, to make written explanations about how to determine the dutiable value of the import or export goods. The customs shall make written explanations to the obligatory duty payer.

Article 36 The import and export duties may be collected by ad valorem or by quantity or by any other means as provided by the state.

If collected by ad valorem, the formula is: Payable Duties = Dutiable Value \times Tariff Rate

If collected by quantity, the formula is: Payable Duties = Quantity of Goods \times Unit Duty Value

Article 37 An obligatory duty payer shall pay the duties in the designated bank within 15 days from the day when the customs fills in and issues a duty payment form. If it fails to pay the duties within the time limit, it shall pay a late fee of 0.05% of the amount of the defaulted duties per day from the day when the duties are in default.

The customs may make an announcement about the information of the obligatory duty payers who default the duties.

The customs shall issue receipts when collecting customs duties and late fees. The formats of the receipts shall be formulated by the General Administration of Customs.

Article 38 The customs duties and late fees shall be calculated and collected in terms of RMB.

Where the transaction value of import or export goods and the associated expenses are calculated in terms of a foreign currency, the dutiable value shall be calculated by converting the transaction value and the associated expenses into RMB according to the basic exchange rate announced by the People's Bank of China. If the transaction value of

import or export goods and the associated expenses are calculated in terms of a foreign currency beyond the scope of foreign currencies of basic exchange rate, the dutiable value shall be calculated by converting them into RMB in accordance with relevant regulation of the state. The date of the applicable exchange rate shall be provided for by the General Administration of Customs.

Article 39 Where an obligatory duty payer fails to pay the duties because of force majeure or the change of duty policies of the state, it may, upon approval of the General Administration of Customs, extend the time limit for the payment of the duties, but the extended period shall not exceed 6 months.

Article 40 If any clear evidence shows that an obligatory duty payer of import or export goods transfers or conceals the dutiable goods or other properties during the time period for paying duties, the customs may order the obligatory duty payer to provide a guaranty. If the obligatory duty payer fails to provide a guaranty, the customs may take duty preservation measures in accordance with Article 61 of the Customs Law of the People's Republic of China.

Where the obligatory duty payer or the guarantor still fails to pay the duties 3 months after the expiration of time limit for paying the duties, the customs may take mandatory measures in accordance with Article 60 of the Customs Law.

Article 41 With regard to the materials imported for processing trade, if they are imported under the provisions of the state on bonded imports, and if the finished products or the import materials fail to be exported within the specified time limit, the customs shall collect import duties in accordance with relevant provisions.

Where import duties are paid for the materials imported for processing trade when they enter into the territory of China in accordance with the provisions of the state, and the finished products or the import materials are exported within the specified time limit, the customs shall refund the duties collected on entry.

Article 42 Any of the following goods permitted to enter or exit China temporarily by the customs, if the obligatory duty payer shall pay the customs office a sum of caution money equivalent to the value of the duties payable or provides other guaranty, it may be allowed not to pay the duties for the time being, but shall re-carry the goods into or out of China within 6 months as of the day of entry or exit. Upon the application of the obligatory duty payer, the customs may extend the time limit for re-carrying the goods out of or into China in accordance with the provisions of the General Administration of Customs.

- (1) The goods exhibited or used in exhibitions, trade fairs, meetings and other similar activities;
- (2) The articles used in performances or competitions in cultural or sports exchange activities;
- (3) The instruments, equipment and articles used in making news reports or in producing films or TV programs;

- (4) The instruments, equipment and articles used in scientific research, teaching or medical activities;
- (5) The means of transport and special vehicles used in the activities as listed in Paragraphs 1 – 4 of this Article;
- (6) The samples of goods;
- (7) The instruments and tools used in installing, trial running and testing equipment;
- (8) The containers of the goods; and
- (9) Other goods used for non-commercial purposes.

If the goods permitted to enter China temporarily as listed in Paragraph 1 aren't re-carried out of China within the specified time limit, or the goods permitted to exit China temporarily aren't re-carried into China within the specified time limit, the customs shall collect duties in accordance with the law.

With regard to other goods permitted to enter China temporarily which are beyond the scope of good exempted from customs duties for the time being as listed in Paragraph 1, the duties on the goods shall be calculated and collected according to the dutiable value and the ratio between the time when the goods stay in China and the depreciation time. The specific measures shall be formulated by the General Administration of Customs.

Article 43 If, due to quality or specifications reasons, any of the export goods is re-carried into China in its original form within 1 year as of the day when they were exported, it is not subject to import duties.

If, due to quality or specifications reasons, any of the export goods is re-carried out of China in its original form within 1 year as of the day when they were imported, it is not subject to export duties.

Article 44 With regard to the goods compensated without further charge or the identical goods gratuitously replaced by the consigner of the import or export goods, the carrier or the insurance company because of damage, shortage, poor quality or incompatible specifications, no duty shall be collected when they are imported or exported. For the gratuitously replaced original import goods that are not to be re-carried outside China or the original export goods that are not to be re-carried into China, the customs shall impose duties on the original import or export goods in accordance with relevant regulation.

Article 45 The following import and export goods are duty-free:

- (1) Where the customs duty of goods under a single invoice is not more than RMB 50;
- (2) The articles that are for advertising purposes or to be used as samples and therefore of no commercial value;
- (3) The materials gratuitously donated by foreign governments or international organizations;
- (4) The goods damaged prior to the customs clearance;

(5) The fuel, materials, food and drinks necessary for the journey and carried by the means of transport that enter into or exit China;

With regard to the goods damaged prior to the customs clearance, the duties may be reduced on the basis of the seriousness of the damages as determined by the customs.

With regard to other goods exempt from duties or at reduced duties as provided for in law, the customs shall exempt them from duties or reduce the duties in accordance with relevant provisions.

Article 46 With regard to the reduction or exemption of duties and the temporary reduction or temporary exemption of duties on the import goods or export goods of special areas, special enterprises or specified purposes, the relevant provisions of the State Council shall be implemented.

Article 47 With regard to the reduction or the exemption of import link taxes levied by the customs on the import goods, the provisions of relevant laws and administrative regulations shall be implemented.

Article 48 With regard to the import or export goods exempt from duties or at reduced duties, the obligatory duty payer shall, unless otherwise provided for, go through the duty exemption or reduction formalities for examination and approval at the customs upon the strength of relevant documents in accordance with the provisions before the goods are imported or exported.

Article 49 With regard to the duty-exempted or duty-reduced import goods whose use is subject to the supervision of the customs, if they are transferred or if their purposes of use are changed within the term of supervision and thus it is necessary to make up the duties, the customs shall depreciate and assess the duties according to the import time, and make up the import tariffs.

The term of supervision for the special duty-exempted or duty-reduced import goods shall be provided for by the General Administration of Customs.

Article 50 Under any of the following circumstances, an obligatory duty payer may file an application for the refund of customs duties within 1 year from the day when it pays the duties, and shall present the reasons to the customs in written form and provide the original receipt of the payment of duties and other relevant materials.

- (1) The duty-paid import goods that are re-carried out of China in their original forms due to quality or specifications reasons;
- (2) The export-duty-paid export goods that are re-carried into China in their original forms due to quality or specifications reasons and have already repaid the domestic link export rebates;
- (3) The export-duty-paid goods that fail to be loaded and exported for any reason, for which an application is filed for canceling the declaration.

The customs shall, within 30 days from the day when it receives an application for the refund of duties, verify the information and notify the obligatory duty payer of the refund formalities. The obligatory duty payer shall go through the relevant refund formalities within 3 months from the day when it receives the notice.

With regard to other customs duties that shall be refunded in accordance with any law or administrative regulation, the customs shall refund them in accordance with the law or administrative regulation.

Article 51 Where the customs finds the duties underpaid or missed after the clearance of the import or export goods, it shall, within 1 year from the day when the duties are paid or when the customs clearance is made, demand the obligatory duty payer to make up the duties. But under the circumstance that the duties are underpaid or missed due to the obligatory duty payer's violation of relevant provisions, the customs may demand the obligatory duty payer to make up the underpaid or missed duties within 3 years from the day when the duties are paid or when the customs clearance is made, and charge a late fee of 0.05 % of the amount of the underpaid or missed duties per day from the day when the duties are paid or when the customs clearance is made.

Where the customs finds that the duties on the goods under its supervision are underpaid or missed due to the obligatory duty payer's violation of relevant provisions, it shall demand the obligatory duty payer to make up the duties within 3 years as of the payable day of the duties, and shall charge a late fee of 0.05 % of the amount of the underpaid or missed duties per day from the payable day.

Article 52 Where the customs finds any overpaid duties, it shall inform the obligatory duty payer to go through duty refund formalities immediately.

Where an obligatory duty payer finds any overpaid duties, it may, within 1 year from the day when the duties were paid, request the customs to refund the overpaid duties and pay the current deposit interest for the same period in written form. The customs shall verify the information and notify the obligatory duty payer of the refund formalities within 30 days from the day when it accepts the application.

The obligatory duty payer shall go through the refund formalities within 3 months from the day when it receives the notice.

Article 53 Where any duties and interest to be refunded, in accordance with Articles 50 and 52 of the present Regulations, involves the refund from the state treasury, the provisions of the relevant laws and administrative regulations on state treasury shall be implemented.

Article 54 Where a customs declaration enterprise accepts the entrustment of an obligatory duty payer and goes through the formalities for customs declaration and duty payment in its own name, it and the obligatory duty payer shall bear joint and several liabilities for the payment of duties.

Where a customs declaration enterprise accepts the entrustment of an obligatory duty payer and handles the customs declaration and duty payment formalities in the name of the customs declaration enterprise, the customs declaration and obligatory duty payer shall take joint and several liabilities.

Where any goods subject to the supervision of the customs are damaged or lost within the term when they are under the supervision of the customs, unless they are damaged or lost as a result of force majeure, the persons who are obligatory to keep the goods shall be liable for paying the corresponding duties.

Article 55 Where an obligatory duty payer who owes duties is to be merged or divided, it shall, prior to the merger or division, report to the customs and pay off the duties in accordance with the law. If the obligatory duty payer fails to pay off the duties when it is merged, the post-merger legal person or other organization shall keep on performing the obligation of paying the duties that should have been paid. If the obligatory duty payer fails to pay off the duties when it is divided, the post-division legal person or other organization shall bear the joint liabilities for paying the duties that should have been paid.

With regard to the duty-exempted goods or duty-reduced goods or bonded goods, if the obligatory duty payer is merged, divided or under any other asset restructure circumstances within the term of supervision, it shall report to the customs office concerned. If it is necessary to pay duties in accordance with relevant provisions, it shall pay off the duties in accordance with the law. If it may continue to enjoy the duty exemption or reduction or bonded enterprise treatments in accordance with relevant provisions, it shall go through the formalities for altering the obligatory duty payer in the customs.

Where an obligatory duty payer owes duties, or is cancelled, dissolved, bankrupt or terminated in any other lawful circumstances within the supervision term of the duty-exempted or duty-reduced goods or the bonded goods, it shall report to the customs office concerned prior to liquidation. In accordance with the law, the customs shall check up the payable duties of the obligatory duty payer and make them paid off.

Chapter V. The Collection of Import Tariffs on Entry Articles

Article 56 The customs duties and import link taxes collected by the customs instead of others are consolidated as import tariffs, which shall be collected by the customs.

Article 57 Where any of the entry articles is for the self-use of an individual and is within the scope of reasonable quantity as provided for by the General Administration of Customs, the obligatory duty payer of the articles shall pay the import tariffs before the articles are permitted to enter into China.

With regard to the entry goods for self-use purposes that exceed the quota as prescribed by the General Administration of Customs but remains within a reasonable scope of quantity, the import duties shall be paid by the obligatory duty payer of the entry goods prior to the release of the goods according to relevant provisions.

With regard to the entry articles exceeding the reasonable and self-use quantity, the relevant formalities shall be gone through by referring to the import goods in accordance with the law.

With regard to the entry articles subject to payment of duties of goods as specified by the Customs Tariff Commission of the State Council, the duties shall be collected in accordance with Chapters 2 - 4 of the present Regulations.

Article 58 An obligatory duty payer of the articles on entry refers to the person who carries the articles on entry, the consignee of the posted articles on entry or any other consignee of the articles on entry by other means.

Article 59 An obligatory duty payer of the entry articles may go through the formalities for paying the duties by himself, or may entrust any other person to do it as well. The person who accepts such an entrustment shall abide by all the provisions on the obligatory duty payer in this Chapter.

Article 60 The import tariffs shall be levied on the basis of ad valorem.

The calculation formula for import tariffs is: Amount of Import Tariffs = Dutiable Value \times Import Tariff rate

Article 61 The customs shall classify the entry articles into different categories and determine the dutiable value and the applicable tariff rate in accordance with the Form of Import Tariff Rates for Entry Articles, and the People's Republic of China - the Form of the Dutiable Values of Articles on Entry formulated by the General Administration of Customs.

Article 62 The tariff rate and the dutiable value implemented on the day when the tariff payment form is filled in shall be applicable to the entry articles.

Article 63 The relevant provisions on the collection of import tariffs on goods in the present Regulations shall be implemented in the reduction, exemption, makeup, demand of payment and refund of import tariffs, and the collection of import tariffs on the articles that are temporarily permitted to enter China.

Chapter VI. Supplementary Provisions

Article 64 Where an obligatory customs duty payer or a guarantor raises an objection to the customs' determination of the obligatory customs duty payer, the price after paying the duty, the category of goods, the place of origin, the applicable tariff rate or exchange rate, the reduced or exempted amount of duty, the makeup of duty, the refund of duty, the collection of default fees, the way of calculation and collection of duty or the place of duty payment, it (he) shall pay the duty, and may file a reconsideration application to the customs of a higher level in accordance with the law. Where it (he) refuses to accept the decision of reconsideration, it (he) may bring a lawsuit in the people's court in accordance with the law.

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Article 65 The provisions on the management of the collection of duties shall be applicable to the management of the collection of import link tax by the customs.

Article 66 Any one who violates any of the present Regulations shall be punished in accordance with the Customs Law, the Detailed Rules for the Implementation of Administrative Punishments under the Customs Law of the People's Republic of China and other relevant laws and administrative regulations.

Article 67 The present Regulations shall be implemented as of January 1, 2003 and the Regulations of the People's Republic of China on Import and Export Duties amended and promulgated by the State Council on March 18, 1992 shall be abolished on the same day.

