ATTACHMENT 69

Public
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Law of the People's Republic of China against unfair Competition (Adopted at the Third Meeting of the Standing Committee of the Eighth National People's Congress on September 2, 1993, Promulgated by Order No. 10 of the President of the People's Republic of China, and effective as of December 1, 1993)

Chapter I - General Provisions

Article 1

This Law is formulated with a view to safeguarding the healthy development of socialist market economy, encouraging and protecting fair competition, repressing unfair competition acts, and protecting the lawful rights and interests of business operators and consumers.

Article 2

A business operator shall, in his market transactions, follow the principles of voluntariness,* equality, fairness, honesty and credibility and observe the generally recognized business ethics.

Unfair competition as mentioned in this Law refers to a business operators acts violating the provisions of this Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order.

A business operator as mentioned in this Law refers to a legal person or any other economic organization or individual engaged in commodities marketing or profit-making services commodities referred to hereinafter includes such services).

Article 3

People's governments at various levels shall take measures to repress unfair competition acts and create favorable environment and conditions for fair competition.

Administrative departments for industry and commerce of the people's governments at or above the county level shall exercise supervision over and inspection of unfair competition acts; where laws or administrative rules and regulations provide that other departments shall exercise the supervision and inspection, those provisions shall apply.

Article 4

The State shall encourage, support and protect all organizations and individuals in the exercise of social supervision over unfair competition acts.

No State functionary may support or cover up unfair competition acts.

Chapter II - Acts of Unfair Competition

Article 5

A business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means:

(1) counterfeiting a registered trademark of another person;

(2) using for a commodity without authorization a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter;

(3) using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person; or

(4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.

Article 6

A public utility enterprise or any other business operator occupying monopoly status according to law shall not restrict people to purchasing commodities from the business operators designated by him, thereby precluding other business operators from fair competition.

Article 7

Governments and their subordinate departments shall not abuse administrative powers to restrict people to purchasing commodities from the business operators designated by them and impose limitations on the rightful operation activities of other business operators.

Governments and their subordinate departments shall not abuse administrative powers to restrict commodities originated in other places from entering the local markets or the local commodities from flowing into markets

of other places.

Article 8

A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or purchasing commodities. A business operator who offers off-the-book rebate in secret to the other party, a unit or an individual, shall be deemed and punished as offering bribes; and any unit or individual that accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.

A business operator may, in selling or purchasing commodities, expressly allow a discount to the other party and pay a commission to the middleman. The business operator who gives discount to the other party and pays commission to the middleman must truthfully enter them in the account. The business operator who accepts the discount or the commission must also truthfully enter it in the account.

Article 9

A business operator may not, by advertisement or any other means, make false or misleading publicity of their commodities as to their quality, ingredients, functions, usage, producers, duration of validity or origin.

An advertisement agent may not act as agent for, or design, produce or release, a false advertisement while he clearly knows or ought to know its falsehood.

Article 10

A business operator shall not use any of the following means to infringe upon business secrets:

(1) obtaining an obligees business secrets by stealing, luring, intimidation or any other unfair means;

(2) disclosing, using or allowing another person to use the business secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) in violation of the agreement or against the obligees demand for keeping business secrets, disclosing, using or allowing another person to use the business secrets he possesses.

Obtaining, using or disclosing another's business secrets by a third party who clearly knows or ought to know that the case falls under the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon business secrets.

?/FONT>Business secrets as mentioned in this Article refers to any technology information or business operation information which is unknown to the public, can bring about economic benefits to the obligee, has practical utility and about which the obligee has adopted secret-keeping measures.

Article 11

A business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs.

Any of the following shall not be deemed as an unfair competition act:

(1) selling perishables or live commodities;

(2) disposing of commodities near expiration of their validity duration or those kept too long in stock;

(3) seasonal sales; or

(4) selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation.

Article 12

A business operator may not, against the will of purchasers, conduct tie-in sale of commodities or attach any other unreasonable conditions to the sale of their commodities.

Article 13

A business operator shall not engage in any of the following lottery-attached sale activities:

(1) lottery-attached sale conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize;

(2) lottery-attached sale employed as a means to sell goods of low quality at a high price; or

(3) lottery-attached sale in form of lottery-drawing with the highest prize exceeding 5 000 yuan.

Article 14

A business operator shall not fabricate or spread false information to injure his competitors commercial credit or the reputation of his competitors commodities.

Article 15

Bidders shall not act in collusion with each other so as to force up or down the bidding prices.

Bidders and tender-inviters* shall not collude with each other so as to push out their competitors from fair competition.

Chapter III - Supervision and Inspection

Article 16

Supervision and inspection departments at or above the county level may carry out supervision over and inspection of unfair competition acts.

Article 17

Supervision and inspection departments shall, in supervising and inspecting unfair competition acts, have the right to exercise the following functions and powers:

(1) to interrogate the business operators under inspection, interested persons, or witnesses in accordance with the prescribed procedures, and require them to provide testimonial materials or other materials relating to the unfair competition acts;

(2) to inquire about and duplicate the agreements, account books, invoices, documents, records, business letters and telegrams or other materials relating to the unfair competition acts; and

(3) to inspect the property involved in the unfair competition acts under Article 5 of this Law; and, when necessary, to order the business operators under inspection to explain the source and quantity of the commodities, suspend the sale and await the inspection thereof, and the property involved shall not be transferred, concealed or destroyed.

Article 18

Functionaries of supervision and inspection departments shall, when supervising and inspecting unfair competition acts, produce their inspection certificates.

Article 19

Business operators under inspection, interested persons and witnesses shall truthfully provide relevant materials or particulars when the supervision and inspection departments supervise and inspect unfair competition acts.

Chapter IV - Legal Responsibility

Article 20

A business operator who violates the provisions of this Law and thus causes damage to the infringed business operators, shall bear the liability of compensation for the damage. If the losses of the infringed business operator are difficult to estimate, the damages shall be the profits derived from the infringement by the infringer* during the period of infringement. And the infringer shall also bear the reasonable expense paid by the infringed business operator for investigating the infringers unfair competition acts violating his lawful rights and interests.

A business operator whose lawful rights and interests are infringed upon by unfair competition acts may bring a suit in a peoples court.

Article 21

A business operator who counterfeits another's registered trademark, uses without authorization the name of another enterprise or person, forges or counterfeits authentication marks, famous-and-excellent-product marks or other product quality marks, forges origin of the products or makes false and misleading indications regarding the product quality shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Law of the People's Republic of China on Product Quality.

In case a business operator uses for a commodity without authorization the name, package or decoration of a famous commodity or the name, package or decoration similar to that of a famous commodity and thereby confuses the commodity with another's famous commodity and leads the purchasers to mistake the former for the latter, the supervision and inspection department shall order the business operator to stop the illegal act and confiscate the illegal earnings and may, in light of the circumstances, impose a fine of not less than one time but not more than three times the illegal earnings; if the circumstances are serious, his business license may be revoked; and if the commodities sold are fake and inferior, and the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 22

A business operator, who resorts to bribery by offering money or goods or by any other means in selling or purchasing commodities and if the case constitutes a crime, shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances and confiscate the illegal earnings,

if any.

Article 23

In case a public utility enterprise or any other business operator occupying monopoly status according to law restricts people to purchasing commodities from a designated business operator in order to push out other business operators from fair competition, the supervision and inspection departments at the provincial level or of cities divided into districts shall order the ceasing of the illegal acts and may impose a fine of not less than 50 000 yuan but not more than 200 000 yuan in light of the circumstances. If such designated business operator takes advantage of his monopoly status to sell goods of low quality at high prices or indiscriminately collects fees, the inspection and supervision department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 24

In case a business operator makes false and misleading publicity of his commodities by advertisement or any other means, the supervision and inspection department shall order the said business operator to stop his illegal acts and eliminate the bad effects, and may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances.

In case an advertisement agent acts as agent for, or designs, produces or releases, a false advertisement though the agent clearly knows or ought to know the falsehood, the supervision and inspection department shall order the ceasing of the illegal acts, confiscate the illegal earnings, and impose a fine according to law.

Article 25

In case a business operator violates the provisions of Article 10 of this Law and infringes upon trade secrets, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances.

Article 26

In case a business operator engages in lottery-attached sale in violation of the provisions of Article 13 of this Law, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10 000 yuan but not more than 100 000 yuan in light of the circumstances.

Article 27

Where bidders act in collusion with each other to force up or down the bidding price, or a bidder colludes with a tender-inviter* for the purpose of pushing out their competitors, the successful bid shall be invalid, and the supervision and inspection department may impose a fine of not less than 10 000 yuan but not more than 200 000 yuan in light of the circumstances.

Article 28

In case a business operator acts in violation of the order of stopping the sale or forbidding the transfer, concealment or destruction of the property involved in the unfair competition acts, the supervision and inspection department may impose a fine of not less than one time but not more than three times the price of the property sold, transferred, concealed or destroyed.

Article 29

In case a party is not satisfied with the punishment decision made by the supervision and inspection department, it may apply for reconsideration to the competent department at the next higher level within 15 days from receipt of the decision; and if the party is still not satisfied with the reconsideration decision, it may bring a suit in a people's court within 15 days from receipt of the decision; and the party may also directly file a suit in a people's court.

Article 30

Where a government or its subordinate departments, in violation of the provisions of Article 7

of this Law, restrict people to purchasing commodities from a designated business operator or impose limits on other business operator's rightful operation activities or the normal circulation of commodities between different areas, the supervision and inspection department at higher levels shall order them to make corrections; and if the circumstances are serious, the persons held directly responsible shall be given administrative sanctions by the relevant department at the same or higher levels; if the designated business operator takes advantage of his status to sell goods of low quality at high prices or indiscriminately collects fees, the supervision and inspection department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 31

Where a State functionary engaged in supervision over and inspection of unfair competition acts abuses his power or neglects his duty, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, he shall be given an administrative sanction.

Article 32

Where a State functionary engaged in supervision over and inspection of unfair competition acts practices favoritism or irregularities and intentionally harbors a business operator whom he clearly knows to be guilty of a crime committed by violating the provisions of this Law and attempts to shield him from prosecution, he shall be investigated for criminal responsibility according to law.

Chapter V - Supplementary Provisions

Article 33

This Law shall enter into force as of December 1, 1993.