中华人民共和国国务院令

(第392号)

《中华人民共和国进出口关税条例》已经2003年10月29日国务院第26次常务会议通过，现予公布，自2004年1月1日起施行。

总理 温家宝

二〇〇三年十一月二十三日

中华人民共和国进出口关税条例

第一章 总则

第一条 为了贯彻对外开放政策，促进对外经济贸易和国民经济的发展，根据《中华人民共和国海关法》（以下简称《海关法》）的有关规定，制定本条例。

第二条 中华人民共和国准许进出口的货物、进境物品，除法律、行政法规另有规定外，海关依照本条例规定征收进出口关税。

第三条 国务院制定《中华人民共和国进出口税则》（以下简称《税则》）、《中华人民共和国进境物品进口税税率表》（以下简称《进境物品进口税税率表》），规定关税的税目、税则号列和税率，作为本条例的组成部分。

第四条 国务院设立关税税则委员会，负责《税则》和《进境物品进口税税率表》的税目、税则号列和税率的调整和解释，报国务院批准后执行；决定实行暂定税率的货物、税率

和期限；决定关税配额税率；决定征收反倾销税、反补贴税、保障措施关税、报复性关税以及决定实施其他关税措施；决定特殊情况下税率的适用，以及履行国务院规定的其他职责。

第五条 进口货物的收货人、出口货物的发货人、进境物品的所有人，是关税的纳税义务人。

第六条 海关及其工作人员应当依照法定职权和法定程序履行关税征管职责，维护国家利益，保护纳税人合法权益，依法接受监督。

第七条 纳税义务人有权要求海关对其商业秘密予以保密，海关应当依法为纳税义务人保密。

第八条 海关对检举或者协助查获违反本条例行为的单位和个人，应当按照规定给予奖励，并负责保密。

第二章 进出口货物关税税率的设置和适用

第九条 进口关税设置最惠国税率、协定税率、特惠税率、普通税率、关税配额税率等税率。对进口货物在一定期限内可以实行暂定税率。

出口关税设置出口税率。对出口货物在一定期限内可以实行暂定税率。

第十条 原产于共同适用最惠国待遇条款的世界贸易组织成员的进口货物，原产于与中华人民共和国签订含有相互给予最惠国待遇条款的双边贸易协定的国家或者地区的进口货物，以及原产于中华人民共和国境内的进口货物，适用最惠国税率。

原产于与中华人民共和国签订含有关税优惠条款的区域性贸易协定的国家或者地区的进口货物，适用协定税率。



原产于与中华人民共和国签订含有特殊关税优惠条款的贸易协定的国家或者地区的进口货物，适用特惠税率。

原产于本条第一款、第二款和第三款所列以外国家或者地区的进口货物，以及原产地不明的进口货物，适用普通税率。

第十一条 适用最惠国税率的进口货物有暂定税率的，应当适用暂定税率；适用协定税率、特惠税率的进口货物有暂定税率的，应当从低适用税率；适用普通税率的进口货物，不适用暂定税率。

适用出口税率的出口货物有暂定税率的，应当适用暂定税率。

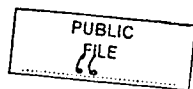
第十二条 按照国家规定实行关税配额管理的进口货物，关税配额内的，适用关税配额税率；关税配额外的，其税率的适用按照本条例第十条、第十一条的规定执行。

第十三条 按照有关法律、行政法规的规定对进口货物采取反倾销、反补贴、保障措施的，其税率的适用按照《中华人民共和国反倾销条例》、《中华人民共和国反补贴条例》和《中华人民共和国保障措施条例》的有关规定执行。

第十四条 任何国家或者地区违反与中华人民共和国签订或者共同参加的贸易协定及相关协定，对中华人民共和国在贸易方面采取禁止、限制、加征关税或者其他影响正常贸易的措施的，对原产于该国家或者地区的进口货物可以征收报复性关税，适用报复性关税税率。

征收报复性关税的货物、适用国别、税率、期限和征收办法，由国务院关税税则委员会决定并公布。

第十五条 进出口货物，应当适用海关接受该货物申报进口或者出口之日实施的税率。



进口货物到达前，经海关核准先行申报的，应当适用装载该货物的运输工具申报进境之日实施的税率。

转关运输货物税率的适用日期，由海关总署另行规定。

第十六条 有下列情形之一的，需缴纳税款的，应当适用海关接受申报办理纳税手续之日实施的税率：

- (一) 保税货物经批准不复运出境的；
- (二) 减免税货物经批准转让或者移作他用的；
- (三) 暂准进境货物经批准不复运出境，以及暂准出境货物经批准不复运进境的；
- (四) 租赁进口货物，分期缴纳税款的。

第十七条 补征和退还进出口货物关税，应当按照本条例第十五条或者第十六条的规定确定适用的税率。

因纳税义务人违反规定需要追征税款的，应当适用该行为发生之日实施的税率；行为发生之日不能确定的，适用海关发现该行为之日实施的税率。

第三章 进出口货物完税价格的确定

第十八条 进口货物的完税价格由海关以符合本条第三款所列条件的成交价格以及该货物运抵中华人民共和国境内输入地点起卸前的运输及其相关费用、保险费为基础审查确定。

进口货物的成交价格，是指卖方在中华人民共和国境内销售该货物时买方为进口该货物向卖方实付、应付的，并按照本条例第十九条、第二十条规定调整后的价款总额，包括直接支付的价款和间接支付的价款。

进口货物的成交价格应当符合下列条件：

- (一) 对买方处置或者使用该货物不予限制，但法律、行政法规规定实施的限制、对货物转售地域的限制和对货物价格无实质性影响的限制除外；
- (二) 该货物的成交价格没有因搭售或者其他因素的影响而无法确定；
- (三) 卖方不得从买方直接或者间接获得因该货物进口后转售、处置或者使用而产生的任何收益，或者虽有收益但能够按照本条例第十九条、第二十条的规定进行调整；
- (四) 买卖双方没有特殊关系，或者虽有特殊关系但未对成交价格产生影响。

第十九条 进口货物的下列费用应当计入完税价格：

- (一) 由买方负担的购货佣金以外的佣金和经纪费；
- (二) 由买方负担的在审查确定完税价格时与该货物视为一体的容器的费用；
- (三) 由买方负担的包装材料费用和包装劳务费用；
- (四) 与该货物的生产和向中华人民共和国境内销售有关的，由买方以免费或者以低于成本的方式提供并可以按适当比例分摊的料件、工具、模具、消耗材料及类似货物的价款，以及在境外开发、设计等相关服务的费用；
- (五) 作为该货物向中华人民共和国境内销售的条件，买方必须支付的、与该货物有关的特许权使用费；

(六) 卖方直接或者间接从买方获得的该货物进口后转售、处置或者使用的收益。

第二十条 进口时在货物的价款中列明的下列税收、费用，不计入该货物的完税价格：

- (一) 厂房、机械、设备等货物进口后进行建设、安装、装配、维修和技术服务的费用；
- (二) 进口货物运抵境内输入地点起卸后的运输及其相关费用、保险费；
- (三) 进口关税及国内税收。

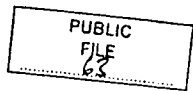
第二十一条 进口货物的成交价格不符合本条例第十八条第三款规定条件的，或者成交价格不能确定的，海关经了解有关情况，并与纳税义务人进行价格磋商后，依次以下列价格估定该货物的完税价格：

- (一) 与该货物同时或者大约同时向中华人民共和国境内销售的相同货物的成交价格；
- (二) 与该货物同时或者大约同时向中华人民共和国境内销售的类似货物的成交价格；
- (三) 与该货物进口的同时或者大约同时，将该进口货物、相同或者类似进口货物在一级销售环节销售给无特殊关系买方最大销售总量的单位价格，但应当扣除本条例第二十二条规定的项目；

(四) 按照下列各项总和计算的价格：生产该货物所使用的料件成本和加工费用，向中华人民共和国境内销售同级或者同种类货物通常的利润和一般费用，该货物运抵境内输入地点起卸前的运输及其相关费用、保险费；

(五) 以合理方法估定的价格。

纳税义务人向海关提供有关资料后，可以提出申请，颠倒前款第(三)项和第(四)项的适用次序。



第二十二條 按照本條例第二十一條第一款第(三)項規定估定完稅價格,應當扣除的項目是指:

(一)同等級或者同種類貨物在中華人民共和國境內第一級銷售環節銷售時通常的利潤和一般費用以及通常支付的佣金;

(二)進口貨物運抵境內輸入地點起卸後的運輸及其相關費用、保險費;

(三)進口關稅及國內稅收。

第二十三條 以租賃方式進口的貨物,以海關審查確定的該貨物的租金作為完稅價格。

納稅義務人要求一次性繳納稅款的,納稅義務人可以選擇按照本條例第二十一條的規定估定完稅價格,或者按照海關審查確定的租金總額作為完稅價格。

第二十四條 運往境外加工的貨物,出境時已向海關報明並在海關規定的期限內復運進境的,應當以境外加工費和料件費以及復運進境的運輸及其相關費用和保險費審查確定完稅價格。

第二十五條 運往境外修理的機械器具、運輸工具或者其他貨物,出境時已向海關報明並在海關規定的期限內復運進境的,應當以境外修理費和料件費審查確定完稅價格。

第二十六條 出口貨物的完稅價格由海關以該貨物的成交价格以及該貨物運至中華人民共和國境內輸出地點裝載前的運輸及其相關費用、保險費為基礎審查確定。

出口貨物的成交价格,是指該貨物出口時賣方為出口該貨物应当向買方直接收取和間接收取的價款總額。

出口關稅不計入完稅價格。

第二十七条 出口货物的成交价格不能确定的,海关经了解有关情况,并与纳税义务人进行价格磋商后,依次以下列价格估定该货物的完税价格:

- (一) 与该货物同时或者大约同时向同一国家或者地区出口的同种货物的成交价格;
- (二) 与该货物同时或者大约同时向同一国家或者地区出口的类似货物的成交价格;
- (三) 按照下列各项总和计算的价格:境内生产相同或者类似货物的料件成本、加工费用,通常的利润和一般费用,境内发生的运输及其相关费用、保险费;
- (四) 以合理方法估定的价格。

第二十八条 按照本条例规定计入或者不计入完税价格的成本、费用、税收,应当以客观、可量化的数据为依据。

第四章 进出口货物关税的征收

第二十九条 进口货物的纳税义务人应当自运输工具申报进境之日起14日内,出口货物的纳税义务人除海关特准的外,应当在货物运抵海关监管区后、装货的24小时以前,向货物的进出境地海关申报。进出口货物转关运输的,按照海关总署的规定执行。

进口货物到达前,纳税义务人经海关核准可以先行申报。具体办法由海关总署另行规定。

第三十条 纳税义务人应当依法如实向海关申报,并按照海关的规定提供有关确定完税价格、进行商品归类、确定原产地以及采取反倾销、反补贴或者保障措施等所需的资料;必要时,海关可以要求纳税义务人补充申报。

第三十一条 纳税义务人应当按照《税则》规定的目录条文和归类总规则、类注、章注、子目注释以及其他归类注释,对其申报的进出口货物进行商品归类,并归入相应的税则号列;海关应当依法审核确定该货物的商品归类。

第三十二条 海关可以要求纳税义务人提供确定商品归类所需的有关资料;必要时,海关可以组织化验、检验,并将海关认定的化验、检验结果作为商品归类的依据。

第三十三条 海关为审查申报价格的真实性和准确性,可以查阅、复制与进出口货物有关的合同、发票、账册、结付汇凭证、单据、业务函电、录音录像制品和其他反映买卖双方关系及交易活动的资料。

海关对纳税义务人申报的价格有怀疑并且所涉关税数额较大的,经直属海关关长或者其授权的隶属海关关长批准,凭海关总署统一格式的协助查询账户通知书及有关工作人员的工作证件,可以查询纳税义务人在银行或者其他金融机构开立的单位账户的资金往来情况,并向银行业监督管理机构通报有关情况。

第三十四条 海关对纳税义务人申报的价格有怀疑的,应当将怀疑的理由书面告知纳税义务人,要求其在规定的期限内书面作出说明、提供有关资料。

纳税义务人在规定的期限内未作说明、未提供有关资料的,或者海关仍有理由怀疑申报价格的真实性和准确性的,海关可以不接受纳税义务人申报的价格,并按照本条例第三章的规定估定完税价格。

第三十五条 海关审查确定进出口货物的完税价格后,纳税义务人可以以书面形式要求海关就如何确定其进出口货物的完税价格作出书面说明,海关应当向纳税义务人作出书面说明。

第三十六条 进出口货物关税，以从价计征、从量计征或者国家规定的其他方式征收。

从价计征的计算公式为：应纳税额 = 完税价格 × 关税税率

从量计征的计算公式为：应纳税额 = 货物数量 × 单位税额

第三十七条 纳税义务人应当自海关填发税款缴款书之日起 15 日内向指定银行缴纳税款。纳税义务人未按期缴纳税款的，从滞纳税款之日起，按日加收滞纳税款万分之五的滞纳金。

海关可以对纳税义务人欠缴税款的情况予以公告。

海关征收关税、滞纳金等，应当制发缴款凭证，缴款凭证格式由海关总署规定。

第三十八条 海关征收关税、滞纳金等，应当按人民币计征。

进出口货物的成交价格以及有关费用以外币计价的，以中国人民银行公布的基准汇率折合为人民币计算完税价格；以基准汇率币种以外的外币计价的，按照国家有关规定套算为人民币计算完税价格。适用汇率的日期由海关总署规定。

第三十九条 纳税义务人因不可抗力或者在国家税收政策调整的情形下，不能按期缴纳税款的，经海关总署批准，可以延期缴纳税款，但是最长不得超过 6 个月。

第四十条 进出口货物的纳税义务人在规定的纳税期限内有明显的转移、藏匿其应税货物以及其他财产迹象的，海关可以责令纳税义务人提供担保；纳税义务人不能提供担保的，海关可以按照《海关法》第六十一条的规定采取税收保全措施。

纳税义务人、担保人自缴纳税款期限届满之日起超过 3 个月仍未缴纳税款的，海关可以按照《海关法》第六十条的规定采取强制措施。

第四十一条 加工贸易的进口料件按照国家规定保税进口的,其制成品或者进口料件未
在规定的期限内出口的,海关按照规定征收进口关税。

加工贸易的进口料件进境时按照国家规定征收进口关税的,其制成品或者进口料件在规
定的期限内出口的,海关按照有关规定退还进境时已征收的关税税款。

第四十二条 经海关批准暂时进境或者暂时出境的下列货物,在进境或者出境时纳税义
务人向海关缴纳相当于应纳税款的保证金或者提供其他担保的,可以暂不缴纳关税,并应当
自进境或者出境之日起6个月内复运出境或者复运进境;经纳税义务人申请,海关可以根据
海关总署的规定延长复运出境或者复运进境的期限:

- (一) 在展览会、交易会、会议及类似活动中展示或者使用的货物;
- (二) 文化、体育交流活动中使用的表演、比赛用品;
- (三) 进行新闻报道或者摄制电影、电视节目使用的仪器、设备及用品;
- (四) 开展科研、教学、医疗活动使用的仪器、设备及用品;
- (五) 在本款第(一)项至第(四)项所列活动中使用的交通工具及特种车辆;
- (六) 货样;
- (七) 供安装、调试、检测设备时使用的仪器、工具;
- (八) 盛装货物的容器;
- (九) 其他用于非商业目的的货物。

第一款所列暂准进境货物在规定的期限内未复运出境的,或者暂准出境货物在规定的期
限内未复运进境的,海关应当依法征收关税。

第一款所列可以暂时免征关税范围以外的其他暂准进境货物,应当按照该货物的完税价格和其在境内滞留时间与折旧时间的比例计算征收进口关税。具体办法由海关总署规定。

第四十三条 因品质或者规格原因,出口货物自出口之日起1年内原状复运进境的,不征收进口关税。

因品质或者规格原因,进口货物自进口之日起1年内原状复运出境的,不征收出口关税。

第四十四条 因残损、短少、品质不良或者规格不符原因,由进出口货物的发货人、承运人或者保险公司免费补偿或者更换的相同货物,进出口时不征收关税。被免费更换的原进口货物不退运出境或者原出口货物不退运进境的,海关应当对原进出口货物重新按照规定征收关税。

第四十五条 下列进出口货物,免征关税:

- (一) 关税税额在人民币50元以下的一票货物;
- (二) 无商业价值的广告品和货样;
- (三) 外国政府、国际组织无偿赠送的物资;
- (四) 在海关放行前损失的货物;
- (五) 进出境运输工具装载的途中必需的燃料、物料和饮食用品。

在海关放行前遭受损坏的货物,可以根据海关认定的受损程度减征关税。

法律规定的其他免征或者减征关税的货物,海关根据规定予以免征或者减征。

第四十六条 特定地区、特定企业或者有特定用途的进出口货物减征或者免征关税,以及临时减征或者免征关税,按照国务院的有关规定执行。

第四十七条 进口货物减征或者免征进口环节海关代征税，按照有关法律、行政法规的规定执行。

第四十八条 纳税义务人进出口减免税货物的，除另有规定外，应当在进出口该货物之前，按照规定持有关文件向海关办理减免税审批手续。经海关审查符合规定的，予以减征或者免征关税。

第四十九条 需由海关监管使用的减免税进口货物，在监管年限内转让或者移作他用途要补税的，海关应当根据该货物进口时间折旧估价，补征进口关税。

特定减免税进口货物的监管年限由海关总署规定。

第五十条 有下列情形之一的，纳税义务人自缴纳税款之日起1年内，可以申请退还关税，并应当以书面形式向海关说明理由，提供原缴款凭证及相关资料：

（一）已征进口关税的货物，因品质或者规格原因，原状退货复运出境的；

（二）已征出口关税的货物，因品质或者规格原因，原状退货复运进境，并已重新缴纳因出口而退还的国内环节有关税收的；

（三）已征出口关税的货物，因故未装运出口，申报退还的。

海关应当自受理退税申请之日起30日内查实并通知纳税义务人办理退还手续。纳税义务人应当自收到通知之日起3个月内办理有关退税手续。

按照其他有关法律、行政法规规定应当退还关税的，海关应当按照有关法律、行政法规的规定退税。

第五十一条 进出口货物放行后，海关发现少征或者漏征税款的，应当自缴纳税款或者货物放行之日起1年内，向纳税义务人补征税款。但因纳税义务人违反规定造成少征或者漏

征税款的,海关可以自缴纳税款或者货物放行之日起3年内追征税款,并从缴纳税款或者货物放行之日起按日加收少征或者漏征税款万分之五的滞纳金。

海关发现海关监管货物因纳税义务人违反规定造成少征或者漏征税款的,应当自纳税义务人应缴纳税款之日起3年内追征税款,并从应缴纳税款之日起按日加收少征或者漏征税款万分之五的滞纳金。

第五十二条 海关发现多征税款的,应当立即通知纳税义务人办理退还手续。

纳税义务人发现多缴税款的,自缴纳税款之日起1年内,可以以书面形式要求海关退还多缴的税款并加算银行同期活期存款利息,海关应当自受理退税申请之日起30日内查实并通知纳税义务人办理退还手续。

纳税义务人应当自收到通知之日起3个月内办理有关退税手续。

第五十三条 按照本条例第五十条、第五十二条的规定退还税款、利息涉及从国库中退库的,按照法律、行政法规有关国库管理的规定执行。

第五十四条 报关企业接受纳税义务人的委托,以纳税义务人的名义办理报关纳税手续,因报关企业违反规定而造成海关少征、漏征税款的,报关企业对少征或者漏征的税款、滞纳金与纳税义务人承担纳税的连带责任。

报关企业接受纳税义务人的委托,以报关企业的名义办理报关纳税手续的,报关企业与纳税义务人承担纳税的连带责任。

除不可抗力外,在保管海关监管货物期间,海关监管货物损毁或者灭失的,对海关监管货物负有保管义务的人应当承担相应的纳税责任。

第五十五条 欠税的纳税义务人，有合并、分立情形的，在合并、分立前，应当向海关报告，依法缴清税款。纳税义务人合并时未缴清税款的，由合并后的法人或者其他组织继续履行未履行的纳税义务；纳税义务人分立时未缴清税款的，分立后的法人或者其他组织对未履行的纳税义务承担连带责任。

纳税义务人在减免税货物、保税货物监管期间，有合并、分立或者其他资产重组情形的，应当向海关报告。按照规定需要缴税的，应当依法缴清税款；按照规定可以继续享受减免税、保税待遇的，应当到海关办理变更纳税义务人的手续。

纳税义务人欠税或者在减免税货物、保税货物监管期间，有撤销、解散、破产或者其他依法终止经营情形的，应当在清算前向海关报告。海关应当依法对纳税义务人的应缴税款予以清缴。

第五章 进境物品进口税的征收

第五十六条 进境物品的关税以及进口环节海关代征税合并为进口税，由海关依法征收。

第五十七条 海关总署规定数额以内的个人自用进境物品，免征进口税。

超过海关总署规定数额但仍在合理数量以内的个人自用进境物品，由进境物品的纳税义务人在进境物品放行前按照规定缴纳进口税。

超过合理、自用数量的进境物品应当按照进口货物依法办理相关手续。

国务院关税税则委员会规定按货物征税的进境物品，按照本条例第二章至第四章的规定征收关税。

第五十八条 进境物品的纳税义务人是指，携带物品进境的入境人员、进境邮递物品的收件人以及以其他方式进口物品的收件人。

第五十九条 进境物品的纳税义务人可以自行办理纳税手续，也可以委托他人办理纳税手续。接受委托的人应当遵守本章对纳税义务人的各项规定。

第六十条 进口税从价计征。

进口税的计算公式为：进口税税额 = 完税价格 × 进口税税率

第六十一条 海关应当按照《进境物品进口税税率表》及海关总署制定的《中华人民共和国进境物品归类表》、《中华人民共和国进境物品完税价格表》对进境物品进行归类、确定完税价格和确定适用税率。

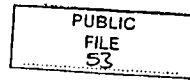
第六十二条 进境物品，适用海关填发税款缴款书之日实施的税率和完税价格。

第六十三条 进口税的减征、免征、补征、追征、退还以及对暂准进境物品征收进口税参照本条例对货物征收进口关税的有关规定执行。

第六章 附则

第六十四条 纳税义务人、担保人对海关确定纳税义务人、确定完税价格、商品归类、确定原产地、适用税率或者汇率、减征或者免征税款、补税、退税、征收滞纳金、确定计征方式以及确定纳税地点有异议的，应当缴纳税款，并可以依法向上一级海关申请复议。对复议决定不服的，可以依法向人民法院提起诉讼。

第六十五条 进口环节海关代征税的征收管理，适用关税征收管理的规定。



第六十六条 有违反本条例规定行为的，按照《海关法》、《中华人民共和国海关法行政处罚实施细则》和其他有关法律、行政法规的规定处罚。

第六十七条 本条例自2004年1月1日起施行。1992年3月18日国务院修订发布的《中华人民共和国进出口关税条例》同时废止。

chl_50576

Notice of the General Office of the State Council on the Main Functions and the Adjustment of the Members of the Customs Tariff Commission of the State Council

(No.20 [2008] of the General Office of the State Council)

The people's governments of all provinces, autonomous regions and municipalities directly under the Central Government, all the ministries and commissions of the State Council and all the institutions directly under the State Council:

The Customs Tariff Commission of the State Council is an advisory and coordinating organ of the State Council, and its main functions are: be responsible for readjusting and interpreting tariff items, tariff nomenclature heading numbers and tariff rates in the Import and Export Tariff of the People's Republic of China and the Table of Import Tariff Rate of the People's Republic of China on Goods Entering into the Territory, which shall take effect upon the approval of the State Council; decide on the goods subject to temporary tariff rates, the tariff rates and time limit; decide the rate of tariff quota; decide the imposition of antidumping duties, countervailing duties, duty under safeguard measures, retaliatory duties and decide on the implementation of other measures relating to customs duties; approve the program on the application of the preferential tariff rate to the relevant countries and regions; review the important tariff policies and the external negotiation program reported to the State Council; decide on the application of tariff rates under special circumstances, and exercise other functions as provided for by the State Council.

According to the establishment of the organs and the personnel changes, the State Council decides to readjust the members of the Customs Tariff Commission of the State Council correspondingly. The readjustment is now notified as follows:

Director: Xie Xuren minister of the Ministry of Finance

Deputy Director: You Quan under-secretary general of the State Council

Commissioners: Zhang Xiaoqiang deputy director of the Development and Reform Commission

Fu Ziyang vice minister of the Ministry of Commerce

Lou Qinjian vice minister of the Ministry of Industry and Informatization

Wang Min vice minister of the Ministry of Land and Resources

Niu Dun vice minister of the Ministry of Agriculture

Sun Songpu deputy director of the General Administration of Customs

Dong Shukui chief economist of the Administration of Taxation

Song Dahan deputy director of the Legislative Affairs Office

Zhu Guangyao assistant minister of the Ministry of Finance

The Ministry of Finance shall assume the specific work of the Customs Tariff Commission of the State Council. From now on, in case any of the commissioners of the Customs Tariff Commission of the State Council needs readjustment, the entity to which he (she) belongs shall give its opinions, which shall be approved by the director of the Customs Tariff Commission of the State Council.

General office of the State Council

April 14, 2008

国务院办公厅关于国务院关税税则

委员会主要职责和调整组成人员的通知

(国办发[2008]20号)

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

国务院关税税则委员会为国务院的议事协调机构，其主要职责是：负责《中华人民共和国进出口税则》和《中华人民共和国进境物品进口税税率表》的税目、税则号列和税率的调整 and 解释，报国务院批准后执行；决定实行暂定税率的货物、税率和期限；决定关税配额税率；决定征收反倾销税、反补贴税、保障措施关税、报复性关税以及决定实施其他关税措施；批准有关国家、地区适用税则优惠税率的方案；审议上报国务院的重大关税政策和对外谈判方案；决定特殊情况下税率的适用，以及履行国务院规定的其他职责。

根据机构设置和人员变动情况，国务院决定对国务院关税税则委员会组成人员进行相应调整。现将调整后的名单通知如下：

主任：谢旭人 财政部部长

副主任：尤 权 国务院副秘书长

委员：张晓强 发展改革委副主任

傅自应 商务部副部长

娄勤俭 工业和信息化部副部长

汪 民 国土资源部副部长

牛 盾 农业部副部长

孙松瑛 海关总署副署长

董树奎 税务总局总经济师

魏传忠 质检总局副局长

宋大涵 法制办副主任

朱光耀 财政部部长助理

国务院关税税则委员会具体工作由财政部承担。今后，国务院关税税则委员会委员如需调整，由所在单位提出意见，由国务院关税税则委员会主任审批。

国务院办公厅口

二〇〇八年四月十四日

chl_105920

The State Development and Reform Commission of the People's Republic of China

Bulletin

No. 64 [2007]

For the purpose of speeding up the reform of industry structure, enhancing sustainable and sound development of aluminum industry, improving environmental protection, efficiently utilizing energy and resources, ensuring employees' safety at work, further increasing access threshold, rationalizing investment behaviors in the aluminum industry, restraining from irrational investment in the aluminum sector, enabling the realization of the goal of saving energy and reducing discharge of wastes, the State Development and Reform Commission ("SDRC"), together with relevant departments, enacts and publishes the *Requirements of Entry Into the Aluminum Industry* (the "*Requirements*") in accordance with relevant laws, regulations, and industrial policy.

All departments concerned should conform to the *Requirements* when they conduct review and approval of investment proposals, filing management, land supply, business registrations, environmental impact assessment, safety permit, and credit financings concerning bauxite mining, smelting, processing, and utilization of regenerated aluminum projects.

Annex: Requirements of Entry Into the Aluminum Industry

29 October 2007

REQUIREMENTS OF ENTRY INTO THE ALUMINUM INDUSTRY

To speed up the structural reform of aluminum industry, to regulate investment behaviors, to promote sustainable and sound development of aluminum industry, and to realize the goal of saving energy and reducing discharge of wastes, the *Requirements on Accessing the Aluminum Industry* has been enacted according to relevant laws, regulations and industrial policy.

I. Requirements for Layout and Size of Enterprises and Other External Conditions

Newly-built or reconstructed exploitation projects of bauxite mines, aluminum smelting (electrolytic aluminum, alumina, and secondary aluminum) and aluminum processing projects must comply with requirements of state industrial policy and planning, comprehensive planning for the use of land, land supply policy and land use standards. Such enterprises must also ensure compensation and settlement for lands appropriated, develop new arable land to make up for occupied arable land, and carry out land reclamation. As well, these enterprises must strictly implement environmental impact assessment, environment protection and safety measures.