Endnotes

中华人民共和国反不正当竞争法

（1993年9月2日第八届全国人民代表大会常务委员会第三次会议通过　1993年9月2日中华人民共和国主席令第十号公布　自1993年12月1日起施行）

第一章　总　则

第二章　不正当竞争行为

第三章　监督检查

第四章　法律责任

第五章　附　则

第一章　总　则

第一条　为保障社会主义市场经济健康发展，鼓励和保护公平竞争，制止不正当竞争行为，保护经营者和消费者的合法权益，制定本法。

第二条　经营者在市场交易中，应当遵循自愿、平等、公平、诚实信用的原则，遵守公认的商业道德。

本法所称的不正当竞争，是指经营者违反本法规定，损害其他经营者的合法权益，扰乱社会经济秩序的行为。

本法所称的经营者，是指从事商品经营或者营利性服务（以下所称商品包括服务）的法人、其他经济组织和个人。

第三条　各级人民政府应当采取措施，制止不正当竞争行为，为公平竞争创造良好的环境和条件。

县级以上人民政府工商行政管理部门对不正当竞争行为进行监督检查；法律、行政法规规定由其他部门监督检查的，依照其规定。

第四条 国家鼓励、支持和保护一切组织和个人对不正当竞争行为进行社会监督。

国家机关工作人员不得支持、包庇不正当竞争行为。

第二章 不正当竞争行为

第五条 经营者不得采用下列不正当手段从事市场交易，损害竞争对手：

（一）假冒他人的注册商标；

（二）擅自使用知名商品特有的名称、包装、装潢，或者使用与知名商品近似的名称、包装、装潢，造成和他人的知名商品相混淆，使购买者误认为是该知名商品；

（三）擅自使用他人的企业名称或者姓名，引人误认为是他人的商品；

（四）在商品上伪造或者冒用认证标志、名优标志等质量标志，伪造产地，对商品质量作引人误解的虚假表示。

第六条 公用企业或者其他依法具有独占地位的经营者，不得限定他人购买其指定的经营者的商品，以排挤其他经营者的公平竞争。

第七条 政府及其所属部门不得滥用行政权力，限定他人购买其指定的经营者的商品，限制其他经营者正当的经营活动。

政府及其所属部门不得滥用行政权力，限制外地商品进入本地市场，或者本地商品流向外地市场。

第八条 经营者不得采用财物或者其他手段进行贿赂以销售或者购买商品。在帐外暗中给予对方单位或者个人回扣的，以行贿论处；对方单位或者个人在帐外暗中收受回扣的，以受贿论处。

经营者销售或者购买商品，可以以明示方式给对方折扣，可以给中间人佣金。经营者给对方折扣、给中间人佣金的，必须如实入帐。接受折扣、佣金的经营者必须如实入帐。

第九条 经营者不得利用广告或者其他方法，对商品的质量、制作成分、性能、用途、生产者、有效期限、产地等作引人误解的虚假宣传。

广告的经营者不得在明知或者应知的情况下，代理、设计、制作、发布虚假广告。

第十条 经营者不得采用下列手段侵犯商业秘密：

（一）以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密；

（二）披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密；

（三）违反约定或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密。

第三人明知或者应知前款所列违法行为，获取、使用或者披露他人的商业秘密，视为侵犯商业秘密。

本条所称的商业秘密，是指不为公众所知悉、能为权利人带来经济利益、具有实用性并经权利人采取保密措施的技术信息和经营信息。

第十一条 经营者不得以排挤竞争对手为目的，以低于成本的价格销售商品。

有下列情形之一的，不属于不正当竞争行为：

（一）销售鲜活商品；

（二）处理有效期限即将到期的商品或者其他积压的商品；

（三）季节性降价；

（四）因清偿债务、转产、歇业降价销售商品。

第十二条 经营者销售商品，不得违背购买者的意愿搭售商品或者附加其他不合理的条件。

第十三条 经营者不得从事下列有奖销售：

（一）采用谎称有奖或者故意让内定人员中奖的欺骗方式进行有奖销售；

（二）利用有奖销售的手段推销质次价高的商品；

（三）抽奖式的有奖销售，最高奖的金额超过五千元。

第十四条 经营者不得捏造、散布虚伪事实，损害竞争对手的商业信誉、商品声誉。

第十五条 投标者不得串通投标，抬高标价或者压低标价。

投标者和招标者不得相互勾结，以排挤竞争对手的公平竞争。

第三章　监督检查

第十六条　县级以上监督检查部门对不正当竞争行为，可以进行监督检查。

第十七条　监督检查部门在监督检查不正当竞争行为时，有权行使下列职权：

（一）按照规定程序询问被检查的经营者、利害关系人、证明人，并要求提供证明材料或者与不正当竞争行为有关的其他资料；

（二）查询、复制与不正当竞争行为有关的协议、帐册、单据、文件、记录、业务函电和其他资料；

（三）检查与本法第五条规定的不正当竞争行为有关的财物，必要时可以责令被检查的经营者说明该商品的来源和数量，暂停销售，听候检查，不得转移、隐匿、销毁该财物。

第十八条　监督检查部门工作人员监督检查不正当竞争行为时，应当出示检查证件。

第十九条　监督检查部门在监督检查不正当竞争行为时，被检查的经营者、利害关系人和证明人应当如实提供有关资料或者情况。

第四章　法律责任

第二十条　经营者违反本法规定，给被侵害的经营者造成损害的，应当承担损害赔偿责任，被侵害的经营者的损失难以计算的，赔偿额为侵权人在侵权期间因侵权所获得的利润；并应当承担被侵害的经营者因调查该经营者侵害其合法权益的不正当竞争行为所支付的合理费用。

被侵害的经营者的合法权益受到不正当竞争行为损害的，可以向人民法院提起诉讼。

第二十一条　经营者假冒他人的注册商标，擅自使用他人的企业名称或者姓名，伪造或者冒用认证标志、名优标志等质量标志，伪造产地，对商品质量作引人误解的虚假表示的，依照《中华人民共和国商标法》、《中华人民共和国产品质量法》的规定处罚。

经营者擅自使用知名商品特有的名称、包装、装潢，或者使用与知名商品近似的名称、包装、装潢，造成和他人的知名商品相混淆，使购买者误认为是该知名商品的，监督检查部

门应当责令停止违法行为，没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款；情节严重的，可以吊销营业执照；销售伪劣商品，构成犯罪的，依法追究刑事责任。

第二十二条 经营者采用财物或者其他手段进行贿赂以销售或者购买商品，构成犯罪的，依法追究刑事责任；不构成犯罪的，监督检查部门可以根据情节处以一万元以上二十万元以下的罚款，有违法所得的，予以没收。

第二十三条 公用企业或者其他依法具有独占地位的经营者，限定他人购买其指定的经营者的商品，以排挤其他经营者的公平竞争的，省级或者设区的市的监督检查部门应当责令停止违法行为，可以根据情节处以五万元以上二十万元以下的罚款。被指定的经营者借此销售质次价高商品或者滥收费用的，监督检查部门应当没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款。

第二十四条 经营者利用广告或者其他方法，对商品作引人误解的虚假宣传的，监督检查部门应当责令停止违法行为，消除影响，可以根据情节处以一万元以上二十万元以下的罚款。

广告的经营者，在明知或者应知的情况下，代理、设计、制作、发布虚假广告的，监督检查部门应当责令停止违法行为，没收违法所得，并依法处以罚款。

第二十五条 违反本法第十条规定侵犯商业秘密的，监督检查部门应当责令停止违法行为，可以根据情节处以一万元以上二十万元以下的罚款。

第二十六条 经营者违反本法第十三条规定进行有奖销售的，监督检查部门应当责令停止违法行为，可以根据情节处以一万元以上十万元以下的罚款。

第二十七条 投标者串通投标，抬高标价或者压低标价；投标者和招标者相互勾结，以排挤竞争对手的公平竞争的，其中标无效。监督检查部门可以根据情节处以一万元以上二十万元以下的罚款。

第二十八条 经营者有违反被责令暂停销售，不得转移、隐匿、销毁与不正当竞争行为有关的财物的行为的，监督检查部门可以根据情节处以被销售、转移、隐匿、销毁财物的价款的一倍以上三倍以下的罚款。

第二十九条 当事人对监督检查部门作出的处罚决定不服的，可以自收到处罚决定之日起十五日内向上一级主管机关申请复议；对复议决定不服的，可以自收到复议决定书之日起十五日内向人民法院提起诉讼；也可以直接向人民法院提起诉讼。

第三十条 政府及其所属部门违反本法第七条规定，限定他人购买其指定的经营者的商品、限制其他经营者正当的经营活动，或者限制商品在地区之间正常流通的，由上级机关责令其改正；情节严重的，由同级或者上级机关对直接责任人员给予行政处分。被指定的经营者借此销售质次价高商品或者滥收费用的，监督检查部门应当没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款。

第三十一条 监督检查不正当竞争行为的国家机关工作人员滥用职权、玩忽职守，构成犯罪的，依法追究刑事责任；不构成犯罪的，给予行政处分。

第三十二条 监督检查不正当竞争行为的国家机关工作人员徇私舞弊，对明知有违反本法规定构成犯罪的经营者故意包庇不使他受追诉的，依法追究刑事责任。

第五章 附 则

第三十三条 本法自１９９３年１２月１日起施行。

ATTACHMENT 67.

Public
File 255

Anti-Monopoly Law of the People's Republic of China

(Adopted at the 29th Session of the Standing Committee of the 10th National People's Congress on August 30, 2007)

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Chapter I General Provisions

Article 1

This Law is enacted for the purposes of guarding against and prohibiting monopolistic conduct, safeguarding fair market competition, improving economic efficiency, protecting the interests of consumers and public interests, and promoting the healthy development of the socialist market economy.

Article 2

This Law is applicable to monopolistic conducts in economic activities within the territory of the People's Republic of China; this Law is applicable to conducts outside the territory of the People's Republic of China that have eliminative or restrictive effects on competition in the domestic market of the People's Republic of China.

Article 3

Monopolistic conduct under this Law includes:

(1) Undertakings concluding monopoly agreements;

(2) Abuse of dominant market position by undertakings;

(3) Concentration of undertakings that has or may have the effect of eliminating or restricting competition.

Article 4

The State shall formulate and implement competition rules, which are suitable to the socialist market economy, improve macroeconomic control, as well as improve a unified, open, competitive and orderly market system.

Article 5

Undertakings may implement concentration through fair competition and voluntary coalition in accordance with law to expand their business scale and increase their market competitiveness.

Article 6

Undertakings with a dominant market position shall not abuse their market dominant position to eliminate or restrict competition.

Article 7

With respect to industries that are dominated by the State-owned economy and that have a direct bearing on national economic wellbeing and national security, as well as industries that conduct exclusive and monopolistic sales in accordance with law, the State shall protect the legitimate business activities of the undertakings in these industries. The State shall implement the supervision, adjustment and control of the business operations and the prices of products and service of these undertakings in accordance with law, safeguard the legitimate interests of consumers and promote technological progress.

Undertakings of industries under the previous paragraph shall conduct their business in accordance with law in an honest and trustworthy manner, impose strict self-discipline, and accept supervision from the public. These undertakings shall not harm the interests of consumers by making use of their position of control or their position of exclusive and monopolistic sales.

Article 8

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to eliminate or restrict competition.

Article 9

The State Council shall establish the Anti-Monopoly Commission, which shall be responsible for organizing, coordinating and guiding anti-monopoly work and it shall have the following functions:

(1) Research and formulate relevant competition policies;

(2) Organize investigations, assess the state of overall market competition, and issue assessment reports;

(3) Formulate and promulgate anti-monopoly guidelines;

(4) Coordinate the anti-monopoly administrative enforcement work ; and

(5) Other functions as specified by the State Council.

The State Council shall stipulate the composition of and the work protocols of the Anti-Monopoly Commission under the State Council.

Article 10

The authority empowered by the State Council to have the functions for anti-monopoly law enforcement (hereafter the "Anti-Monopoly Enforcement Authority under the State Council") is responsible for the anti-monopoly law enforcement in accordance with provisions of this Law.

If necessary in light of the practical work, the Anti-Monopoly Enforcement Authority under the State Council may delegate to corresponding agencies at the levels of province, autonomous region and municipality directly under the State Council functions for relevant anti-monopoly law enforcement in accordance with provisions of this Law.

Article 11

Industry associations shall strengthen self-disciplining of undertakings within their industries and guide these undertakings to compete in accordance with law and maintain the order of market competition.

Article 12

For the purposes of this Law, an "undertaking" means a natural person, legal person or other organization that engages in manufacturing commodities, operating or providing services.

For the purposes of this Law, a "relevant market" means the product scope or territory within which undertakings compete with respect to specific products or services (hereafter collectively "products") during a certain period.

Chapter II Monopoly Agreements

Article 13

The following Monopoly Agreements among undertakings with competing relationships shall be prohibited:

(1) Fix or change prices of products;

(2) Restrict the production output or sales volume of products;

(3) Allocate the sales markets or the raw material purchasing markets;

(4) Restrict the purchase of new technology or new equipment, or restricts the development of new technology or new products;

(5) Jointly boycott transactions; and

(6) Other Monopoly Agreements as otherwise determined by the Anti-Monopoly Enforcement Authority under the State Council.

A monopolistic agreement referred to in this Law refers to any agreements, decisions or other concerted actions that eliminate or restrict competition.

Article 14

Undertakings are prohibited from reaching the following Monopoly Agreements with their counter-parties that:

(1) Fix the resale price of products with respect to third parties;

(2) Restrict the minimal resale price of products with respect to the third parties;

(3) are monopoly agreements as otherwise determined by the Anti-monopoly Enforcement Authority under the State Council.

Article 15

Monopoly Agreements between undertakings that can be proven to fall under any of the following cases shall be exempt from the application of Article 13 and Article 14:

(1) For the purpose of technology improvement, or research and development of new products;

(2) For the purpose of upgrading product quality, reducing cost and improving efficiency, unifying products specifications or standards or implementing the division of labour based on specialization;

(3) For the purpose of improving operational efficiency of small and medium-sized undertakings and enhancing their competitiveness;

(4) For the purpose of achieving such public interests as energy savings, environmental protection, disaster relief and other charitable assistance;

(5) For the purpose of mitigating serious decrease in sales volumes or distinctive production oversupply during economic depression.

(6) For the purpose of safeguarding the legitimate interests in foreign trade and economic cooperation; or

(7) Other circumstances as stipulated by law and the State Council. (***New Provision***)

In the case that Monopoly Agreements fall within the circumstances set out in subparagraphs (1) to (5), undertakings shall also prove that the agreements entered into will not substantially restrict competition in the relevant market, and consumers are able to share the benefits derived from such agreements.

Article 16

Industrial Associations shall not organize undertakings within their industries to engage in monopolistic conducts prohibited by this Chapter.

Chapter III Abuse of Dominant Market Position

Article 17

Undertakings holding a dominant market position are prohibited from engaging in the following activities by abusing their dominant market position:

(1) Selling products at unfairly high prices or buying products at unfairly low prices;

(2) Selling products at prices below cost without any justification;

(3) Refusing to enter into transactions with their counter-parties without any justification;

(4) Limiting their counter-parties to enter into transactions exclusively with them or undertakings designated by them without any justification;

(5) Implementing tie-in sales without any justification or imposing any other unreasonable transaction terms in the course of transactions;

(6) Applying discriminating treatment on prices or other transaction terms to their counter-parties that are in the same positions without any justification; and

(7) Other abusive exploitations of dominant market position as determined by the Anti-Monopoly Enforcement Authority under the State Council.

For the purpose of this Law, a "dominant market position" means the market position of undertakings to control the price, quantity of products or other transaction terms in the relevant market, or to enable them to block or affect other undertakings in entering into the relevant market.

Article 18

A finding of a dominant market position of an undertaking shall be based on the following factors:

(1) The market share of the undertaking in the relevant market, and the competitive conditions in the relevant market;

(2) The ability of the undertaking to control the sales market or raw material purchasing market;

(3) The financial status and technical conditions/capabilities of the undertaking;

(4) The extent of dependence on the undertaking by other undertakings in respect to transactions;

(5) The level of difficulty for other undertakings to enter into the relevant market; and

(6) Other factors relating to the dominant market position of the undertaking.

Article 19

In any of the following cases, a dominant market position of an undertaking or undertakings may be presumed:

(1) The market share of one undertaking in the relevant market accounts for 1/2;

(2) The aggregate market share of two undertakings in the relevant market accounts for 2/3; or

(3) The aggregate market share of three undertakings in the relevant market accounts for 3/4.

In case of sub-paragraphs (2) or (3), an undertaking with a market share of less than 1/10 shall not be presumed to hold a dominant market position.

An undertaking which is presumed to hold a dominant market position shall not be found to be in a dominant market position, if it can provide evidence which shows it does not hold a dominant market position.

Chapter IV Concentration of Undertakings

Article 20

A "concentration of undertakings" means any of the following circumstances:

(1) A merger among undertakings;

(2) Acquisition by an undertaking(s) of control of other undertakings through means of acquiring shares or assets; or

(3) By contract or other means, an acquisition by an undertaking(s) of control of other undertakings, or an acquisition by an undertaking(s) of the ability to impose decisive influence on other undertakings.

Article 21

Where a concentration of undertakings meets the relevant thresholds for notification as stipulated by the State Council, the undertakings shall file a notification with the Anti-Monopoly Enforcement Authority under the State Council; without notification

with the Anti-Monopoly Enforcement Authority under the State Council, the undertakings shall be prohibited from implementing the concentration.

Article 22

In any of the following cases, the undertakings to a concentration may dispense with the notification with the Anti-monopoly Enforcement Authority under the State Council:

(1) One undertaking to the concentration holds more than 50% of the shares with voting rights or assets of each of the other participating undertakings;

(2) More than 50% of the shares with voting rights or assets of each of the undertakings to the concentration are owned by a single undertaking that is not participating in the concentration.

Article 23

In filing a notification of concentration with the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall submit the following documents and materials:

(1) The notification;

(2) Explanation regarding the impact of the concentration on competition in the relevant market;

(3) The agreement of the concentration;

(4) The financial and accounting reports in the preceding accounting year of the undertakings participating in the concentration, which reports shall have been audited by an accountant; and

(5) Other documents or materials required by the Anti-Monopoly Enforcement Authority under the State Council.

The notification shall specify matters such as the names, addresses, scope of business, proposed date for implementing the concentration and other matters as stipulated by the Anti-Monopoly Enforcement Authority under the State Council.

Article 24

In case that the documents and materials submitted for notification by the undertakings are not complete, the undertakings shall supplement the documents and materials within the time limit specified by the Anti-Monopoly Enforcement Authority under the State Council. Where the undertakings fail to supplement such documents or materials within the time limit, it shall be deemed that no notification is filed.

Article 25

Within 30 days from the date of receipt of the documents and materials that are consistent with provisions of Article 23 of this Law as submitted by the undertakings, the Anti-Monopoly Enforcement Authority under the State Council shall initiate the preliminary review, make a decision whether or not to initiate further review, and notify the undertakings in writing. Pending the decision of the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall refrain from implementing the concentration.

Where the Anti-Monopoly Enforcement Authority under the State Council decides not to initiate further review or makes no decision within the time limit, the undertakings may implement the concentration.

Article 26

Where the Anti-monopoly Enforcement Authority under the State Council decides to initiate further review, it shall complete the review within 90 days from the date of the decision, makes a decision whether or not to prohibit the concentration of undertakings and notify the undertakings in writing; in case of a decision to prohibit the concentration of undertakings, the Anti-monopoly Enforcement Authority under the State Council shall state its reasons thereof. During the period of the further review, undertakings shall not implement the concentration.

In any of the following cases, the Anti-Monopoly Enforcement Authority under the State Council may extend the time limit specified in the above paragraph after notifying the undertakings in writing, provided that the maximum extension period does not exceed 60 days:

(1) The undertakings agree to extend the time limit;

(2) The documents or materials submitted by the undertakings are inaccurate and need further verification; or

(3) Material changes have occurred with respect to relevant circumstances since the filing of the notification by the undertakings.

Where the Anti-monopoly Enforcement Authority under the State Council makes no decision within the time limit, undertakings may implement the concentration

Article 27

In reviewing a concentration of undertakings, the following factors shall be taken into consideration:

(1) The market shares of the undertakings participating in the concentration in the relevant market(s) and their ability to control the market(s);

(2) The degree of concentration in the relevant market(s);

(3) The effect of the proposed concentration on market access and technological progress;

(4) The effect of the proposed concentration on consumers and other relevant undertakings;

(5) The effect of the proposed concentration on the development of the national economy ; and

(6) Other factors having effects on market competition that the Anti-Monopoly Enforcement Authority under the State Council considers shall be taken into consideration.

Article 28

Where the concentration of undertakings has or may have the effect of eliminating or restricting competition, the Anti-monopoly Enforcement Authority under the State Council shall make a decision to prohibit the concentration of undertakings. However, the Anti-Monopoly Enforcement Authority under the State Council may make a decision not to prohibit the concentration of undertakings where the undertakings can prove that its positive effects on competition significantly overweighs its negative effects on competition, or that the concentration of undertakings is in the public interest.

Article 29

Where the Anti-Monopoly Enforcement Authority under the State Council does not prohibit the concentration of undertakings, it may decide to impose restrictive conditions on the concentration of undertakings to reduce anti-competitive effects arising from the concentration.

Article 30

The Anti-Monopoly Enforcement Authority under the State Council shall make a public announcement in a timely manner with respect to a decision to prohibit a concentration of undertakings or a decision to impose restrictive conditions on the concentration of undertakings.

Article 31

With respect to mergers with and acquisitions of domestic enterprises by foreign investors or other forms of concentration involving foreign investors that concern national security, apart from the review of concentration of undertakings under this Law, they shall be examined in accordance with relevant provisions of the State for national security review.

Chapter V Abuse of Administrative Powers to Eliminate or Restrict Competition

Article 32

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to mandate or mandate in disguised form any entities or persons to operate, buy or use only the products supplied by the undertakings designated by them.

Article 33

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers and take any of the following actions that impede the free flow of products among different regions:

(1) To set discriminatory items for fees or charges, implement discriminatory fee standards or fix discriminatory prices for products originated from other regions;

(2) To impose on products originated from other regions technical requirements or inspection standards different from those on similar local products, or require repeated inspection or certification on products originated from other regions, restricting entry of products originated from other regions into the local markets;

(3) To implement administrative license measures as applicable only to products originated from other regions, restricting entry of products originated from other regions into the local markets;

(4) To prevent entry of products originated from other regions into the local markets or the exit/sale of the local products into other regions by setting up checkpoints or other means; or

(5) Other actions which impede the free flow of products among different regions.