The location of aluminum smelting enterprises should be selected in accordance with the state comprehensive planning for aluminum smelting industry and the regional planning for ecosystem. The production scales of such enterprises will be conditioned by the regions where they are located. No new aluminum smelting (electrolytic aluminum, alumina or secondary aluminum) enterprises should be built within drinking water preservation areas, basic farmland protection areas, natural conservations, scenic resorts, ecological conservation areas designated by state laws, regulations, administrative rules and administrative plans stipulated by county government or higher level governments, nor in large or medium-size cities and their suburb areas, nor within one kilometer of residential areas, sanitariums, hospitals as well as food, medicine or electronics enterprises that have higher requirements for environment.

Exploitation of bauxite mines is not allowed without an exploitation permit. The exploitation activity shall comply with laws, regulations and rules on safety in production and mineral resources as well as mineral resources planning. Exploitation activities must comply with approved exploitation plan. Excessive and wasteful exploitations are strictly prohibited.

Newly-built exploitation projects of bauxite mine should be designed and executed in a professional way. Mining investment projects are subject to the *State Council Decision on Reform of the Investment System*. Those projects with gross investment of ¥50 million or above should be reviewed and approved by investment administrative department under the State Council; other projects should be reviewed and approved by investment administrative department at the provincial level. The production scale of such projects cannot be lower than 300,000 tons per year, and mine life not lower than 15 years.

Newly-built alumina projects must be reviewed and approved by investment administrative department under the State Council. For alumina projects utilizing domestic bauxite resources, its annual production capacity must be not less than 800,000 tons and the mine life must be more than 30 years. Newly-built alumina enterprises must first apply for exploitation right for bauxite and carry out mining activities in accordance with approved exploitation and utilization plan. Alumina enterprises

must not acquire unauthorized bauxite mines. For alumina projects utilizing imported bauxite, its annual production capacity must be not less than 600,000 tons. They must ensure that they have reliable long-term bauxite supply from overseas, and such supply should be secured by bauxite contracts of 5-year or more through joint venture or other cooperation. Furthermore, overseas supply of bauxite must reach 60% or more of the total demand. Transportation facility must also be secured.

The newly-built electrolytic aluminum projects must be approved by investment administrative departments under the State Council. For near term, only projects that require environmental protection technique renovation and projects to eliminate production capacity that has become obsolete can receive approvals. Rebuilt electrolytic aluminum projects must secure alumina supply, required electricity supply and transportation. Permission must be obtained from investment administrative departments under the State Council to carry out preliminary preparation before obtaining approvals for land use and environmental assessment.

The production scale of newly-built secondary aluminum projects must be more than 50,000 tons per year. The production scale of existing secondary aluminum enterprises must be more than 20,000 tons per year. The production scale of reconstruction and expansion projects must be more than 30,000 tons per year.

The main products of the newly-built aluminum processing projects should mainly be aluminum plate, aluminum strip, aluminum foil, aluminum extrusion, or industry extrusion. The production capacity of comprehensive multiple-product aluminum processing projects must reach more than 100,000 tons per year. The production capacity of single-product aluminum processing projects must reach: plates and strips minimum 30,000 tons per year, foils minimum 30,000 tons per year, and extrusions minimum 50,000 tons per year.

Capital proportion in bauxite mining, smelting, and regenerated utilization projects must reach 35% or above.

II. Techniques and Equipment

The newly-built large and medium sized bauxite mines need to adopt advanced exploitation techniques, use large-scale equipment and improve automatization level.

Alumina projects need adopt production technical systems that are efficient, advanced, low energy consumption and environmentally-friendly, such as Bayer Method and Combination Method. Projects adopting waste heat recovery techniques or relevant equipment must satisfy requirements prescribed by the *Energy Conservation Law*, *Law of the People's Republic of China on Promoting Clean Production*, and *Environmental Protection Law*.

Electrolytic aluminum projects that require environmental protection technique renovation and projects to eliminate production capacity that has become obsolete must adopt the large-scale prebaked anode aluminum reduction cell technology which is minimum 200KA. And the anode effect frequency of the newly-built product line should be lower than 0.08 per cell day. It is prohibited to rebuild and reuse the abolished Soderberg cell.

It is prohibited to adopt wet process technique to produce fluorides for aluminum reduction aluminum fluoride salt. Carbon anode for aluminum smelter projects should adopt the continuous mix-up

technology. It is prohibited to construct individual programme of carbon material for aluminum reduction with production capacity below 100,000 tons per year.

Improve aluminum regeneration and recovery technology and environmental protection. It is prohibited to use reverberatory of direct coal-burning to produce secondary aluminum and to use other reverberatory which are below 4 tons to produce secondary aluminum. It is prohibited to use crucible furnace to smelt regenerated duralumin.

Newly-built aluminum processing projects must adopt new processing techniques such as continuous cast-rolling technique and hot strip rolling method to increase production efficiency, automatization level, product quality. Under-developed technique, such as two-person rotating-type rolling mill aluminum processed material is prohibited in the production.

Pursuant to the *Notice of Distributing Comprehensive Scheme of Saving Energy and Reducing Discharge by the State Council* (GuoFa [2007] No.15), the *Catalogue of Industrial Structure* (2005 Edition), and the *Notice of Guidelines on Speeding up the Restructure in the Aluminum Industry*, it is encouraged to eliminate production capacity of electrolytic aluminum that has become obsolete, to prevent the abolished Soderberg Cell method from reappearing, to strive to adopt a 160KA large-scale prebaked anode aluminum reduction cell technique in the electrolytic aluminum sector by the end of 11th five-year plan, and to immediately eliminate backward techniques such as the crucible melting reprocessing duralumin technique and the two-person rotating-type rolling mill aluminum processed materials technique.

III. Energy Consumption

According to the new back-step coefficient of 1 kilo-watt hour electricity equivalent to 0.1229 kilogram standard coal, the energy consumption in aluminum industry should comply with the entry standards as follows.

Comprehensive energy consumption of underground bauxite mining should be lower than 25 kilogram standard coal per ton of ore; and energy consumption of open pit mining should be lower than 13 kilogram standard coal per ton of ore.

The comprehensive energy consumption of the newly-built alumina production system with Bayer method should be lower than 500 kilogram standard coal per ton of alumina. The comprehensive energy consumption of alumina production system with other technique should be lower than 800 kilogram standard coal per ton of alumina. The comprehensive energy consumption of the existing alumina production system with Bayer method should be lower than 520 kilogram standard coal per ton of alumina. The comprehensive consumption of alumina production system with other techniques should be lower than 900 kilogram standard coal per ton of alumina.

The comprehensive energy consumption of alternating current of the reconstruction production of electrolytic aluminum should be lower than 14,300 kilo-watt hour per ton of aluminum; efficiency of the current should be higher than 94%. The comprehensive consumption of alternating current of the existing production of electrolytic aluminum should be lower than 14,450 kilo-watt hour per ton of aluminum; efficiency of the current should be higher than 93%. Those whose comprehensive consumption of alternating current is higher than the standard are not allowed to enter the aluminum industry. Existing enterprises whose comprehensive expenditure of alternating current has met the

entry standard still need to undertake technical renovation to reduce energy expenditure and to meet the same standard as that of newly-built enterprises by the end of "11th five-year plan".

The comprehensive energy consumption of newly-built aluminum processing projects should be lower than 350 kilograms of standard coal per ton; the comprehensive electrical consumption should be lower than 1150 kilowatt-hours per ton. The comprehensive energy consumption of aluminum processing material in existing enterprises should be lower than 410 kilograms standard coal per ton; the comprehensive electrical consumption should be lower than 1250 kilowatt-hours per ton. Existing enterprises need to adopt new techniques and to reduce their energy consumption to meet the same requirements as newly-built enterprises by the end of "11th five-year plan".

IV Consumption and Comprehensive Utilization of Resources

Loss rate should not exceed 12% for bauxite underground mining and should not exceed 8% for open-pit mining. Dilution rate should not exceed 10% for underground mining and should not exceed 8% for open-pit mining. Construction of bauxite mines and concentrators with low utilization rate is prohibited. Mining enterprises should work out mineral resources development and utilization plan according to the abovementioned requirements and submit to land and resources administrative department for approval. The actual mining loss rate and recovery rate in ore-dressing must not be lower than the designed standards stipulated in the approved mineral resources development and utilization plan.

The comprehensive recovery rate of newly constructed aluminum oxide manufacturing system using Bayer Process should be more than 81%. Water consumption should be less than 8 ton per 1 ton aluminum oxide and the size of occupied land should be less than 1 square meter per 1 ton aluminum oxide. The comprehensive recovery rate of newly constructed aluminum oxide manufacturing system using other methods should be more than 90%. Water consumption should be less than 7 ton per 1 ton aluminum oxide and the size of occupied land should be less than 1.2 square meter per 1 ton aluminum oxide. Existing alumina manufacturing enterprises need reduce resources consumption by means of technology innovation and meet the standards for newly constructed system by the end of "11th five-year plan."

For rebuilt production capacity of electrolytic aluminum, to produce 1 ton aluminum, the unit cost of aluminum oxide should be less than 1920 kilograms, consumption of fluoride salt should be less than 25 kilograms, consumption of carbon anode should be less than 410 kilograms, new water consumption should be less than 7 tons, and the size of occupied land should be less than 3 square meters. With regard to existing electrolytic aluminum enterprises, the unit cost of aluminum oxide should be less than 1930 kilograms, consumption of fluoride salt should be less than 30 kilograms, consumption of carbon anode should be less than 430 kilograms, new water consumption should be less than 7.5 tons. Existing alumina manufacturing enterprises need reduce resources consumption by means of technology innovation and meet the standards for newly constructed system by the end of "11th five-year plan."

For newly constructed aluminum processing enterprises, metal consumption should be lower than 1,025 kilograms per ton and lower than 1,015 kilograms per ton if producing aluminum extrusions; the rate of finished products of aluminum fabrication semis should be more than 75%, where finished products rate of fabrication semis should be more than 78%, finished products rate of molten semis

should be more than 91%, finished products rate of aluminum plates should be more than 70%, finished products rate of aluminum strip should be more than 77%, finished products rate of aluminum foil should be more than 79%, and finished products rate of aluminum extrusions should be more than 88%. With regard to existing aluminum processing enterprises, metal consumption should be lower than 1035 kilograms per ton, where the metal consumption for producing aluminum extrusions should be lower than 1020 kilograms per ton; the finished products rate of aluminum fabrication semis should be more than 72%, where finished products rate of fabrication semis should be more than 78%, finished products rate of molten semis should be more than 91%, finished products rate of aluminum plates should be more than 69%, finished products rate of aluminum strip should be more than 75%, finished products rate of aluminum foil should be more than 78%, and finished products rate of aluminum extrusions should be more than 87%. Existing alumina manufacturing enterprises need reduce metal consumption by means of technology innovation and meet the standards for newly constructed system by the end of "11th five-year plan."

V Environment Protection and Land Reclamation

Mining enterprises are strictly prohibited from damaging land and polluting the environment. The examination and approval of environmental impact reports and the approval and acceptance of environmental protection facilities shall be conducted with all due consideration. Regulations regarding land reclamation shall be strictly followed and the principle of "whoever damages the land shall be responsible for reclamation of same" shall be strictly adhered to in fulfilling the general obligations required under land reclamation regulations. In accordance with the bulletin "Notice Regarding the Management of Work on Development and Reclamation Projects" ([2006] number 225) issued by the seventh division of the Exploration and Development Committee of the Ministry of Land and Resources, reclamation plans should be set up, costs of reclamation should be included in production costs at their full values, reclamation fees should be paid in accordance with regulations and funds should be set aside for land reclamation, all in the principle and spirit of developing the land and reclaiming the land concurrently. In accordance with the "Guidelines for Gradually Establishing Mechanisms for Environment Protection and Ecosystem Restoration in Mining Areas" promulgated by the Ministry of Finance, the Ministry of Land and Resources and the Ministry of Environmental Protection, an environmental fund should be gradually established via a "guarantee deposit" system specially designed for the management of environmental related matters in mining areas and the restoration of the ecosystem in said areas. The environmental protection plans of mining investment projects shall be examined and approved by the relevant government environmental departments that have jurisdiction and in accordance with relevant regulations established by the Ministry of Environmental Protection and the guidelines established under the "Decision Regarding Changes in Investment Structure" published by the government. The environment should be restored and land should be reclaimed in mining areas in accordance with the requirements relating to environmental protection, land restoration, and water and soil conservation. Discharges of pollutants caused by aluminum smelting and processing must comply with the standards established under "Guidelines Regarding Discharges of Industrial Pollutants" (GB9078-1996), "Guidelines Regarding Discharges of General Pollutants" (GB16297-1996), "Guidelines Regarding Discharges of Waste Water" (GB8978-1996) and other requirements regarding treatment of industrial waste and dangerous products and any requirements imposed by the local government. Discharges of pollutants must be done in compliance with approved environmental impact studies and must conform to the controlling

values and total amounts stipulated in the environmental impact studies. Alumina enterprises should discharge zero water pollutant and the ultimate disposal of red sludge (including the disposal sites) should be done in strict compliance with the approved requirements in the environmental impact studies. Pollution caused by hazardous substances such as fluoride, toxic dust and red sludge should be prevented. The amount of discharged fluoride should be less than 1,000 grams. The addition of electrolytic residue containing fluorine to burning coal is strictly prohibited.

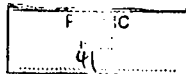
Dust removal and recycling equipment should be installed in aluminum smelting projects where dust may be produced during the process of raw material disposal, intermediate material cracking, smelting, casting, loading and unloading. Such equipment needs to be monitored by an automatic monitoring system approved by environment monitoring equipment inspection agencies designated by the Ministry of Environmental Protection.

With regard to newly constructed and existing secondary aluminum projects, advanced processes and equipments should be adopted in recycling and disposing aluminum wastes. Burning in open areas is prohibited in disposing the plastic and rubber skins of waste electric wires, cables with aluminum cores and residue aluminum waste material. Where the burning method is adopted for the preliminary treatment of discarded electric wires and aluminum core cables, the level of air pollutant discharged needs to be in compliance with relevant provisions of the "Guidelines Relating to Pollution Control Standards on Burning Dangerous Wastes" (GB18484-2001) and any relevant local regulations.

In accordance with the *Environmental Protection Law of the People's Republic of China* and other relevant laws and regulations, all newly-constructed, reconstructed and extension projects should be carried out in strict compliance with environmental assessment guidelines. A pollution discharge license ("PDL") should be obtained when pollutants are being discharged, with the exception of areas where the requirement for a PDL has not been implemented. Newly constructed bauxite mining, smelting and processing enterprises shall not start any production or sales activities until it has been approved by the relevant governmental department(s) and a PDL is obtained (with the exception of areas where the requirement for a PDL has not been implemented). Any existing enterprises which wishes to expand or change its productions must also obtain a PDL after approval from a provincial level governmental department is obtained. Environmental protection departments shall supervise and inspect the progress of enterprises' implementation and adherence to environmental guidelines, it shall publish a list of non-compliant enterprises periodically, and it shall inspect the progress of mandatory clean-up programs in accordance with relevant legislation for those enterprises that have not met the requirements regarding emission standards or who have exceed the sewage discharge thresholds permitted. Enterprises that fail to meet emission standards or exceed the total amount of sewage discharged permitted and fail to rectify such violations within a specific time period shall be shut down in accordance with the powers provided to local governments.

VI. Safety Production and Occupational Hazard

Mining, smelting, and processing construction projects must meet the provisions under the *Safe Production Law of the People's Republic of China*, *The Law of the People's Republic of China on Safety in Mines*, and the *Law of the Peoples Republic of China on Prevention and Control of Occupational Diseases* and other laws and regulations. Such projects must also contain appropriate measures to ensure workplace safety and prevent occupation diseases, establish and improve any safe production responsibility systems and establish and maintain other appropriate rules and systems as



required. Any new, reconstructed, or extended projects must contain such safety and prevention programs and such programs must be designed, implemented, and used contemporaneously with the design and implementation of the main projects. Safety and preventative programs on bauxite and alumina projects must be inspected and approved by the safe production and supervision departments in accordance with relevant regulations. Occupational hazard prevention and control facilities must be established, personal protective equipment in line with national standards must be provided, and preventive measures must be established with respect to any risks caused by accidents, including, but not limited to, leaks of aluminum fluids, explosions, fires, lightning strikes, equipment failures, mechanical damages, and bodily injuries. Measures and programs must also be established to ensure a safe supply of electricity and water and to ensure that poisonous or dangerous substances are properly dealt with, and such programs shall be inspected and approved by local governmental authorities.

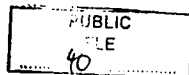
A mining enterprise shall only engage in production activities after it has lawfully obtained the safe production permit required under *Regulations on Safe Production Permits* (the State Council Decree No. 397) and other relevant legislations. Any aluminum and red mud storage facilities must comply with relevant tailing dam safety management requirements and other technical requirements.

VII . Monitoring and Administration

Any projects relating to the new and rebuilt of bauxite mines, aluminum smelting and processing must adhere to the aforementioned requirements.

The relevant governmental departments must adhere to policies applicable to the industry in general and adhere to industry admission requirements in managing project investments, supplying land, assessing the impact on the environment and processing any matters relating to project financings. Development authorities must assess environmental impact studies and evaluation reports on electrolytic aluminum projects and aluminum projects in accordance with requirements established by the Ministry of Environmental Protection, and must obtain approval from the Ministry of Environmental Protection. Existing enterprises who have met industry policies need to improve their technologies and techniques in order to achieve the standards (relating to the usage of resources, the usage of energy and environmental protection) that new enterprises who wish to enter into the aluminum industry are required to meet.

Newly-built or reconstruction projects relating to bauxite exploration and development, aluminum smelting (including that of alumina, electrolytic aluminum, or secondary aluminum) and aluminum processing shall be approved, inspected and supervised, by the relevant provincial-level (or higher-level) investment, state land resources, safety production, labour sanitation, production quality control and other administrative departments, along with an expert panel, before those projects can be undertaken. Those projects which do not meet the requirements cannot commence operations. The investment departments need supervise the enterprises to complete all requirements within the given period. For those who have not legally obtained land or those who are not using the land as stipulated in the governing land contracts, or those who are not fulfilling their reclamation obligations, the department of state land resources need impose sanctions and penalties and impose deadlines for remedying such problems in accordance with land resource legislations and the contracts for the use of land. Furthermore, the department of state land resources shall not issue the certificate of a right to



use land. The department of state land resources shall also deal with various illegal exploitation conducts in accordance with various relevant laws and regulations. As to the conducts which do not conform to safety or environmental requirements, the department of safety and environmental protection shall impose penalties on the wrongdoers and set a limited time for them to correct the wrongdoings in accordance with relevant laws and regulations.

Local development and reform commissions, local economics and trade commissions, local industrial offices, local departments of state land resource, local environmental departments, administration departments for industry and commerce, local departments for production safety, local departments for labor sanitation and other administration and legal operation departments should supervise and examine at regular intervals the implementation of the requirements on bauxite mines, aluminum smelting, and aluminum processing enterprises. The Chinese Nonferrous Metal Industry Association may provide such assistance as required.

As for those bauxite mines, aluminum smelting and processing, and other newly-built or reconstructive projects which do not conform to the industry policies and the requirements of entry into the aluminum industry, the departments which are in charge of investment administration shall not approve or accept a filling for those projects. The departments which are in charge of managing state land resource shall not handle the examination and approval procedures of land for construction purposes. Environmental departments shall not approve the environmental impact assessment report and financial institutions shall not provide credit and the electrical department shall terminate any power supply. Once an enterprise is wound up or closed down, the enterprise needs go through the alternation or cancellation registration procedures with the administration departments of industry and commerce.

The State Development and Reform Commission will periodically publish a list of bauxite mines, aluminum smelting and aluminum processing enterprises that conform to the requirements to enter into the aluminum industry. The State Development and Reform Commission will actively supervise and monitor the development of those aluminum factories and enterprises.

VIII. Supplementary Provisions

The Requirements of Entry into the Aluminum Industry apply to all types of bauxite mines, aluminum smelting, and aluminum processing enterprises in the territories of China (with the exception of Hong Kong, Macau and Taiwan).

If the *Requirements* are altered, the altered *Requirements* shall deem to apply.

The *Requirements* will be in force and effect as of the day of publication. The State Development and Reform Commission shall be responsible for the interpretation of such requirements and shall make any amendments as necessary depending on the development of the aluminum industry.

中华人民共和国国家发展和改革委员会

公告

2007 年第 64 号

为加快产业结构调整，促进铝工业的持续健康发展，加强环境保护，综合利用资源，保证职工安全，进一步提高准入门槛，规范铝行业的投资行为，制止盲目投资。促进节能减排目标的实现，依据国家有关法律法规和产业政策，我委会同有关部门制定了《铝行业准入条件》，现予以公告。

各有关部门在对铝矿山、冶炼、加工、再生利用建设项目进行投资核准、备案管理、土地供应、工商注册登记、环境影响评价、安全许可、信贷融资等工作中要以行业准入条件为依据。

附件：铝行业准入条件

二〇〇七年十月二十九日

铝行业准入条件

为加快铝工业结构调整,规范投资行为,促进行业持续协调健康发展和节能减排目标的实现,根据国家有关法律法规和产业政策,制定铝行业准入条件。

一、企业布局及规模和外部条件要求

新建或者改建的铝土矿开采、铝冶炼(电解铝、氧化铝、再生铝)、加工项目必须符合国家产业政策和规划布局要求,符合土地利用总体规划、土地供应政策和土地使用标准的规定,依法做好征地补偿安置、耕地占补平衡和土地复垦工作。必须依法严格执行环境影响评价和环保、安全设施“三同时”验收制度。

各地要根据国家铝冶炼发展的总体规划布局,按照生态功能区划的要求,对优化开发、重点开发的地区研究确定不同区域的铝冶炼生产规模总量,合理选择铝冶炼企业厂址。在国家法律、法规、行政规章及规划确定或县级以上人民政府批准的饮用水水源保护区、基本农田保护区、自然保护区、风景名胜区、生态功能保护区等需要特殊保护的地区,大中城市及其近郊,居民集中区、疗养地、医院和食品、药品、电子等对环境质量要求高的企业周边1公里内,不得新建铝冶炼(电解铝、氧化铝、再生铝)企业及生产装备。

开采铝土矿资源,应依法取得采矿许可证,遵守矿产资源、安全生产法律法规、矿产资源规划及相关政策。采矿权人应严格按照批准的开发利用方案进行开采,严禁无证开采、乱采滥挖和破坏浪费资源。

新建铝土矿开采项目,必须规范设计、正规开采。矿山投资项目,必须按照《国务院关于投资体制改革的决定》中公布的政府核准投资项目目

景要求办理，总投资 5 亿元及以上的矿山开发项目由国务院投资主管部门核准，其他矿山开发项目由省级政府投资主管部门核准。申请核准的矿山投资项目，总生产建设规模不得低于 30 万吨/年，服务年限为 15 年以上。

新建氧化铝项目，必须经过国务院投资主管部门核准。利用国内铝土矿资源的氧化铝项目起步规模必须是年生产能力在 80 万吨及以上，落实铝土矿、交通运输等外部生产条件，自建铝土矿山比例应达到 85% 以上，配套矿山的总体服务年限必须在 30 年以上；新建氧化铝企业，必须在矿产资源规划允许的范围内按规定首先申请铝土矿采矿权，按照矿产资源开采登记管理部门批准的开发利用方案，依法开采铝土矿资源，氧化铝生产企业不得收购无证开采的铝土矿。利用进口铝土矿的氧化铝项目起步规模必须是年生产能力在 60 万吨及以上，必须有长期可靠的境外铝土矿资源作为原料保障，通过合资合作方式取得 5 年以上铝土矿长期合同的原料达到总需求的 60% 以上，并落实交通运输等外部生产条件。

新增生产能力的电解铝项目，必须经过国务院投资主管部门核准。近期只核准环保改造项目及国家规划的淘汰落后生产能力置换项目。改造的电解铝项目，必须有氧化铝原料供应保证，并落实电力供应、交通运输等内外部生产条件。对于确需建设的环保改造项目及国家规划的淘汰落后生产能力置换项目，必须经过国家投资主管部门同意开展前期工作后，方可办理项目用地和环评审批手续。

新建再生铝项目，规模必须在 5 万吨/年以上；现有再生铝企业的生产准入规模为大于 2 万吨/年；改造、扩建再生铝项目，规模必须在 3 万吨/年以上。

新建铝加工项目产品结构必须以板、带、箔或者挤压管、工业型材为主。多品种综合铝加工项目生产能力必须达到 10 万吨/年以上。单一品种铝

加工项目生产能力必须达到：板带材 5 万吨/年、箔材 3 万吨/年、挤压材 5 万吨/年以上。

铝矿山、冶炼、再生利用项目资本金比例要达到 35%及以上。

二、工艺和装备

新建大中型铝土矿山要采用适合矿床开采技术条件的先进采矿方法，尽量采用大型设备，适当提高自动化水平。

氧化铝项目要根据铝土矿资源情况选择采用拜耳法、联合法等生产效率高、工艺先进、能耗低、环保达标、资源综合利用效果好的生产工艺系统。必须有资源综合利用、节能等设施。设计选用余热回收等工艺及设备必须满足国家《节约能源法》、《清洁生产促进法》、《环境保护法》等法律法规的要求。

报请核准的电解铝淘汰落后生产能力置换项目及环保改造项目，必须采用 200KA 及以上大型预焙槽工艺，且新建生产线阳极效应系数要小于 0.08 个/槽日。严禁将已经淘汰的自焙槽重新改造。

禁止湿法工艺生产铝用氟化盐。铝用炭阳极项目必须采用连续混捏技术，禁止建设 10 万吨/年以下的独立铝用炭素项目。

发展循环经济，提高铝再生回收企业的技术和环保水平，按照规模化、环保型的发展模式回收利用再生资源。禁止利用直接燃煤的反射炉再生铝项目和 4 吨以下的其他反射炉再生铝项目，禁止采用坩埚炉熔炼再生铝合金。

新建铝加工项目，必须采用连续铸轧或者热连轧等生产效率和自动化程度高、技术先进、产品质量好、综合成品率高的连续加工工艺，严禁利用“二人转”式轧机生产铝加工材。

按照《国务院关于印发节能减排综合性工作方案的通知》(国发[2007]15号)等文件和《产业结构指导目录(2005 年本)》、《关于加快铝工业结构调整指导意见的通知》等产业政策规定,淘汰落后电解铝生产能力,杜绝已经淘汰的自焙槽电解铝生产能力死灰复燃,力争在“十一五”末期电解铝行业全部采用 160KA 以上大型预焙槽冶炼工艺,立即淘汰坩埚炉熔炼再生铝合金工艺及二人转轧机生产铝加工材工艺。

三、 能源消耗

按照 1 千瓦时电力折 0.1229 千克标准煤的新折标系数,对铝行业能源消耗提出如下准入指标。

铝土矿地下开采原矿综合能耗要低于 25 千克标准煤/吨矿,露天开采原矿综合能耗要低于 13 千克标准煤/吨矿。

新建拜耳法氧化铝生产系统综合能耗必须低于 500 千克标准煤/吨氧化铝,其他工艺氧化铝生产系统综合能耗必须低于 800 千克标准煤/吨氧化铝。现有拜耳法氧化铝生产系统综合能耗必须低于 520 千克标准煤/吨氧化铝,其他工艺氧化铝生产系统综合能耗必须低于 900 千克标准煤/吨氧化铝。

新改造的电解铝生产能力综合交流电耗必须低于 14300 千瓦时/吨铝;电流效率必须高于 94%。现有的电解铝企业综合交流电耗应低于 14450 千瓦时/吨铝;电流效率必须高于 93%。综合交流电耗高于准入水平的不予准入,符合综合交流电耗准入条件的现有企业要通过技术改造节能降耗,在“十一五”末达到新改造企业能耗水平。

新建及现有再生铝合金项目,必须有节能措施,采用先进的工艺和设备,确保符合国家能耗标准。

新建铝加工项目铝加工材综合能耗要低于 350 千克标准煤/吨;综合电耗低于 1150 千瓦时/吨。现有企业铝加工材综合能耗要低于 410 千克标准

煤/吨；综合电耗低于 1250 千瓦时/吨。现有企业要通过技术改造节能降耗，在“十一五”末达到新建企业能耗水平。

四、资源消耗及综合利用

铝土矿采矿损失率地下开采不超过 12%、露天开采不超过 8%；采矿贫化率地下开采不超过 10%、露天开采不超过 8%。禁止建设资源利用率低的铝土矿山及选矿厂。矿山企业应按照上述要求编制矿产资源开发利用方案报国土资源主管部门审批。铝土矿的实际采矿损失率和选矿回收率不得低于批准的矿产资源开发利用方案规定的指标及设计标准。

新建拜耳法氧化铝生产系统氧化铝综合回收率达到 81% 以上，新水消耗低于 8 吨/吨氧化铝，占地面积小于 1 平方米/吨氧化铝。新建其他工艺氧化铝生产系统氧化铝综合回收率达到 90% 以上，新水消耗低于 7 吨/吨氧化铝，占地面积小于 1.2 平方米/吨铝。现有氧化铝企业要通过技术改造降低资源消耗，在“十一五”末达到新建系统标准。