Article 34

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict the participation of undertakings from other regions in local bidding activities by such means as prescribing discriminatory qualification requirements or assessment standards, or by not publishing information according to law.

Article 35

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict investment or the establishment of branches in their regions by undertakings from other regions by such means as according treatment unequal to that enjoyed by their local undertakings.

Article 36

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to compel undertakings to engage in monopolistic conducts prohibited by this Law.

Article 37

Administrative agencies shall not abuse their administrative powers to make regulations containing provisions eliminating or restricting competition.

Chapter VI Investigation of Suspected Monopolistic Conducts

Article 38

The Anti-Monopoly Enforcement Authority shall investigate suspected monopolistic conducts in accordance with the law.

Any entity or individual shall have the right to report any suspected monopolistic conducts to the Anti-Monopoly Enforcement Authority. The Anti-monopoly Enforcement Authority shall maintain confidentiality for such entity or individual.

Where such report is in writing and furnished with relevant facts and evidence, the Anti-Monopoly Enforcement Authority shall conduct necessary investigations.

Article 39

In investigating suspected monopolistic conducts, the Anti-monopoly Enforcement Authority may take the following measures:

(1) To enter into the business premises or other places of the investigated undertakings for inspection;

(2) To interview undertakings, interested parties or other relevant entities or individuals being investigated, and request them to explain the relevant facts and circumstances;

(3) To inspect and copy relevant documents and materials of undertakings, interested parties or other relevant entities or individuals being investigated,

such as relevant vouchers and certificates, agreements, accounting books, business correspondence, electronic data;

(4) To seal or seize relevant evidence; and

(5) To examine bank accounts of the undertakings.

Measures in the above paragraph shall be applied only after a written report is submitted to principal responsible persons of the Anti-Monopoly Enforcement Authority and the relevant approval is obtained.

Article 40

For investigation of suspected monopolistic conducts by the Anti-monopoly Enforcement Authority, there shall be at least two enforcement officers attending the investigation, and they shall present the proofs of enforcement certificates.

Enforcement officers shall maintain written record of their inquiries and such written record shall be signed by those being interviewed or investigated.

Article 41

The Anti-Monopoly Enforcement Authority and its staff shall keep confidential the commercial secrets obtained during the course of law enforcement.

Article 42

Undertakings, interested parties , other relevant organizations or individuals being investigated shall cooperate with the Anti-Monopoly Enforcement Authority with respect to the performance of its functions and shall not refuse or hinder the investigation by the Anti-Monopoly Enforcement Authority.

Article 43

Undertakings being investigated and interested parties shall have the right to state their opinions. The Anti-Monopoly Enforcement Authority shall verify the facts, reasons and supporting evidences furnished by the undertakings being investigated or interested parties.

Article 44

After investigations and verification, if the Anti-Monopoly Enforcement Authority considers that the suspected monopolistic conduct constitutes monopolistic conduct, it shall make a decision in accordance with law and may publish the decision to the public.

Article 45

With respect to a suspected monopolistic conduct that is investigated by the Anti-Monopoly Enforcement Authority, if the undertaking being investigated undertakes to take concrete measures to eliminate consequences of such monopolistic conduct within the time limit accepted by the Anti-Monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may decide to suspend the investigation. The decision to suspend the investigation shall expressly state detailed contents of such commitments of the undertaking.

Where the Anti-Monopoly Enforcement Authority decides to suspend the investigation, it shall monitor the undertaking's performance of its commitments. Where the undertaking performed its commitments, the Anti-Monopoly Enforcement Authority may decide to cease the investigation.

In any of the following circumstances, the Anti-monopoly Enforcement Authority shall resume its investigation:

(1) Where the undertaking fails to meet its commitments;

(2) Where material changes have occurred with respect to the facts on which the decision to suspend the investigation is based;

(3) Where the decision to suspend the investigation was made based on incomplete or inaccurate information provided by the undertaking.

Chapter VII Legal Liability

Article 46

For undertakings that enter into any monopoly agreement in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such act, confiscate the illegal gains and impose fines of more than 1% and less than 10% of the turnover in the preceding year; fines of no more than RMB 500,000 yuan may be imposed where the monopolistic agreement has not yet been implemented.

Where any undertaking on its own initiative reports the relevant circumstances of the monopoly agreement and furnishes important evidence to the Anti-monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may in its discretion mitigate or exempt such undertaking from punishment.

For industrial associations that organize the undertakings within their industries to reach monopoly agreements, the Anti-Monopoly Enforcement Authority may impose fines of no more than RMB 500,000 yuan; in serious circumstances, the authority for registration and administration of social organizations may revoke the registration of the industrial associations according to law.

Article 47

For undertakings that abuse their dominant market position in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such an act, confiscate the illegal gains, .and impose fines of more than 1% and less than 10% of the turnover in the preceding year.

Article 48

For undertakings that implement concentrations in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority under the State Council is authorised to order such undertakings to cease the implementation of the concentration, or to dispose of shares or assets or transfer businesses within a given time limit, and take other measures necessary to restore to the state before the concentration of such undertakings, and may impose fines of no more than RMB 500,000 yuan.

Article 49

In determining the specific amount of fines imposed under Articles 46, 47 and 48 of this Law, the Anti-Monopoly Enforcement Authority shall take into account such factors as the nature, extent and duration of an illegal conduct.

Article 50

Undertakings shall be responsible for civil liabilities according to law for losses caused to others as a result of their monopolistic conducts.

Article 51

Where any administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration engages in conducts that eliminate or restrict competition in abuse of their administrative powers, its superior agency shall order it to make correction; the persons directly in charge and others who are directly responsible shall be subject to disciplinary sanctions in accordance with law. The Anti-Monopoly Enforcement Authority may make proposals to the relevant superior agency of the administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration on handling of the case in accordance with law.

Where laws or administrative regulations otherwise make provisions for the regulation of conducts eliminating or restricting competition by administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration in abuse of their administrative powers, such provisions shall prevail.

Article 52

If any individual or entity in an examination and investigation implemented by the Anti-Monopoly Enforcement Authority in accordance with the law, refuses to submit relevant materials or information, submits false materials or information, conceals, destroys or removes evidence, or refuses to be investigated or hinders the

investigation, the Anti-Monopoly Enforcement Authority is authorised to order such individual or entity to cease and desist such act and to impose fines of no more than RMB 20,000 yuan on individuals or fines of no more than RMB 200,000 yuan on entities; in serious circumstances, the Anti-Monopoly Enforcement Authority may impose fines that is between RMB 20,000 yuan and RMB 100,000 yuan on individuals or fines of between RMB 200,000 yuan and RMB 1 million yuan on entities; if the case constitutes a criminal offence, criminal liabilities shall be prosecuted according to law.

Article 53

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with Article 28 and Article 29 of this law may first apply for an administrative review according to law; and, if object to the decision in the administrative review, may file an administrative suit according to law.

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with provisions other than the previous provisions may apply for an administrative review or bring an administrative action according to law.

Article 54

Any working staff of the Anti-Monopoly Enforcement Authority who abuses his powers, neglects his duties, bends the law for personal gains, or divulges business secrets obtained in the process of law enforcement, shall be prosecuted for criminal liabilities according to law if the case constitute a criminal offence, or shall be imposed disciplinary sanctions according to law if the case does not constitute a criminal offence.

Chapter VIII Supplementary Provisions

Article 55

This Law is not applicable to undertakings' conduct in exercise of intellectual property rights pursuant to provisions of laws and administrative regulations relating to intellectual property rights; but this Law is applicable to undertakings' conduct that eliminates or restricts competition by abusing their intellectual property rights.

Article 56

This Law is not applicable to the alliance or concerted actions among farmers and farmers' economic organisations in connection with operational activities such as the production, processing, sales, transportation and storage of agricultural products.

Article 57

This Law is effective as of 1 August 2008.

中华人民共和国反垄断法

（2007年8月30日第十届全国人民代表大会常务委员会第二十九次会议通过）

目　录

第一章 总则
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第一章 总　则

第一条 为了预防和制止垄断行为，保护市场公平竞争，提高经济运行效率，维护消费者利益和社会公共利益，促进社会主义市场经济健康发展，制定本法。

第二条 中华人民共和国境内经济活动中的垄断行为，适用本法；中华人民共和国境外的垄断行为，对境内市场竞争产生排除、限制影响的，适用本法。

第三条 本法规定的垄断行为包括：

（一）经营者达成垄断协议；

（二）经营者滥用市场支配地位；

（三）具有或者可能具有排除、限制竞争效果的经营者集中。

第四条 国家制定和实施与社会主义市场经济相适应的竞争规则，完善宏观调控，健全统一、开放、竞争、有序的市场体系。

第五条 经营者可以通过公平竞争、自愿联合，依法实施集中，扩大经营规模，提高市场竞争能力。

第六条 具有市场支配地位的经营者，不得滥用市场支配地位，排除、限制竞争。

第七条 国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护，并对经营者的经营行为及其商品和服务的价格依法实施监管和调控，维护消费者利益，促进技术进步。

前款规定行业的经营者应当依法经营，诚实守信，严格自律，接受社会公众的监督，不得利用其控制地位或者专营专卖地位损害消费者利益。

第八条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。

第九条 国务院设立反垄断委员会，负责组织、协调、指导反垄断工作，履行下列职责：

（一）研究拟订有关竞争政策；

（二）组织调查、评估市场总体竞争状况，发布评估报告；

（三）制定、发布反垄断指南；

（四）协调反垄断行政执法工作；

（五）国务院规定的其他职责。

国务院反垄断委员会的组成和工作规则由国务院规定。

第十条 国务院规定的承担反垄断执法职责的机构（以下统称国务院反垄断执法机构）依照本法规定，负责反垄断执法工作。

国务院反垄断执法机构根据工作需要，可以授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。

第十一条 行业协会应当加强行业自律，引导本行业的经营者依法竞争，维护市场竞争秩序。

第十二条 本法所称经营者，是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。

本法所称相关市场，是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。

第二章 垄断协议

第十三条 禁止具有竞争关系的经营者达成下列垄断协议：

（一）固定或者变更商品价格；

（二）限制商品的生产数量或者销售数量；

（三）分割销售市场或者原材料采购市场；

（四）限制购买新技术、新设备或者限制开发新技术、新产品；

（五）联合抵制交易；

（六）国务院反垄断执法机构认定的其他垄断协议。

本法所称垄断协议，是指排除、限制竞争的协议、决定或者其他协同行为。

第十四条 禁止经营者与交易相对人达成下列垄断协议：

（一）固定向第三人转售商品的价格；

（二）限定向第三人转售商品的最低价格；

（三）国务院反垄断执法机构认定的其他垄断协议。

第十五条 经营者能够证明所达成的协议属于下列情形之一的，不适用本法第十三条、第十四条的规定：

（一）为改进技术、研究开发新产品的；

（二）为提高产品质量、降低成本、增进效率，统一产品规格、标准或者实行专业化分工的；

（三）为提高中小经营者经营效率，增强中小经营者竞争力的；

（四）为实现节约能源、保护环境、救灾救助等社会公共利益的；

（五）因经济不景气，为缓解销售量严重下降或者生产明显过剩的；

（六）为保障对外贸易和对外经济合作中的正当利益的；

（七）法律和国务院规定的其他情形。

属于前款第一项至第五项情形，不适用本法第十三条、第十四条规定的，经营者还应当证明所达成的协议不会严重限制相关市场的竞争，并且能够使消费者分享由此产生的利益。

第十六条 行业协会不得组织本行业的经营者从事本章禁止的垄断行为。

第三章 滥用市场支配地位

第十七条 禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为：

（一）以不公平的高价销售商品或者以不公平的低价购买商品；

（二）没有正当理由，以低于成本的价格销售商品；

（三）没有正当理由，拒绝与交易相对人进行交易；

（四）没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易；

（五）没有正当理由搭售商品，或者在交易时附加其他不合理的交易条件；

（六）没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇；

（七）国务院反垄断执法机构认定的其他滥用市场支配地位的行为。

本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

第十八条 认定经营者具有市场支配地位，应当依据下列因素：

（一）该经营者在相关市场的市场份额，以及相关市场的竞争状况；

（二）该经营者控制销售市场或者原材料采购市场的能力；

（三）该经营者的财力和技术条件；

（四）其他经营者对该经营者在交易上的依赖程度；

（五）其他经营者进入相关市场的难易程度；

（六）与认定该经营者市场支配地位有关的其他因素。

第十九条 有下列情形之一的，可以推定经营者具有市场支配地位：

（一）一个经营者在相关市场的市场份额达到二分之一的；

（二）两个经营者在相关市场的市场份额合计达到三分之二的；

（三）三个经营者在相关市场的市场份额合计达到四分之三的。

有前款第二项、第三项规定的情形，其中有的经营者市场份额不足十分之一的，不应当推定该经营者具有市场支配地位。

被推定具有市场支配地位的经营者，有证据证明不具有市场支配地位的，不应当认定其具有市场支配地位。

第四章 经营者集中

第二十条 经营者集中是指下列情形：

（一）经营者合并；

（二）经营者通过取得股权或者资产的方式取得对其他经营者的控制权；

（三）经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经

营者施加决定性影响。

第二十一条 经营者集中达到国务院规定的申报标准的，经营者应当事先向国务院反垄断执法机构申报，未申报的不得实施集中。

第二十二条 经营者集中有下列情形之一的，可以不向国务院反垄断执法机构申报：

（一）参与集中的一个经营者拥有其他每个经营者百分之五十以上有表决权的股份或者资产的；

（二）参与集中的每个经营者百分之五十以上有表决权的股份或者资产被同一个未参与集中的经营者拥有的。

第二十三条 经营者向国务院反垄断执法机构申报集中，应当提交下列文件、资料：

（一）申报书；

（二）集中对相关市场竞争状况影响的说明；

（三）集中协议；

（四）参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告；

（五）国务院反垄断执法机构规定的其他文件、资料。

申报书应当载明参与集中的经营者的名称、住所、经营范围、预定实施集中的日期和国务院反垄断执法机构规定的其他事项。

第二十四条 经营者提交的文件、资料不完备的，应当在国务院反垄断执法机构规定的期限内补交文件、资料。经营者逾期未补交文件、资料的，视为未申报。

第二十五条 国务院反垄断执法机构应当自收到经营者提交的符合本法第二十三条规定的文件、资料之日起三十日内，对申报的经营者集中进行初步审查，作出是否实施进一步审查的决定，并书面通知经营者。国务院反垄断执法机构作出决定前，经营者不得实施集中。

国务院反垄断执法机构作出不实施进一步审查的决定或者逾期未作出决定的，经营者可以实施集中。

第二十六条 国务院反垄断执法机构决定实施进一步审查的，应当自决定之日起九十日内审查完毕，作出是否禁止经营者集中的决定，并书面通知经营者。作出

禁止经营者集中的决定，应当说明理由。审查期间，经营者不得实施集中。

有下列情形之一的，国务院反垄断执法机构经书面通知经营者，可以延长前款规定的审查期限，但最长不得超过六十日：

（一）经营者同意延长审查期限的；

（二）经营者提交的文件、资料不准确，需要进一步核实的；

（三）经营者申报后有关情况发生重大变化的。

国务院反垄断执法机构逾期未作出决定的，经营者可以实施集中。

第二十七条 审查经营者集中，应当考虑下列因素：

（一）参与集中的经营者在相关市场的市场份额及其对市场的控制力；

（二）相关市场的市场集中度；

（三）经营者集中对市场进入、技术进步的影响；

（四）经营者集中对消费者和其他有关经营者的影响；

（五）经营者集中对国民经济发展的影响；

（六）国务院反垄断执法机构认为应当考虑的影响市场竞争的其他因素。

第二十八条 经营者集中具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构应当作出禁止经营者集中的决定。但是，经营者能够证明该集中对竞争产生的有利影响明显大于不利影响，或者符合社会公共利益的，国务院反垄断执法机构可以作出对经营者集中不予禁止的决定。

第二十九条 对不予禁止的经营者集中，国务院反垄断执法机构可以决定附加减少集中对竞争产生不利影响的限制性条件。

第三十条 国务院反垄断执法机构应当将禁止经营者集中的决定或者对经营者集中附加限制性条件的决定，及时向社会公布。

第三十一条 对外资并购境内企业或者以其他方式参与经营者集中，涉及国家安全的，除依照本法规定进行经营者集中审查外，还应当按照国家有关规定进行国家安全审查。

第五章 滥用行政权力排除、限制竞争

第三十二条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品。

第三十三条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品在地区之间的自由流通：

（一）对外地商品设定歧视性收费项目、实行歧视性收费标准，或者规定歧视性价格；

（二）对外地商品规定与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验、重复认证等歧视性技术措施，限制外地商品进入本地市场；

（三）采取专门针对外地商品的行政许可，限制外地商品进入本地市场；

（四）设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出；

（五）妨碍商品在地区之间自由流通的其他行为。

第三十四条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制外地经营者参加本地的招标投标活动。

第三十五条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，采取与本地经营者不平等待遇等方式，排斥或者限制外地经营者在本地投资或者设立分支机构。

第三十六条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，强制经营者从事本法规定的垄断行为。

第三十七条 行政机关不得滥用行政权力，制定含有排除、限制竞争内容的规定。

第六章 对涉嫌垄断行为的调查

第三十八条 反垄断执法机构依法对涉嫌垄断行为进行调查。

对涉嫌垄断行为，任何单位和个人有权向反垄断执法机构举报。反垄断执法机构应当为举报人保密。

举报采用书面形式并提供相关事实和证据的，反垄断执法机构应当进行必要的调查。

第三十九条 反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：

（一）进入被调查的经营者的营业场所或者其他有关场所进行检查；

（二）询问被调查的经营者、利害关系人或者其他有关单位或者个人，要求其说明有关情况；

（三）查阅、复制被调查的经营者、利害关系人或者其他有关单位或者个人的有关单证、协议、会计账簿、业务函电、电子数据等文件、资料；

（四）查封、扣押相关证据；

（五）查询经营者的银行账户。

采取前款规定的措施，应当向反垄断执法机构主要负责人书面报告，并经批准。

第四十条 反垄断执法机构调查涉嫌垄断行为，执法人员不得少于二人，并应当出示执法证件。

执法人员进行询问和调查，应当制作笔录，并由被询问人或者被调查人签字。

第四十一条 反垄断执法机构及其工作人员对执法过程中知悉的商业秘密负有保密义务。

第四十二条 被调查的经营者、利害关系人或者其他有关单位或者个人应当配合反垄断执法机构依法履行职责，不得拒绝、阻碍反垄断执法机构的调查。

第四十三条 被调查的经营者、利害关系人有权陈述意见。反垄断执法机构应当对被调查的经营者、利害关系人提出的事实、理由和证据进行核实。

第四十四条 反垄断执法机构对涉嫌垄断行为调查核实后，认为构成垄断行为的，应当依法作出处理决定，并可以向社会公布。

第四十五条 对反垄断执法机构调查的涉嫌垄断行为，被调查的经营者承诺在反垄断执法机构认可的期限内采取具体措施消除该行为后果的，反垄断执法机构可以决定中止调查。中止调查的决定应当载明被调查的经营者承诺的具体内容。

反垄断执法机构决定中止调查的，应当对经营者履行承诺的情况进行监督。经营者履行承诺的，反垄断执法机构可以决定终止调查。

有下列情形之一的，反垄断执法机构应当恢复调查：

（一）经营者未履行承诺的；

（二）作出中止调查决定所依据的事实发生重大变化的；

（三）中止调查的决定是基于经营者提供的不完整或者不真实的信息作出的。

第七章 法律责任

第四十六条 经营者违反本法规定，达成并实施垄断协议的，由反垄断执法机构

责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；尚未实施所达成的垄断协议的，可以处五十万元以下的罚款。

经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的，反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。

行业协会违反本法规定，组织本行业的经营者达成垄断协议的，反垄断执法机构可以处五十万元以下的罚款；情节严重的，社会团体登记管理机关可以依法撤销登记。

第四十七条 经营者违反本法规定，滥用市场支配地位的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款。

第四十八条 经营者违反本法规定实施集中的，由国务院反垄断执法机构责令停止实施集中、限期处分股份或者资产、限期转让营业以及采取其他必要措施恢复到集中前的状态，可以处五十万元以下的罚款。

第四十九条 对本法第四十六条、第四十七条、第四十八条规定的罚款，反垄断执法机构确定具体罚款数额时，应当考虑违法行为的性质、程度和持续的时间等因素。

第五十条 经营者实施垄断行为，给他人造成损失的，依法承担民事责任。

第五十一条 行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力，实施排除、限制竞争行为的，由上级机关责令改正；对直接负责的主管人员和其他直接责任人员依法给予处分。反垄断执法机构可以向有关上级机关提出依法处理的建议。

法律、行政法规对行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力实施排除、限制竞争行为的处理另有规定的，依照其规定。

第五十二条 对反垄断执法机构依法实施的审查和调查，拒绝提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者有其他拒绝、阻碍调查行为的，由反垄断执法机构责令改正，对个人可以处二万元以下的罚款，对单位可以处二十万元以下的罚款；情节严重的，对个人处二万元以上十万元以下的罚款，对单位处二十万元以上一百万元以下的罚款；构成犯罪的，依法追究刑事责任。

第五十三条 对反垄断执法机构依据本法第二十八条、第二十九条作出的决定不服的，可以先依法申请行政复议；对行政复议决定不服的，可以依法提起行政诉讼。

对反垄断执法机构作出的前款规定以外的决定不服的，可以依法申请行政复议或者提起行政诉讼。

第五十四条 反垄断执法机构工作人员滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的商业秘密，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

第八章 附则

第五十五条 经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法。

第五十六条 农业生产者及农村经济组织在农产品生产、加工、销售、运输、储存等经营活动中实施的联合或者协同行为，不适用本法。

第五十七条 本法自 2008 年 8 月 1 日起施行。

ATTACHMENT 66

Public
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Guarantee Law of the People's Republic of China

(Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress on June 30, 1995, and effective as of October 1, 1995) { 1 }

Chapter I - General Provisions { 2 }

Article 1

{ 3 }

This Law is enacted for purposes of promoting capital accommodation and commodity circulation, ensuring the realization of creditors' rights and developing socialist market economy. { 4 }

Article 2

{ 5 }

In such economic activities as debit and credit, buying and selling, carriage of goods and contracting for processing, a creditor who needs to ensure the realization of his rights in the form of guarantee, may establish guarantee subject to the provisions of this Law. The forms of guarantee provided in this law include guarantee, mortgage, pledge, lien and earnest. { 6 }

Article 3

{ 7 }

Guarantee activities shall be in conformity to the principle of equality, voluntariness, fairness, honesty and trustworthiness. This law also applies to counter*-guarantee. { 8 }

Article 4

{ 9 }

A third person, at the time of tendering guarantee to a creditor for a debtor, may require the debtor to tender counter guarantee. { 10 }

Article 5

{ 11 }

A guarantee contract is an accessory contract to a principal contract. If the principal contract is invalid, the guarantee contract shall be invalid. Where the guarantee contract stipulates otherwise, such stipulations shall apply. Where a guarantee contract is confirmed as invalid and void, the debtor, the guarantor or the creditor, who commits some mistake, shall, based on his respective mistake, bear corresponding civil liability. { 12 }

Chapter II - Guarantee { 13 }

Section 1 - Guarantee and Guarantor { 14 }

Article 6

{ 15 }

Guarantee" as the term is used in this Law means an act under which, according to an

agreement between a guarantor and a creditor, the guarantor shall perform a bebt* or bear responsibility as contracted if the debtor fails to pay the debt. { 16 }

Article 7

{ 17 }

A legal person, any other organization or a citizen, that has the ability of discharge of a debt may act as a guarantor. { 18 }

Article 8

{ 19 }

Any state organ may not act as a guarantor, however, upon approval by the State Council, those which conduct subloans* for the purpose of using loans from foreign governments or international economic organizations shall be excluded. { 20 }

Article 9

{ 21 }

Any institution or social organization of public interests, such as schools, kindergartens and hospitals, may not act as a guarantor. { 22 }

Article 10

{ 23 }

Any branch or functionary department of an enterprise as legal person may not act as a guarantor. A branch of an enterprise as legal person, which has the power of attorney in writing from the legal person, may tender guarantee within the authorized limits. { 24 }

Article 11

{ 25 }

No unit or individual may force financial institutions such as banks or enterprises to tender guarantee for others. Financial institutions such as banks or enterprises have the right to refuse any acts forcing them to tender guarantee for others. { 26 }

Article 12

{ 27 }

In the case of two or more guarantors to a debt, each guarantor shall bear guarantee responsibility in proportion to his proper share of the guarantee as contracted. If no share of guarantee is agreed upon, the guarantor shall bear joint and several liability; the creditor may require any of the guarantors to bear full guarantee responsibility, and each guarantor shall be liable to guarantee the full realization of creditor's rights. The guarantor who has already borne guarantee responsibility shall have the right to recover compensation from the debtor, or require other guarantors who bear joint and several liability to pay the shares they ought to bear. { 28 }

Section 2 - Guarantee Contract and Guarantee Mode { 29 }

Article 13

{ 30 }

A guarantor and a creditor shall conclude a guarantee contract in the form of writing. { 31 }

Article 14

{ 32 }

A guarantor and a creditor may conclude a separate guarantee contract relating to a specific principal contract, and also may, within the maximum amount of claim and through negotiation, conclude one guarantee contract relating to loan contracts or trade contracts of a particular commodity, which occur consecutively in a certain period of time. { 33 }

Article 15

{ 34 }

A guarantee contract shall include the following particulars:

1. the category and amount of the principal creditor's right to be guaranteed; { 36 }

2. time limit for the debtor to perform his debt: { 37 }

3. mode of guarantee; { 38 }

4. scope of guarantee; { 39 }

5. duration of guarantee; and { 40 }

6. other matters deemed as necessary to be agreed upon by both parties. { 41 }

A guarantee contract which does not completely include the particulars provided in the preceding paragraph, may be added and amended. { 42 }

Article 16

{ 43 }

The modes of guarantee include: { 44 }

1. general guarantee; and { 45 }

2. joint and several liability guarantee. { 46 }

Article 17

{ 47 }

A general guarantee means that, as agreed upon in guarantee contract by the parties concerned, the guarantor shall bear guarantee responsibility if the debtor fails to perform his debt. The guarantor of a general guarantee may, prior to court proceedings or arbitration over a dispute concerning the principal contract and a failure again to pay a debt after a compulsory enforcement over the debtor's property according to law, refuse to bear guarantee responsibility to a creditor. A guarantor may not execute the right provided in the preceding paragraph under any of the following circumstances: { 48 }

1. in a case of which the change of debtor's address has caused serious difficulty to the creditor in requiring the debtor to pay his debt; { 49 }

2. in a case of which a people's court accepts the debtor's bankruptcy case and the execution procedures are abated; or { 50 }

3. in a case of which the guarantor waives, in written form, his right provided in the preceding paragraph. { 51 }

Article 18

{ 52 }

A joint and several liability guarantee means that, as agreed upon in a guarantee contract by the parties concerned, the guarantor and the debtor shall bear joint and several liability over a debt. If the debtor of a joint and several liability guarantee fails to pay his debt at the expiry of term for execution as stipulated by the principal contract, the creditor may require the debtor to pay his debt and also may require the guarantor to bear guarantee responsibility within the limit of his guarantee. { 53 }

Article 19

{ 54 }

The parties concerned who make no agreement on the mode of guarantee or make an ambiguous agreement thereon shall bear guarantee responsibility in accordance with the mode of a joint and several liability guarantee. { 55 }

Article 20

{ 56 }

Guarantors of general guarantee or joint and several liability guarantee enjoy the right of demur of the debtors. If a debtor waives his right of demur over a debt, the guarantor still has the right to demur. The right of demur means such right under which the debtor may, according to legal causes, challenge the claim by the creditor when the creditor executes his rights. { 57 }

Section 3 - Guarantee Responsibility { 58 }

Article 21

{ 59 }

The scope of guarantee includes the principal creditor's right as well as interests, fines for breach of agreement, compensation for loss and damage and expenses for the realization of creditor's rights. Where a guarantee contract has otherwise stipulations, such stipulations shall apply. If the parties make no agreement on the scope of guarantee or make an ambiguous agreement thereon, the guarantor shall bear responsibility for all the debts. { 60 }

Article 22

{ 61 }

If, within the duration of guarantee, a creditor transfers his principal right to third person according to law, the guarantor shall continue to bear guarantee responsibility within the original scope of guarantee. Where a guarantee contract has otherwise stipulations, such stipulations shall apply. { 62 }

Article 23

{ 63 }

If, within the duration of guarantee, a creditor allows his debtor to transfer his debt, the guarantor's consent in writing shall be obtained, and the guarantor will no longer bear the guarantee responsibility over those debts transferred without his consent. { 64 }

Article 24

{ 65 }

A creditor and debtor who agree to modify a principal contract shall obtain the guarantor's consent in writing. Without his consent in writing, the guarantor will no longer bear the guarantee responsibility. If the guarantee contract has otherwise stipulations, such stipulations shall apply.

{ 66 }

Article 25

{ 67 }

In case the guarantor and the creditor of a general guarantee fails to stipulate the duration of guarantee, the duration of guarantee shall be six months from the date on which the term for performance of the principal debt expires. Where, within the duration of guarantee as contracted and the duration of guarantee as provided in the preceding paragraph, a creditor did not initiate legal proceedings against the debtor or apply for arbitration, the guarantor shall be exemption from his guarantee responsibility; if the creditor has initiated legal proceedings or applied for arbitration, the provisions concerning the discontinuance of the limitation of action shall apply to the duration of guarantee. { 68 }

Article 26

{ 69 }

In case the guarantor and the creditor of a joint and several liability guarantee fails to stipulate the duration of guarantee, the creditor shall have the right to require the guarantor to bear guarantee responsibility within six months from the date on which the term for performance of the principal debt expires. Where, within the duration of guarantee as contracted and the duration of guarantee as provided in the preceding paragraph, a creditor did not require the guarantor to bear guarantee responsibility, the guarantor shall be exemption from his guarantee responsibility.

{ 70 }

Article 27

{ 71 }

In the absence of the duration of guarantee, a guarantor who, subject to the provisions of Article 14 of this Law, tenders guarantee over creditor's rights occurring consecutively may, at any time, notify in writing the creditor to terminate the guarantee contract, however, the guarantor shall bear guarantee responsibility over those rights occurred prior to the time at which the notification in writing is delivered to the creditor. { 72 }

Article 28

{ 73 }

Where there are both guarantee and things guaranteed over one creditor's right, the guarantor shall bear guarantee responsibility over those rights beyond the things guaranteed. If the creditor surrenders the guarantee by things, the guarantor shall be exemption from his guarantee responsibility within the scope of the creditor's surrender. { 74 }

Article 29

{ 75 }

Where, without authorization in writhing by the legal person or beyond the authorized scope, a branch of an enterprise as legal person concludes a guarantee contract with a creditor, such a contract shall not be binding or that part beyond the authorized scope shall not be binding, if the creditor and the enterprise as legal person have some mistake, they shall bear their corresponding civil liability according to their respective mistake; if the creditor has no mistake, the enterprise as legal person shall bear civil liability. { 76 }

Article 30

{ 77 }

Under one of the following circumstances, the guarantor shall not bear civil liability: 1. in a case of which the parties to a principal contract maliciously collude so as to cheat the guarantor to tender guarantee; or 2. in a case of which the creditor of a principal contract resorts to such means as deceit and compulsion in making the guarantor to tender guarantee under the condition against his true intention. { 78 }

Article 31

{ 79 }

A guarantor, after bearing his guarantee responsibility, shall have the right to recover compensation from the debtor. { 80 }

Article 32

{ 81 }

If, after a people's court takes cognizance of a bankruptcy case filed by a debtor, a creditor fails to declare his rights, the guarantor may participate the distribution of bankruptcy property and execute the right of recourse in priority. { 82 }

Chapter III - Mortgage { 83 }

Section 1 - Mortgage and Things Mortgaged { 84 }

Article 33

{ 85 }

Mortgage" as the term is used in this Law means guarantee under which a debtor or a third person, without transferring the possession over the property listed in Article 34 { 86 }

of this Law, places such property as creditor's rights. When the debtor fails to pay his debt, the creditor shall have the right, in accordance with the provisions of this law, to get in priority compensation from the money received from converting or auctioning and selling of the property. In the preceding paragraph, the debtor or the third person is the mortgagor, the creditor is the mortgagee and the property served as guarantee is the things mortgaged. { 87 }