新改造的电解铝生产能力，氧化铝单耗要低于 1920 千克/吨铝，原铝液消耗氟化盐低于 25 千克/吨铝，阳极炭素净耗低于 410 千克/吨铝，新水消耗低于 7 吨/吨铝，占地面积小于 3 平方米/吨铝。现有的电解铝企业，氧化铝单耗要低于 1930 千克/吨铝，原铝液消耗氟化盐低于 30 千克/吨铝，阳极炭素净耗低于 430 千克/吨铝，新水消耗低于 7.5 吨/吨铝。现有企业要通过提高技术水平加强管理降低资源消耗，在“十一五”末达到新建企业标准。

新建加工企业铝加工材金属消耗要低于 1025 千克/吨，其中铝型材金属消耗要低于 1015 千克/吨；铝加工材综合成品率要高于 75%，其中加工材成品率高于 78%、熔铸成品率高于 91%；铝板材加工成品率高于 70%、带材加工成品率高于 77%、箔材加工成品率高于 79%、型材加工成品率高于 88%。现有加工企业铝加工材金属消耗要低于 1035 千克/吨，其中铝型

材金属消耗要低于 1020 千克/吨；铝加工材综合成品率要高于 72%，其中加工材成品率高于 78%，熔铸成品率高于 91%；铝板材加工成品率高于 69%、带材加工成品率高于 75%、箔材加工成品率高于 78%、型材加工成品率高于 87%。现有加工企业要通过技术改造降低金属消耗，在“十一五”末达到新建企业水平。

五、环境保护和土地复垦

严禁矿山企业破坏土地及污染环境。要认真履行环境影响评价文件审批和环保设施“三同时”验收程序。必须严格执行土地复垦规定，坚持“谁破坏、谁复垦”原则，履行土地复垦法定义务。按照国土资源部、发展改革委等七部门《关于加强生产建设项目土地复垦管理工作的通知》(国土资发[2006]225 号)要求，编制土地复垦方案，将土地复垦费列入生产成本并足额预算，依法缴纳土地复垦费并专项用于土地复垦，努力做到“边开发、边复垦”。按照财政部、国土资源部、环保总局《关于逐步建立矿山环境治理和生态恢复责任机制的指导意见》要求，逐步建立环境治理恢复保证金制度，专项用于矿山环境治理和生态恢复。矿山投资项目的环保设计，必须按照国家环保总局的有关规定和《国务院关于投资体制改革的决定》中公布的政府核准投资项目目录要求由有权环保部门组织审查批准。必须按照环保、土地复垦和水土保持要求完成矿区环境恢复和土地复垦利用。铝冶炼、加工企业污染物排放要符合国家《工业炉窑大气污染物排放标准》(GB9078-1996)、《大气污染物综合排放标准》(GB16297-1996)、《污水综合排放标准》(GB8978-1996)、工业固废和危险废物处理处置的有关要求及有关地方标准的规定，必须符合经合法批复的环境影响评价文件规定的控制值和总量指标要求。氧化铝厂要做到废水“零排放”，赤泥的最终处置(包括堆场)应当严格按照环评文件批复的要求执行。防止电解铝冶炼氟化

物、粉尘等有害物质污染以及氧化铝赤泥随意堆放造成的污染。电解铝项目吨铝外排氟化物(包括无组织排放量)要低于 1 千克。严禁将电解铝厂的含氟电解渣添加在煤中燃烧。

铝冶炼项目的原料处理、中间物料破碎、冶炼、浇铸、装卸等所有产生粉尘部位,均要配备除尘及回收处理装置进行处理,并安装经环保总局指定的环境监测仪器检测机构适用性检测合格的自动监控系统进行监测。

新建及现有再生铝项目,废杂铝的回收、处理必须采用先进的工艺和设备,禁止采用露天焚烧的方法去除废铝芯电线电缆的塑料、橡胶皮以及废碎料中的杂质;采用火法对废铝芯电线电缆和废铝碎料进行预处理的,其排放的大气污染物应当满足《危险废物焚烧污染控制标准》(GB18484-2001)中有关要求和有关地方标准的规定。

根据《中华人民共和国环境保护法》等有关法律法规,所有新、改、扩建项目必须严格执行环境影响评价制度,持证排污(尚未实行排污许可证制度的地区除外),达标排放。新建铝土矿山、铝冶炼及加工生产能力,须经过有关部门验收合格后,按照有关规定办理《排污许可证》(尚未实行排污许可证的地区除外)后,企业方可进行生产和销售等经营活动。现有生产企业改扩建的生产能力经省级有关部门验收合格后,也要按照规定办理《排污许可证》等相关手续。环保部门对现有铝冶炼企业执行环保标准情况进行监督检查,定期发布环保不达标生产企业名单,达不到排放标准或超过排污总量的企业,应依法开展强制性清洁生产审核。对达不到排放标准或超过排污总量的企业,由环保部门决定限期治理,治理不合格的,由地方人民政府依法决定给予停产或关闭处理。

六、安全生产与职业危害

矿山、冶炼、加工建设项目必须符合《安全生产法》、《矿山安全法》、《职业病防治法》等法律法规规定，具备相应的安全生产和职业危害防治条件，并建立、健全安全生产责任制和各项规章制度；新、改、扩建项目安全设施和职业危害防治设施必须与主体工程同时设计、同时施工、同时投入生产和使用，铝土矿和氧化铝项目安全设施设计、投入生产和使用前，要依法经过安全生产监督管理部门审查、验收。必须建立职业危害防治设施，配备符合国家有关标准的个人劳动防护用品，配备铝液泄漏、爆炸、火灾、雷击及设备故障、机械伤害、人体坠落、灼烫伤等事故防范设施，以及安全供电、供水装置和消除有毒、有害物质设施，建立健全相关制度，并通过地方行政主管部门组织的专项验收。

矿山企业要依照《安全生产许可证条例》(国务院令 397 号)等有关法规，依法取得安全生产许可证后方可从事生产活动。氧化铝企业赤泥堆场应符合国家有关尾矿库安全管理规定及技术规程。

七、 监督管理

新建和改造铝土矿山、铝冶炼及加工项目必须符合上述准入条件。有关部门办理项目的投资管理、土地供应、环境影响评价和融资等手续必须符合产业政策和准入条件的规定。建设单位必须按照国家环保总局有关分级审批的规定报批环境影响报告书，电解铝和氧化铝项目的环评报告书，必须按照规定向国家环保总局报批。符合产业政策的现有企业要通过技术改造达到新建企业在资源综合利用、能耗、环保等方面的准入条件。

新建或改建铝土矿山、铝冶炼(氧化铝、电解铝、再生铝)及加工项目投产前，要经省级以上投资、国土资源、环保、安全监管、劳动卫生、质检等行政主管部门和有关专家组成的联合检查组监督检查，检查工作要按照准入条件要求进行。经检查认为未达到准入条件的，不允许投产。投资主

管部门应责令建设单位根据设计要求限期完善有关建设内容。对未依法取得土地或者未按规定条件和土地使用合同约定使用土地，未按规定履行土地复垦义务或土地复垦措施不落实的，国土资源管理部门要按照土地管理法规和土地使用合同的约定予以纠正和处罚，责令限期纠正，且不得发放土地使用权证书；依法打击矿山开采中的各种违法行为；对不符合安全、环保要求的，安全监管和环境保护主管部门要根据有关法律、法规进行处罚，并限期整改。

各地区发展改革委、经委(经贸委)、工业办和国土资源、环保、工商、安全监管、劳动卫生等有关管理和执法部门要定期对本地区铝矿山、冶炼和加工企业执行准入条件的情况进行督查。中国有色金属工业协会协助有关部门做好跟踪监督工作。

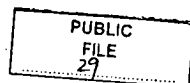
对不符合产业政策和准入条件的铝土矿山、铝冶炼及加工新建和改造项目，投资管理部门不得核准或者备案，国土资源管理部门不得办理建设用地审批手续，环保部门不得批准环境影响评价报告，金融机构不得提供授信，电力部门依法停止供电。依法撤销或责令关闭的企业，要及时到工商行政管理部门依法办理变更登记或注销登记。

国家发展改革委定期公告符合准入条件的铝土矿山、铝冶炼及铝加工生产企业名单。实行社会监督并进行动态管理。

八、 附则

本准入条件适用于中华人民共和国境内(港澳台地区除外)所有类型的铝土矿山、铝冶炼和加工行业生产企业。

本准入条件中涉及的国家标准若进行了修订，则按修订后的新标准执行。



本准入条件自发布之日起实施，由国家发展改革委负责解释，并根据行业发展情况和宏观调控要求进行修订。

Enterprise Income Tax Law of the People's Republic of China

Order of the President of the People's Republic of China(No. 63)

The Enterprise Income Tax Law of the People's Republic of China, which was adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007, is hereby promulgated and shall come into force as of January 1, 2008.

President of the People's Republic of China Hu Jintao

March 16, 2007

Enterprise Income Tax Law of the People's Republic of China

(Adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007)

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Chapter One General Provisions

Article 1 Taxpayers of enterprise income tax shall be enterprises and other

organizations that obtain income within the People's Republic of China (hereinafter referred to as "Enterprises") and shall pay enterprise income tax in accordance with the provisions of this Law. This Law shall not apply to wholly individually-owned enterprises and partnership enterprises.

Article 2 Enterprises are divided into resident enterprises and non-resident enterprises.

For the purposes of this Law, the term "resident enterprises" shall refer to Enterprises that are set up in China in accordance with the law, or that are set up in accordance with the law of the foreign country (region) whose actual administration institution is in China.

For the purposes of this Law, the term "non-resident enterprises" shall refer to Enterprises that are set up in accordance with the law of the foreign country (region) whose actual administration institution is outside China, but they have set up institutions or establishments in China or they have income originating from China without setting up institutions or establishments in China.

Article 3 Resident enterprises shall pay enterprise income tax originating both within and outside China.

Non-resident enterprises that have set up institutions or premises in China shall pay enterprise income tax in relation to the income originating from China obtained by their institutions or establishments, and the income incurred outside China but there is an actual relationship with the institutions or establishments set up by such enterprises.

Where non-resident enterprises that have not set up institutions or establishments in China, or where institutions or establishments are set up but there is no actual relationship with the income obtained by the institutions or establishments set up by such enterprises, they shall pay enterprise income tax in relation to the income originating from China.

Article 4 The rate of enterprise income tax shall be 25%.

Non-resident enterprises that have obtained income in accordance with the provisions of Paragraph Three of Article 3 hereof, the applicable tax rate shall be 20%.

Chapter Two Taxable Income

Article 5 The balance derived from the total income in each taxable year of Enterprises, after deduction of the non-taxable income, tax exempted income, other deductions and the making up of losses of previous years shall be the taxable income.

Article 6 Income obtained by Enterprises from various sources in monetary and non-monetary terms shall be the total income, including

- 1.income from sale of goods;
- 2.income from provision of labour services;
- 3.income from transfer of property;
- 4.income from equity investment such as dividend and bonus;
- 5.interest income;
- 6.rental income;
- 7.income from royalties;
- 8.income from donations; and
- 9.other income.

Article 7 The following income from the total income shall not be taxable

- 1.financial funding;
- 2.administrative fees and government funds obtained and included in financial management in accordance with the law; and
- 3.other non-taxable income prescribed by the State Council.

Article 8 Reasonable expenses that are relevant to the income actually incurred and obtained by Enterprises, including costs, fees, tax payments, losses and other fees may

be deducted from the taxable income.

Article 9 In relation to the expenses from charitable donations incurred by Enterprises, the portion within 12% of the total annual profit may be deducted from the taxable income.

Article 10 The following expenses may not be deducted from the taxable income

1. income from equity investment paid to investors such as dividend and bonus;
2. payment of enterprise income tax;
3. late payment fines;
4. penalties; fines and losses from confiscated property;
5. expenses from donations other than those prescribed in Article 9 hereof;
6. sponsorship fees;
7. expenses for non-verified provisions; and
8. other expenses irrelevant to the income obtained.

Article 11 Where Enterprises compute the taxable income, the depreciation of fixed assets calculated in accordance with provisions may be deducted.

No depreciation may be deducted for the following fixed assets

1. fixed assets other than premises and buildings that have not yet been used;
2. fixed assets leased from other parties by means of business lease;
3. fixed assets leased to other parties by means of lease financing;
4. fixed assets that have been depreciated in full but are still in use;
5. fixed assets that are irrelevant to business activities;
6. land credited as fixed assets after independent price valuation;
7. other fixed assets whose depreciation may not be calculated.

Article 12 In Enterprises compute the taxable income, the amortization of intangible assets calculated in accordance with provisions may be deducted.

The amortization of the following intangible assets may not be deducted

- 1.the fees for self development of intangible assets that have been deducted from the taxable income;
- 2.self-created goodwill;
- 3.intangible assets that are irrelevant to business activities; and
- 4.other intangible assets whose amortization fee may not be calculated.

Article 13 Where Enterprises calculate taxable income, the following expenses incurred by Enterprises as long-term fees to be amortized and that are amortized in accordance with provisions may be deducted

- 1.reconstruction expenses for fixed assets that have been depreciated in full;
- 2.reconstruction expenses for fixed assets leased from other parties;
- 3.heavy repair expenses of fixed assets; and
- 4.other expenses that shall be treated as long-term amortization fees.

Article 14 During the period when Enterprises invest outside the territory, the cost of investment in assets may not be deducted from the taxable income.

Article 15 The inventory used or sold by Enterprises whose cost is calculated in accordance with provisions may be deducted from the taxable income.

Article 16 Where Enterprises transfer assets, the net value thereof may be deducted from the taxable income.

Article 17 Where Enterprises compute the consolidated enterprise income tax, the losses of business institutions outside the territory may not be offset by the profits of business institutions inside the territory.

Article 18 Where there is a loss in a taxable year of Enterprises, it may be brought

forward to the succeeding years and made up by the income of succeeding years, but the limit of bringing forward may not exceed five years.

Article 19 Where non-resident enterprises obtain income provided in Paragraph Three of Article 3 hereof, the taxable income shall be calculated in accordance with the following methods

1. income from equity investment such as dividend and bonus and interest income, rental income and royalties, the total income shall be the taxable income;
2. income from property transfer, the balance derived from the deduction of net asset value from the total income shall be the taxable income;
3. other income whose taxable income shall be calculated with reference to the previous two methods.