Article 34

{ 88 }

The following property may be mortgaged: { 89 }

1. buildings and other objects fixed on land, which are owned by the mortgagor; { 90 }

2. machines, means of transport and other property, which are owned by the mortgagor;

{ 91 }

3. use-right of state -owned land, buildings and other objects fixed on land, which the mortgagor has the right to dispose according to law; { 92 }

4. state-owned machines, means of transport and other property, which the mortgagor has the right to dispose according to law; { 93 }

5. the landuse•-rights of barren mountains, barren valleys, waste hills and waste sands, which the mortgagor has contracted according to law and the contract offering party agrees on the mortgage; { 94 }

6. other property which may be mortgaged according to law. { 95 }

A mortgagor may mortgage the properties listed in the preceding paragraph concurrently. { 96 }

Article 35

{ 97 }

The creditor's rights guaranteed by a mortgagor may not exceed the value of the things mortgaged. If the value of a piece of property, after being mortgaged, is higher than the creditor's rights guaranteed, the remaining part may be mortgaged again, however, the remaining part may not be exceeded. { 98 }

Article 36

{ 99 }

If a building on the state-owned land acquired according to law is mortgaged, the use-right of the state-owned land occupied by the said building shall be mortgaged together. If the use-right of the state-owned land acquired in the form of leasing is mortgaged, the buildings on the said state-owned land shall be mortgaged together. The Land-use right of town (township) and village enterprises may not be mortgaged individually. If the construction structures such as workshops of town (township) and village enterprises are mortgaged, the use-right for the land occupied by such structures shall be mortgaged together. { 100 }

Article 37

{ 101 }

The following property may not be mortgaged; { 102 }

1. land ownership; { 103 }

2. use-rights of such collectively-owned land as farmland, homestead, land allotted for personal needs and hilly land allotted for private use, however, those provided in Item 5 of Article 34 and Paragraph 3 of Article 36 of this Law shall be excluded; { 104 }

3. education facilities, medical and public health facilities and other facilities for public interests of such institutions and social organizations as schools, kindergartens and hospitals; { 105 }

4. property with unclear ownership and use-right or dispute; { 106 }

5. property which is attached, arrested or supervised and controlled according to law; or { 107 }

6. other property which may not be mortgaged according to law. { 108 }

Section 2 - Mortgage Contract and Registration of Things Mortgaged { 109 }

Article 38

{ 110 }

A mortgagor and a mortgagee shall conclude a mortgage contract in the form of writing. { 111 }

Article 39

{ 112 }

A mortgage contract shall include the following particulars: { 113 }

1. the category and amount of the principal creditor's right to be guaranteed; { 114 }

2. the term for the debtor to pay his debt; { 115 }

3. designation, amount, quality condition, location, status of ownership and status of use-rights of the things mortgaged; { 116 }

4. scope of guarantee; and { 117 }

5. other matters and items which the parties deem as necessary to be included. { 118 }

A mortgage contract which fails to include completely the particulars provided in the preceding paragraph may be added and amended. { 119 }

Article 40

{ 120 }

In making a mortgage contract, the mortgagee and mortgagor may not stipulate in the contract that the ownership over the things mortgaged would be transferred to be owned by the creditor if the mortgagee was not paid after the expiry of the term for performance of the debt. { 121 }

Article 41

{ 122 }

A party which uses the property listed in Article 42 of this Law as mortgage shall complete registration of things mortgaged, the mortgage contract shall enter into force from the date of registration. { 123 }

Article 42

{ 124 }

The departments which handle registration of things mortgaged are as follows: { 125 }

1. where the use-right of land on which there is no immovable object is mortgaged, it is the land administration department which issues the land use-right certificate; { 126 }

2. where urban real estate or construction structures such as workshops of town (township) and village enterprises are mortgaged, it is the department designated by the local people's government at or above the county level; { 127 }

3. where forest and trees are mortgaged, it is the competent forestry administrative department at or above the county level; { 128 }

4. where aircraft, ship or transport vehicle is mortgaged, it is the registration department of such means of transport; and { 129 }

5. where equipment or other movables* of enterprises is mortgaged, it is the administrative

department for industry and commerce in the place where such property is located. { 130 }

Article 43

{ 131 }

Where the parties concerned use other property as mortgage, registration of things mortgaged may voluntarily be completed, and in this case, the mortgage contract shall come into force on the date of signing. Parties concerned who fail to complete registration of things mortgaged may not challenge the third person. Where the parties apply for registration of things mortgaged, the registration department is the notary department in the place where the mortgagor is located.
{ 132 }

Article 44

{ 133 }

At the time of applying for registration of things mortgaged, the following documents or their photocopies shall be submitted to the registration department; { 134 }

1. The principal contract and mortgage contract; and { 135 }

2. certificate of ownership or use-right over the things to be mortgaged. { 136 }

Article 45

{ 137 }

The materials registered by the registration departments shall be allowed to be consulted, taken note of or photocopied. { 138 }

Section 3 - The Effect of Mortgage { 139 }

Article 46

{ 140 }

The scope of a guarantee by mortgage includes the principal creditor's right as well as interests, fines for breach of agreement, compensations for loss and damage and expenses for the realization of mortgage. Where a mortgage contract has otherwise stipulations, such stipulations shall apply. { 141 }

Article 47

{ 142 }

Where, upon the expiration of the term for performance of the debt, the things mortgaged are arrested by a people's court according to law due to the failure of the debtor in performing his debt, the mortgagee shall have the right, from the date of arrest, to collect naturally accrued yields arising from the things mortgaged as well as the statutory accrued interests which the mortgagor may collect from the things mortgaged. If the mortgagee fails to notify the genuine facts of arresting the things mortgaged to the liable person who shall pay the statutory accrued interests, the force of mortgage shall not be extended to such naturally accrued yields. The naturally accrued yields mentioned in the preceding paragraph shall be used to write off the expenses for collecting such naturally accrued yields in priority. { 143 }

Article 48

{ 144 }

A mortgagor who gives his property already leased out as mortgages shall advise the leasee* thereof in writing, and the original leasing contract shall continue to be valid. { 145 }

Article 49

{ 146 }

A mortgagor who, in the course of mortgage, assigns the things mortgaged which are registered shall advise the mortgagee and inform the assignee on the condition that the assigned things have already been mortgaged; if the mortgagor fails to advise the mortgagee or fails to inform the assignee, the act of assignment shall be invalid and void. Where the price money of things mortgaged assigned is apparently lower than their value, the mortgagee may require the mortgagor to tender corresponding guarantee; If the mortgagor fails to tender, the things mortgaged may not be assigned. The money received by the mortgagor from assignment of the things mortgaged shall compensate in priority the creditor's rights guaranteed to the mortgagee or be deposited at the third person agreed with the mortgagee, that part in excess of the creditor's rights is owned by the mortgagor, and the part in shortage shall be paid by the debtor. { 147 }

Article 50

{ 148 }

A mortgage may not be separated from the creditor's rights and transferred individually, or act as guarantee for other creditor's rights. { 149 }

Article 51

{ 150 }

Where the act of a mortgagor is sufficient to make the value of the things mortgaged decrease, the mortgagee has the right to require the mortgagor to stop his act. When the value of things mortgaged decreases, the mortgagee has the right to require the mortgagor to restore the value of the things mortgaged, or to tender guarantee which matches the decreased value. If the mortgagor is not to blame for the value decrease of things mortgaged, the mortgagee could require the mortgagor to tender guarantee only within the scope of the compensation obtained for loss and damage. The part of value not decreased shall continue to act as the guarantee for the creditor's rights. { 151 }

Article 52

{ 152 }

A mortgage exists concurrently with the creditor's rights so guaranteed, and if the creditor's rights cease to exist, so cease to exist the mortgage. { 153 }

Section 4 - Realization of Mortgage { 154 }

Article 53

{ 155 }

A mortgagee who is not compensated upon the expiration of the term for performance of the debt may, through agreement with the mortgagor, be compensated from the money received from converting the things mortgaged into cash or from auctioning and selling of the things mortgaged,

and if no agreement is reached, the mortgagee may file a suit in a people's court. After the things mortgaged are converted into cash or auctioned or sold the money in excess of the amount of creditor's rights shall be owned by the mortgagor, and the part in shortage shall be paid by the debtor. { 156 }

Article 54

{ 157 }

Where one piece of property is mortgaged to two or more creditors, the money received from auction or sale of the things mortgaged shall be used for compensation according to the following provisions: { 158 }

1. where the mortgage contracts come into force through registration, it shall be distributed according to the registration order of the things mortgaged; if the order is the same, it shall be distributed according to the percentage of creditor's rights; and { 159 }

2. where the mortgage contracts come into force on the date of signing, if the things mortgaged have been registered, it shall be distributed according to the provisions of Item 1 of this Article; if such things are not registered, it shall be distributed according to the time order of the entry into force of these contracts, if the order is the same, it shall be distributed according to the percentage of creditor's rights. Those that the things mortgaged are already registered shall have the priority in getting compensation than those not registered. { 160 }

Article 55

{ 161 }

After a mortgage contract of urban real estate is signed, the newly constructed buildings on this land do not fall within the things mortgaged. When the mortgaged real estate needs to be auctioned, such newly constructed buildings may be auctioned together with the things mortgaged, however, the mortgagee shall not have the priority in getting compensation from the money received from auction of such newly constructed buildings. If the use-right of a contracted waste land is mortgaged according to the provisions of this Law or the use-right of the land occupied by construction structures such as workshops of town (township) and village enterprises are mortgaged, after the realization of mortgage, the collective ownership and usage purpose of the land may not be changed without going through legal procedures. { 162 }

Article 56

{ 163 }

The mortgagee shall have the right of priority for compensation from the money received from auctioning of the use-right of allotted state-owned land after payment equivalent to the amount payable as the transfer of land use-right according to law. { 164 }

Article 57

{ 165 }

A third person who guarantees by mortgage for a debtor shall have the right over the debtor for compensation after the realization of mortgage. { 166 }

Article 58

{ 167 }

A mortgage shall cease to exist with the disappearance of the things mortgaged, however, compensation received from the disappearance thereof shall be served as mortgaged property.