Article 20 The income, specific scope and standard of deduction and the specific method of taxation treatment of assets prescribed in this Chapter shall be provided by the departments in charge of finance and taxation under the State Council.

Article 21 In computing the taxable income, where financial and accounting treatment methods of Enterprises are inconsistent with tax laws and administrative regulations, such taxable income shall be computed in accordance with tax laws and administrative regulations.

Chapter Three Payable Tax

Article 22 The taxable income of Enterprises shall be the balance derived from the taxable income of Enterprises multiplies the applicable rate and minus the tax amount of tax reduction and exemption pursuant to the preferential tax treatment hereof.

Article 23 The income tax that has been paid outside the territory for the following income obtained by Enterprises may be offset from the payable tax of the current period. The offset limit is the payable tax calculated in accordance with provisions hereof in respect of the income of such item, the portion in excess of the offset limit may be made up by the balance of the offset amount of the current year out of the

annual offset limit within the next five years

1. The taxable income originating outside China by resident enterprises;
2. The taxable income incurred outside China that is obtained by institutions or establishments of non-resident enterprises set up in China with an actual relationship with such institution or establishment.

Article 24 Where income from equity investment such as dividend and bonus originating outside the territory of China is shared by foreign enterprises directly or indirectly controlled by resident enterprises, the portion undertaken by foreign enterprises in the actual income tax actually paid outside the territory by foreign enterprises may be offset in the offset limit prescribed in Article 23 hereof as the income tax that may be offset outside the territory by such resident enterprises.

Chapter Four Preferential Tax Treatment

Article 25 The industries and projects with key support and under encouraged development by the State may be given preferential enterprise income tax treatment.

Article 26 The following income of Enterprises shall be tax-exempted income

1. income from interests on government bonds;
2. income from equity investment income such as dividend and bonus between qualified resident enterprises;
3. income from equity investment such as dividend and bonus obtained from resident enterprises by non-resident enterprises that have set up institutions or establishments in China with an actual relationship with such institutions or establishments;
4. income of qualified non-profit organizations.

Article 27 The following income may be subject to exempted or reduced enterprise income tax

1. income from engaging in projects of agriculture, forestry, animal husbandry and fisheries by Enterprises;

2.income from investment and operation of infrastructure projects with key state support such as harbour, pier, airport, railway, highway, electricity and hydroelectricity by Enterprises;

3.income from engaging in qualified projects of environmental protection and energy and water conservation;

4.income from qualified transfer of technology by Enterprises; and

5.income prescribed by Paragraph Three of Article 3 hereof.

Article 28 Small-scale Enterprises with minimal profits that are qualified are subject to the applicable enterprise income tax rate with a reduction of 20%.

High and new technology Enterprises that require key state support are subject to the applicable enterprise income tax rate with a reduction of 15%.

Article 29 The autonomous authority of ethnic autonomous locality may decide on the reduction or exemption of the portion of enterprise income tax shared by the locality that shall be paid by Enterprises of the ethnic autonomous locality.

Where an autonomous prefecture or autonomous county decides on the reduction or exemption, they must report to the people's government of province, autonomous region or municipality directly under the central government for approval.

Article 30 Weighted deduction may be computed in taxable income for the following expenses of Enterprises

1.research and development fees incurred by Enterprises in the development of new technology, new products and new skills; and

2.the wages paid by Enterprises for job placement of the disabled and of other personnel encouraged by the State.

Article 31 Venture investment enterprises that engage in venture investment requiring key state support and encouragement may offset the taxable income at a certain ratio of the investment amount.

Article 32 Where the fixed assets of Enterprises actually require accelerated depreciation due to technology advancement, the years of depreciation may be shortened or the accelerated depreciation method may be adopted.

Article 33 The income obtained by Enterprises from the production of products in line with state industrial policies through comprehensive use of resources may be deducted from the taxable income.

Article 34 The investment by Enterprises on procurement of special facilities for environmental protection, energy and water conservation and safe production may be subject to an offset tax amount at a certain ratio.

Article 35 The specific measures of preferential tax treatment prescribed by this Law shall be formulated by the State Council.

Article 36 Where there is a significant impact on the business activities of Enterprises pursuant to the needs of national economy and social development, or due to unexpected public incidents, the State Council may formulate the special preferential policy of enterprise income tax and report to the Standing Committee of the National People's Congress for the record.

Chapter Five Tax Withheld at Source

Article 37 The payable income tax from income obtained by non-resident enterprises in accordance with Paragraph Three of Article 3 hereof shall be subject to tax withheld at source, with the payer as the withholding agent. The tax payment shall be withheld from the amount paid or the payable amount due from each tax payment and payable amount of the withholding agent.

Article 38 In respect of the payable income tax from income obtained by non-resident enterprises from project works and labour services in China, the tax authority may designate the payer of project price or labour fee as withholding agent.

Article 39 In respect of the income tax that shall be withheld in accordance with Articles 37 and 38 hereof, where the withholding agent has not withheld or fails to

perform the withholding obligation in accordance with the law, the taxpayer shall pay in the place where the tax is incurred. Where the taxpayer does not pay in accordance with the law, the tax authority may pursue the payable tax amount of such taxpayer from the amount payable by the payer of other income projects in China of such taxpayer.

Article 40 The withholding agent shall turn the tax payment withheld to the treasury within 7 days from the day of withholding, and submit a statement of withholding enterprise income tax to the tax authority of the place where it is located.

Chapter Six Special Tax Payment Adjustment

Article 41 The business transactions between Enterprises and their affiliates that reduce the taxable income or income of such Enterprises and their affiliates not in compliance with independent transaction principle, the taxation authority has the right to make an adjustment in accordance with reasonable methods.

The cost incurred in joint development and transfer of intangible assets, or joint provision and acceptance of labour services by Enterprises and their affiliates shall be shared under the independent transaction principle in computing the taxable income.

Article 42 Enterprises may report to the tax authority the pricing principle and calculation method of the transactions between their affiliates. Upon negotiation and confirmation with the Enterprises, the tax authority may reach the advance pricing arrangement.

Article 43 Where Enterprises submit to the tax authority the annual enterprise income tax return, they shall enclose a statement of the annual business transactions between affiliates in respect of the business transactions of the Enterprises and their affiliates.

Where the tax authority conducts affiliated business investigation, Enterprises and their affiliates, and other enterprises relevant to the affiliated business investigation shall provide the relevant information in accordance with provisions.

Article 44 Where Enterprises fail to provide the information of business transactions

of affiliates, or provide false and incomplete information that cannot faithfully reflect the actual affiliated business transaction, the tax authority has the right to verify its taxable income.

Article 45 Where Enterprises controlled by resident enterprises or resident enterprises and Chinese residents in the country (region) where the actual tax burden is obviously lower than the tax rate prescribed by Paragraph One of Article 4 hereof, and profits are not distributed or distributed at a reduced rate due to reasons other than reasonable business needs, the portion of the above profits belonged to such resident enterprises shall be included in the income of such resident enterprises of the current period.

Article 46 The interest fee incurred in excess of the prescribed standard obtained by Enterprises from the loan investment and equity investment of their affiliates may not be deducted from the taxable income.

Article 47 Where Enterprises implement other arrangement without reasonable business objectives to reduce the payable income or income, the tax authority has the right to adjust in accordance with reasonable methods.

Article 48 Where tax payment requires to be levied additionally by tax authority in respect of the tax payment adjustment made in accordance with the provisions of this Chapter, such tax payment shall be levied additionally and interest shall be levied in accordance with the provisions of the State Council.

Chapter Seven Administration of Tax Levying and Collection

Article 49 The administration of levy and collection of enterprise income tax shall follow the provisions hereof in addition to the Law of the People's Republic of China on the Administration of Levying and Collection of Tax.

Article 50 Unless otherwise specified by tax laws and administrative regulations, resident enterprises whose place of tax payment is the place of registration of the Enterprise but the place of registration is outside the territory, the place of tax payment shall be the place where the actual administration institution is located.

Where resident enterprises establish business institutions in China without legal person qualification, it shall consolidate the calculation and payment of enterprise income tax.

Article 51 In respect of non-resident enterprises that obtain the income prescribed in Paragraph Two of Article 3 hereof, the place of tax payment shall be the place where the institution or the establishment is located. Non-resident enterprises that set up two or more institutions or establishments in China may, upon the examination and approval of the tax authority, select its main institution or establishment to pay the consolidated enterprise income tax.

Where non-resident enterprises obtain the income prescribed in Paragraph Three of Article 3 hereof, the place of tax payment shall be the place where the withholding agent is located.

Article 52 Enterprises may not pay consolidated enterprise income tax unless otherwise prescribed by the State Council.

Article 53 Enterprise income tax shall be calculated in accordance with the taxable year which starts from 1 January to 31 December of a calendar year.

If an Enterprise commences business or terminates its business activities during the taxable year and the actual business period of such taxable year is less than 12 months, the actual business period shall be treated as a taxable year.

Where the Enterprise is liquidated in accordance with the law, the liquidation period shall be a taxable year.

Article 54 Enterprise income tax shall be prepaid on a monthly or quarterly basis.

Enterprises shall submit a prepaid enterprise income tax return to the tax authority within 15 days of the completion of the month or the quarter to make tax prepayment.

Enterprises shall submit an annual enterprise income tax return to the tax authority within five months of the completion of the year and make the settlement of the payable and refundable tax payment.

Enterprises that submit the enterprise income tax return shall enclose a financial report and other relevant information in accordance with provisions.

Article 55 Where Enterprises terminate business activities in the interim of the year, they shall handle with the tax authority the settlement and payment of enterprise income tax of the current period within 60 days from the actual termination of business.

Enterprises shall, prior to handling registration cancellation, file a return of the income settled and pay enterprise income tax in accordance with the law.

Article 56 Enterprise income tax paid in accordance with this Law shall be calculated in Renminbi. Where the income is calculated in a currency other than Renminbi, it shall be converted into Renminbi for tax payment.

Chapter Eight Supplementary Provisions

Article 57 Enterprises set up with approval prior to the promulgation of this Law that enjoy low preferential tax rate in accordance with the tax laws and administrative regulations at the current period may, pursuant to the provisions of the State Council, gradually transit to the tax rate provided herein within five years of the implementation of this Law. Where such enterprises enjoy regular tax exemption and reduction, the treatment continues to apply until expiry after the implementation of this Law. However, those that fail to be entitled to this treatment by reason of not making any profits, the preferential period shall be calculated from the year this Law is implemented.

High and new technology enterprises that are set up in a specific zone in accordance with the law for the purpose of external economic cooperation and technology exchange and that are newly set up and require key state support in the region of special policy of such region specified by the State Council may eligible for transitional treatment and the specific measures shall be provided by the State Council.

Other enterprises under the encouraged category confirmed by the state may eligible for tax exemption and reduction in accordance with the provisions of the State Council.

Article 58 Where agreements on taxation concluded by the People's Republic of China and foreign governments contain different provisions, such agreements shall prevail.

Article 59 The implementing regulations shall be formulated by the State Council on the basis of this Law.

Article 60 This Law shall come into effect as of 1 January 2008. The Law of the People's Republic of China on the Enterprise Income Tax of Foreign-invested Enterprises and Foreign Enterprises adopted at the 4th session of the 7th National People's Congress on 9 April 1991 and the Tentative Regulations of the People's Republic of China on Enterprise Income Tax promulgated by the State Council on 13 December 1993 shall be repealed simultaneously.

中华人民共和国主席令第 63 号

《中华人民共和国企业所得税法》已由中华人民共和国第十届全国人民代表大会第五次会议于 2007 年 3 月 16 日通过，现予公布，自 2008 年 1 月 1 日起施行。

中华人民共和国主席 胡锦涛

2007 年 3 月 16 日

中华人民共和国企业所得税法

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新企业所得税法 第一章 总则

第一条 在中华人民共和国境内，企业和其他取得收入的组织（以下统称企业）为企业所得税的纳税人，依照本法的规定缴纳企业所得税。

个人独资企业、合伙企业不适用本法。

第二条 企业分为居民企业和非居民企业。

本法所称居民企业，是指依法在中国境内成立，或者依照外国(地区)法律成立但实际管理机构在中国境内的企业。

本法所称非居民企业，是指依照外国(地区)法律成立且实际管理机构不在中国境内，但在中国境内设立机构、场所的，或者在中国境内未设立机构、场所，但有来源于中国境内所得的企业。

第三条 居民企业应当就其来源于中国境内、境外的所得缴纳企业所得税。

非居民企业在中国境内设立机构、场所的，应当就其所设机构、场所取得的来源于中国境内的所得，以及发生在中国境外但与其所设机构、场所有实际联系的所得，缴纳企业所得税。

非居民企业在中国境内未设立机构、场所的，或者虽设立机构、场所但取得的所得与其所设机构、场所没有实际联系的，应当就其来源于中国境内的所得缴纳企业所得税。

第四条 企业所得税的税率为 25%。

非居民企业取得本法第三条第三款规定的所得，适用税率为 20%。

新企业所得税法 第二章 应纳税所得额

第五条 企业每一纳税年度的收入总额，减除不征税收入、免税收入、各项扣除以及允许弥补的以前年度亏损后的余额，为应纳税所得额。

第六条 企业以货币形式和非货币形式从各种来源取得的收入，为收入总额。
包括：

- (一) 销售货物收入；
- (二) 提供劳务收入；
- (三) 转让财产收入；

(四) 股息、红利等权益性投资收益；

(五) 利息收入；

(六) 租金收入；

(七) 特许权使用费收入；

(八) 接受捐赠收入；

(九) 其他收入。

第七条 收入总额中的下列收入为不征税收入：

(一) 财政拨款；

(二) 依法收取并纳入财政管理的行政事业性收费、政府性基金；

(三) 国务院规定的其他不征税收入。

第八条 企业实际发生的与取得收入有关的、合理的支出，包括成本、费用、税金、损失和其他支出，准予在计算应纳税所得额时扣除。

第九条 企业发生的公益性捐赠支出，在年度利润总额 12% 以内的部分，准予在计算应纳税所得额时扣除。

第十条 在计算应纳税所得额时，下列支出不得扣除：

(一) 向投资者支付的股息、红利等权益性投资收益款项；

(二) 企业所得税税款；

(三) 税收滞纳金；

(四) 罚金、罚款和被没收财物的损失；

(五) 本法第九条规定以外的捐赠支出；

(六) 赞助支出；

(七) 未经核定的准备金支出；

(八)与取得收入无关的其他支出。

第十一条 在计算应纳税所得额时,企业按照规定计算的固定资产折旧,准予扣除。

下列固定资产不得计算折旧扣除:

- (一)房屋、建筑物以外未投入使用的固定资产;
- (二)以经营租赁方式租入的固定资产;
- (三)以融资租赁方式租出的固定资产;
- (四)已足额提取折旧仍继续使用的固定资产;
- (五)与经营活动无关的固定资产;
- (六)单独估价作为固定资产入账的土地;
- (七)其他不得计算折旧扣除的固定资产。

第十二条 在计算应纳税所得额时,企业按照规定计算的无形资产摊销费用,准予扣除。

下列无形资产不得计算摊销费用扣除:

- (一)自行开发的支出已在计算应纳税所得额时扣除的无形资产;
- (二)自创商誉;
- (三)与经营活动无关的无形资产;
- (四)其他不得计算摊销费用扣除的无形资产。

第十三条 在计算应纳税所得额时,企业发生的下列支出作为长期待摊费用,按照规定摊销的,准予扣除:

- (一)已足额提取折旧的固定资产的改建支出;
- (二)租入固定资产的改建支出;

(三) 固定资产的大修理支出；

(四) 其他应当作为长期待摊费用的支出。

第十四条 企业对外投资期间，投资资产的成本在计算应纳税所得额时不得扣除。

第十五条 企业使用或者销售存货，按照规定计算的存货成本，准予在计算应纳税所得额时扣除。

第十六条 企业转让资产，该项资产的净值，准予在计算应纳税所得额时扣除。

第十七条 企业在汇总计算缴纳企业所得税时，其境外营业机构的亏损不得抵减境内营业机构的盈利。

第十八条 企业纳税年度发生的亏损，准予向以后年度结转，用以后年度的所得弥补，但结转年限最长不得超过五年。

第十九条 非居民企业取得本法第三条第三款规定的所得，按照下列方法计算其应纳税所得额：

(一) 股息、红利等权益性投资收益和利息、租金、特许权使用费所得，以收入全额为应纳税所得额；

(二) 转让财产所得，以收入全额减除财产净值后的余额为应纳税所得额；

(三) 其他所得，参照前两项规定的方法计算应纳税所得额。

第二十条 本章规定的收入、扣除的具体范围、标准和资产的税务处理的具体办法，由国务院财政、税务主管部门规定。

第二十一条 在计算应纳税所得额时，企业财务、会计处理办法与税收法律、行政法规的规定不一致的，应当依照税收法律、行政法规的规定计算。

新企业所得税法 第三章 应纳税额

第二十二条 企业的应纳税所得额乘以适用税率，减去依照本法关于税收优惠的规定减免和抵免的税额后的余额，为应纳税额。

第二十三条 企业取得的下列所得已在境外缴纳的所得税税额，可以从其当期应纳税额中抵免，抵免限额为该项所得依照本法规定计算的应纳税额；超过抵免限额的部分，可以在以后五个年度内，用每年度抵免限额抵免当年应抵税额后的余额进行抵补：

(一) 居民企业来源于中国境外的应税所得；

(二) 非居民企业在中国境内设立机构、场所，取得发生在中国境外但与该机构、场所有实际联系的应税所得。

第二十四条 居民企业从其直接或者间接控制的外国企业分得的来源于中国境外的股息、红利等权益性投资收益，外国企业在境外实际缴纳的所得税税额中属于该项所得负担的部分，可以作为该居民企业的可抵免境外所得税税额，在本法第二十三条规定的抵免限额内抵免。

新企业所得税法 第四章 税收优惠

第二十五条 国家对重点扶持和鼓励发展的产业和项目，给予企业所得税优惠。

第二十六条 企业的下列收入为免税收入：

(一) 国债利息收入；

(二) 符合条件的居民企业之间的股息、红利等权益性投资收益；

(三) 在中国境内设立机构、场所的非居民企业从居民企业取得与该机构、

场所有实际联系的股息、红利等权益性投资收益；

(四) 符合条件的非营利组织的收入。

第二十七条 企业的下列所得，可以免征、减征企业所得税：

- (一) 从事农、林、牧、渔业项目的所得；
- (二) 从事国家重点扶持的公共基础设施项目投资经营的所得；
- (三) 从事符合条件的环境保护、节能节水项目的所得；
- (四) 符合条件的技术转让所得；
- (五) 本法第三条第三款规定的所得。

第二十八条 符合条件的小型微利企业，减按 20% 的税率征收企业所得税。

国家需要重点扶持的高新技术企业，减按 15% 的税率征收企业所得税。

第二十九条 民族自治地方的自治机关对本民族自治地方的企业应缴纳的企业所得税中属于地方分享的部分，可以决定减征或者免征。自治州、自治县决定减征或者免征的，须报省、自治区、直辖市人民政府批准。

第三十条 企业的下列支出，可以在计算应纳税所得额时加计扣除：

- (一) 开发新技术、新产品、新工艺发生的研究开发费用；
- (二) 安置残疾人员及国家鼓励安置的其他就业人员所支付的工资。

第三十一条 创业投资企业从事国家需要重点扶持和鼓励的创业投资，可以按投资额的一定比例抵扣应纳税所得额。

第三十二条 企业的固定资产由于技术进步等原因，确需加速折旧的，可以缩短折旧年限或者采取加速折旧的方法。

第三十三条 企业综合利用资源，生产符合国家产业政策规定的产品所取得的收入，可以在计算应纳税所得额时减计收入。

第三十四条 企业购置用于环境保护、节能节水、安全生产等专用设备的投资额，可以按一定比例实行税额抵免。

第三十五条 本法规定的税收优惠的具体办法，由国务院规定。

第三十六条 根据国民经济和社会发展的需要，或者由于突发事件等原因对企业经营活动产生重大影响的，国务院可以制定企业所得税专项优惠政策，报全国人民代表大会常务委员会备案。

新企业所得税法 第五章 源泉扣缴

第三十七条 对非居民企业取得本法第三条第三款规定的所得应缴纳的所得税，实行源泉扣缴，以支付人为扣缴义务人。税款由扣缴义务人在每次支付或者到期应支付时，从支付或者到期应支付的款项中扣缴。

第三十八条 对非居民企业在中国境内取得工程作业和劳务所得应缴纳的所得税，税务机关可以指定工程价款或者劳务费的支付人为扣缴义务人。

第三十九条 依照本法第三十七条、第三十八条规定应当扣缴的所得税，扣缴义务人未依法扣缴或者无法履行扣缴义务的，由纳税人在所得发生地缴纳。纳税人未依法缴纳的，税务机关可以从该纳税人在中国境内其他收入项目的支付人应付的款项中，追缴该纳税人的应纳税款。

第四十条 扣缴义务人每次代扣的税款，应当自代扣之日起七日内缴入国库，并向所在地的税务机关报送扣缴企业所得税报告表。

新企业所得税法 第六章 特别纳税调整

第四十一条 企业与其关联方之间的业务往来，不符合独立交易原则而减少企业或者其关联方应纳税收入或者所得额的，税务机关有权按照合理方法调整。

企业与其关联方共同开发、受让无形资产，或者共同提供、接受劳务发生的成本，在计算应纳税所得额时应当按照独立交易原则进行分摊。

第四十二条 企业可以向税务机关提出与其关联方之间业务往来的定价原则和计算方法，税务机关与企业协商、确认后，达成预约定价安排。

第四十三条 企业向税务机关报送年度企业所得税纳税申报表时，应当就其与关联方之间的业务往来，附送年度关联业务往来报告表。

税务机关在进行关联业务调查时，企业及其关联方，以及与关联业务调查有关的其他企业，应当按照规定提供相关资料。

第四十四条 企业不提供与其关联方之间业务往来资料，或者提供虚假、不完整资料，未能真实反映其关联业务往来情况的，税务机关有权依法核定其应纳税所得额。

第四十五条 由居民企业，或者由居民企业和中国居民控制的设立在实际税负明显低于本法第四条第一款规定税率水平的国家（地区）的企业，并非由于合理的经营需要而对利润不作分配或者减少分配的，上述利润中应归属于该居民企业的部分，应当计入该居民企业的当期收入。

第四十六条 企业从其关联方接受的债权性投资与权益性投资的比例超过规定标准而发生的利息支出，不得在计算应纳税所得额时扣除。

第四十七条 企业实施其他不具有合理商业目的的安排而减少其应纳税收入或者所得额的，税务机关有权按照合理方法调整。

第四十八条 税务机关依照本章规定作出纳税调整，需要补征税款的，应当补征税款，并按照国务院规定加收利息。

新企业所得税法 第七章 征收管理

第四十九条 企业所得税的征收管理除本法规定外，依照《中华人民共和国税收征收管理法》的规定执行。

第五十条 除税收法律、行政法规另有规定外，居民企业以企业登记注册地为纳税地点；但登记注册地在境外的，以实际管理机构所在地为纳税地点。

居民企业在中国境内设立不具有法人资格的营业机构的，应当汇总计算并缴纳企业所得税。

第五十一条 非居民企业取得本法第三条第二款规定的所得，以机构、场所所在地为纳税地点。非居民企业在中国境内设立两个或者两个以上机构、场所的，经税务机关审核批准，可以选择由其**机构、场所汇总缴纳企业所得税。

非居民企业取得本法第三条第三款规定的所得，以扣缴义务人所在地为纳税地点。

第五十二条 除国务院另有规定外，企业之间不得合并缴纳企业所得税。

第五十三条 企业所得税按纳税年度计算。纳税年度自公历1月1日起至12月31日止。

企业在一个纳税年度中间开业，或者终止经营活动，使该纳税年度的实际经营期不足十二个月的，应当以其实际经营期为一个纳税年度。

企业依法清算时，应当以清算期间作为一个纳税年度。

第五十四条 企业所得税分月或者分季预缴。

企业应当自月份或者季度终了之日起十五日内，向税务机关报送预缴企业所得税纳税申报表，预缴税款。

企业应当自年度终了之日起五个月内，向税务机关报送年度企业所得税纳税申报表，并汇算清缴，结清应缴应退税款。

企业在报送企业所得税纳税申报表时,应当按照规定附送财务会计报告和其他有关资料。

第五十五条 企业在年度中间终止经营活动的,应当自实际经营终止之日起六十日内,向税务机关办理当期企业所得税汇算清缴。

企业应当在办理注销登记前,就其清算所得向税务机关申报并依法缴纳企业所得税。

第五十六条 依照本法缴纳的企业所得税,以人民币计算。所得以人民币以外的货币计算的,应当折合成人民币计算并缴纳税款。

新企业所得税法 第八章 附则

第五十七条 本法公布前已经批准设立的企业,依照当时的税收法律、行政法规规定,享受低税率优惠的,按照国务院规定,可以在本法施行后五年内,逐步过渡到本法规定的税率;享受定期减免税优惠的,按照国务院规定,可以在本法施行后继续享受到期满为止,但因未获利而尚未享受优惠的,优惠期限从本法施行年度起计算。

法律设置的发展对外经济合作和技术交流的特定地区内,以及国务院已规定执行上述地区特殊政策的地区内新设立的国家需要重点扶持的高新技术企业,可以享受过渡性税收优惠,具体办法由国务院规定。

国家已确定的其他鼓励类企业,可以按照国务院规定享受减免税优惠。

第五十八条 中华人民共和国政府同外国政府订立的有关税收的协定与本法有不同规定的,依照协定的规定办理。

第五十九条 国务院根据本法制定实施条例。

第六十条 本法自2008年1月1日起施行。1991年4月9日第七届全国人

民代表大会第四次会议通过的《中华人民共和国外商投资企业和外国企业所得税法》和 1993 年 12 月 13 日国务院发布的《中华人民共和国企业所得税暂行条例》同时废止。

Attachment 3 - List of Various National Zones

Part1: National Economic and Technological Development Zone (ETDZ)	
Province	Zones
Hebei	Langfang ETDZ
	Cangzhou Lingang ETDZ
Zhejiang	Ningbo ETDZ
	Ningbo Daxie ETDZ
	Wenzhou ETDZ
	Xiaoshan ETDZ
	Hangzhou ETDZ
	Jiaxing ETDZ
	Huzhou ETDZ
	Changxing ETDZ
	Shaoxing Paojiang ETDZ
	Jinhua ETDZ
	Ningbo Shihua ETDZ
	Jiashan ETDZ
	Quzhou ETDZ
Guangdong	Guangzhou ETDZ
	Zhanjiang ETDZ
	Guangzhou Nansha ETDZ
	Huizhou Dayawan ETDZ
	Zengcheng ETDZ
Hubei	Wuhan ETDZ
	Xiangyang ETDZ
	Huangshi ETDZ
	Jingzhou ETDZ
	WUhan Wujiashan ETDZ
Part2: National Hi-tech Zones List	
Hebei	Shijiazhuang Hi-tech Zone
	Tangshan Hi-tech Zone
	Yanjiao Hi-tech Zone
Zhejiang	Hangzhou Hi-tech Zone
	Ningbo Hi-tech Zone
Guangdong	Zhongshan Torch Hi-tech Zone
	Guangzhou Hi-tech Zone
	Shenzhen Hi-tech Zone
	Foshan Hi-tech Zone
	Huizhou Hi-tech Zone
	Zhuhai Hi-tech Zone
	Songshan Hugao Hi-tech Zone
	Jiangmen Hi-tech Zone
	Zhaoqing Hi-tech Zone
Hubei	Wuhan Donghu Hi-tech Zone
	Xiangfan Hi-tech Zone

	Yichang Hi-tech Zone
Part3: National Bonded Zone List	
Zhejiang	Ningbo Bonded Zone
Guangdong	Shantou Bonded Zone
	Guangzhou Bonded Zone
	Zhuhai Bonded Zone
	Shenzhen Bonded Zone
Part4: Export Processing Zone (EPZ) List	
Hebei	Qinghuangdao EPZ
Zhejiang	Hangzhou EPZ
	Ningbo EPZ
	Jiaxing EPZ
	Cixi EPZ
Guangdong	Guangzhou EPZ
	Shenzhen EPZ
	Nansha EPZ
	Huizhou EPZ
Hubei	Wuhan EPZ
Part5: List of Other Zones	
Zhejiang	Hangzhou Zhijiang National Holiday Resort
	Ningbo Bonded Logistics Park
	Ningbo Meishan Bonded Port Zone
Guangdong	Guangdong Nanhu National Holiday Resort
	Shenzhen Yantian Bonded Logistics Park
	Zhuao Cross-Border Industry Park
	Shenzhen Qianhaiwan Bonded Port Zone
	Guangzhou Nansha Bonded Port Zone