{ 168 }

Section 5 - Mortgage of Maximum Amount { 169 }

Article 59

{ 170 }

Mortgage of maximum amount" as the term is used in this Law means that, as agreed upon by a mortgagor and a mortgagee and within the maximum amount of creditor's rights, the things mortgaged are served as guarantee to creditor's rights occurring consecutively within a certain period of time. { 171 }

Article 60

{ 172 }

A borrowing contract may be accompanied by a mortgage contract of maximum amount. A contract signed by a creditor and a debtor on a particular commodity occurring transactions consecutively in a certain period of time may be accompanied by a mortgage contract of maximum amount. { 173 }

Article 61

{ 174 }

Creditor's rights of a principal contract with mortgage of maximum amount may not be transferred. { 175 }

Article 62

{ 176 }

Apart from the provisions of this section, other provisions of this Chapter shall also apply to mortgage of maximum amount. { 177 }

Chapter IV - Pledge { 178 }

Section 1 - Pledge of Movables* { 179 }

Article 63

{ 180 }

Pledge of movables" as the term is used in this Law means guarantee under which the debtor or a third person transfers his movables to be possessed by the creditor, and uses such movables as creditor's rights. If the debtor fails to pay the debt, the creditor has the right, in accordance with the provisions of this Law, to get compensation in priority from the money received from converting such movables into cash or from auctioning and selling such movables. Subject to the provisions in the preceding paragraph, the debtor or the third person is a pledger, the creditor is a pledger, and the movables so transferred are the things pledged. { 181 }

Article 64

{ 182 }

A pledger and a pledgee shall conclude a pledge contract in a written form. A pledge contract shall enter into force from the time when the things pledged are transferred to be possessed by the pledgee. { 183 }

Article 65

{ 184 }

A pledge contract shall include the following particulars: { 185 }

1. category and amount of the principal creditor's right to be guaranteed; { 186 }
2. time limit for the debtor to pay his debt; { 187 }
3. name, quantity, quality and descriptions of the things pledged; { 188 }
4. scope of the guarantee; { 189 }
5. time for the transfer and delivery of the things pledged; and { 190 }
6. other matters and items deemed by the parties as necessary to be included. { 191 }

A pledge contract which fails to completely include the particulars provided in the preceding paragraph may be added and amended. { 192 }

Article 66

{ 193 }

A pledger and a pledgee may not stipulate in their contract that the ownership over the things pledged would be transferred to the pledgee if the pledgee is not fully compensated and paid upon the expiration of the term for performance of the debt. { 194 }

Article 67

{ 195 }

The scope of guarantee by pledge includes the principal creditor's right as well as interests, fine for breach of agreement, compensation for loss and damage, maintenance costs of the things pledged and expenses for the realization of the pledge. Where a pledge contract has otherwise stipulations, such stipulations shall apply. { 196 }

Article 68

{ 197 }

A pledgee has the right to collect the derivatives of the hypothecated assets. Should there be other arrangements in the hypothecation contract, those arrangements shall be followed instead. The derivative referred to in the preceding paragraph shall first be used to write off the expenses for collecting the derivatives. { 198 }

Article 69

{ 199 }

A pledgee shall be liable to properly keep and maintain the things pledged. If the things pledged are lost or damaged due to improper maintenance, the pledgee shall bear civil liability. If a pledgee can not properly keep and maintain the things pledged, which might cause disappearance of or damage to them, the pledger may require the pledgee to deposit the things pledged, or require to clear off the creditor's rights in advance and to return the things pledged. { 200 }

Article 70

{ 201 }

Where the things pledged exist the probability of loss, damage or apparent decrease in value, which is sufficient to harm the rights of the pledgee, the pledgee may require the pledger to tender corresponding guarantee. If the pledger fails to tender, the pledgee may auction or sell the things pledged, and make a agreement with the pledger that the money received from auction or sale shall be used to pay in advance the creditor's rights so guarantee or deposit at the third person agreed upon with the pledger. { 202 }

Article 71

{ 203 }

Where the debtor performs his debt at the expiration of the term for performance of the debt or the pledger pays in advance the creditor's rights so guaranteed, the pledgee, shall return the things pledged. A pledgee who is not paid at the expiration of the term for performance of the debt may, by agreement with the pledger, convert the things pledged into cash or auction or sell the things pledged. After the things pledged are converted into cash or auctioned off or sold, the proportion of the money in excess of the amount of creditor's rights shall be owned by the pledger, and the proportion in shortage shall be paid by the debtor. { 204 }

Article 72

{ 205 }

A third person who tenders guarantee by pledge for the debtor shall, after the pledgee has realized his rights of pledge, have the right to get compensation from the debtor. { 206 }

Article 73

{ 207 }

A pledge shall cease to exist along with the disappearance of the things pledged. The compensation received from such disappearance shall be served as pledged property. { 208 }

Article 74

{ 209 }

A pledge exists together with creditor's rights guaranteed. At the time the creditor's rights cease to exist, the pledge shall also cease to exist. { 210 }

Section 2 - Pledge of Rights { 211 }

Article 75

{ 212 }

The following rights may be pledged: { 213 }

1. draft, cheque, promissory notes, bonds, deposit certificates, warehouse receipt and bills of lading; { 214 }

2. shares and stocks, which are duly transferable according to law; { 215 }

3. property rights in the exclusive use right of trademark, patent right and the copyrights, which are transferable according to law; and { 216 }

4. other rights which may be pledged according to law. { 217 }

Article 76

{ 218 }

Where drafts, cheques, promissory notes, bonds, deposit certificates, warehouse receipts or bills of lading are used as pledge, the certificates of right shall be delivered to the pledgee within the time limit as contracted. The pledge contract shall come into force on the date of delivery of such certificates. { 219 }

Article 77

{ 220 }

Where drafts, promissory notes, cheques bonds, deposit certificates, warehouse receipts or bills of lading, on which the date of cashing or taking delivery of goods is marked, are used as pledge, and if such date of cashing or taking delivery of goods of such drafts, promissory notes, cheques, bonds, deposit certificates, warehouse receipts or bills of lading is earlier than the time limit for performance of the debt, the pledgee may cash or taking delivery of goods prior to the expiration of the time limit for performance of the debt, and by agreement with the pledger, use the amount so cashed or goods taken delivery of to pay in advance the creditor's rights guaranteed or deposit at the third person agreed upon with the pledger. { 221 }

Article 78

{ 222 }

Where stocks which are transferable according to law are used as pledge, the pledger and the pledgee shall conclude a written contract and complete pledge registration with the securities registration organization. A pledge contract shall come into force on the date of registration. Stocks, once used as pledge, may not be transferred, however, those consented through negotiation by the pledger and the pledgee may be transferred, the money received from such transfer by the pledger shall be used to pay in priority the creditor's rights so guaranteed to the pledgee or be deposited at the third person agreed upon with the pledgee. Where shares of limited liability companies are used as pledge, the relevant provisions concerning shares transfer of the Company Law shall apply thereto. The pledge contract shall come into force from the date on which the shares pledge is recorded in the name list of shareholders. { 223 }

Article 79

{ 224 }

Where the property right in the exclusive use rights of trademarks, the patent rights or the copyrights, which is transferable according to law, is used as pledge, the pledger and the pledgee shall conclude a written contract and complete pledge registration with their respective administrative department. The pledge contract shall come into force on the date of registration. { 225 }

Article 80

{ 226 }

After the right provided in Article 79 of this Law is used as pledge, the pledger may not

transfer or license others to use them, however, those consented through negotiation by the pledger and the pledgee may transferred or licensed to others for use. The transfer remuneration and royalties received by the pledger shall be used to pay in advance the creditor's rights so guaranteed to the pledgee or be deposited at the third person agreed upon with the pledgee.
{ 227 }

Article 81
{ 228 }
Apart from the provisions of this Section, the provisions of Section 1 of this Chapter shall apply to the pledge of rights. { 229 }

Chapter V - Lien { 230 }

Article 82
{ 231 }
Lien" as the term is used in this Law means that, subject to the provisions of Article 84 of this law, a creditor possesses the movables of the debtor as contracted, and if the debtor fails to pay his debt within the term as contracted, the creditor shall have the right to keep lien of such property in accordance with the provisions of this Law, and take the priority in compensation from the money received from converting such property into cash or from auctioning off and selling such property.
{ 232 }

Article 83
{ 233 }
The scope of guarantee by lien covers the principal creditor's right, as well as interests, fines for breach of agreement, compensation for loss and damage, maintenance costs of things under lien and expenses for the realization of the lien. { 234 }

Article 84
{ 235 }
With respect to the creditor's rights arising from maintenance contract, transport contract, processing and consignment contract, if the debtor fails to pay his debt, the creditor shall have the right of lien. The provisions of the preceding paragraph shall apply to other contracts which are subject to liens as provided by law. The parties may stipulate in the contract the things which may not be under lien. { 236 }

Article 85
{ 237 }
If a piece of property under lien is divisible thing, the value of the thing under lien shall be equivalent to the amount of a debt. { 238 }

Article 86
{ 239 }
The lienor* shall be liable to properly maintain and keep the things under lien. If the loss of

or damage to the things under lien is caused due to improper maintenance and storage, the lienor shall bear civil liability. { 240 }

Article 87

{ 241 }

A creditor and a debtor shall stipulate in a contract that, after the creditor takes lien of property, the debtor shall perform his debt within a term not less than two months. If the creditor and the debtor fail to make such stipulations in the contract, the creditor shall, after taking lien of the debtor's property, determine a term longer than two months and notify the debtor to perform his debt in that term. { 242 }

If the debtor fails to perform his debt as scheduled, the creditor may, by agreement with the debtor, convert the things under lien into cash or auction off and sell the things under lien. { 243 }

After the conversion into cash of the things under lien or auction and sale of such things, the proportion of money in excess of the creditor's right shall be owned by the debtor, the proportion in shortage shall be paid by the debtor. { 244 }

Article 88

{ 245 }

A right of lien ceases to exist under the following reasons: { 246 }

1. where the creditor's right ceases to exist; or { 247 }

2. where the debtor tenders separate guarantee which is accepted by the creditor. { 248 }

Chapter VI - Earnest { 249 }

Article 89

{ 250 }

The parties concerned may stipulate that one party pays earnest as a guarantee for the creditor's rights to the other party. After the debtor pays his debt, such earnest shall be converted as the amount of price or be returned. The party which pays such earnest shall, if failing to perform his debt as contracted, have no right to require for the return of the earnest; and the party which accepts earnest shall, if failing to perform his debt as contracted, return two times of the earnest. { 251 }

Article 90

{ 252 }

Earnest shall be stipulated in a written form. The parties concerned shall also stipulate in the earnest contract the term for payment of earnest. An earnest contract shall come into force from the date on which the earnest is actually paid. { 253 }

Article 91

{ 254 }

The amount of earnest shall be stipulated by the parties, but may not exceed 20 percent of the amount of the subject-matter of the principal contract. { 255 }

Chapter VII - Supplementary Provisions { 256 }

Article 92

{ 257 }

Immovables"* as the term is used in this Law means land as well as the things fixed on the land such as buildings and forest and trees. { 258 }

Movables" as the term is used in this Law means the things other than the immovables. { 259 }

Article 93

{ 260 }

For the purpose of this Law, guarantee contract, mortgage contract, pledge contract or earnest contract" may be a written contract which is separately concluded, including letters and mail and facsimiles of guarantee nature among the parties concerned, and also may be the guarantee clauses in the principal contract. { 261 }

Article 94

{ 262 }

To convert into cash or sell the things mortgaged, things pledged or things under lien, the market price shall be taken as a reference. { 263 }

Article 95

{ 264 }

This Law shall enter into force on October 1, 1995. { 265 }

中华人民共和国担保法

（１９９５年６月３０日第八届全国人民代表大会常务委员会第十四次会议通过　１９９５年６月３０日中华人民共和国主席令第五十号公布　自１９９５年１０月１日起施行）

第一章　总则
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第五章　留置

第六章　定金
第七章　附则

第一章　总则

第一条　为促进资金融通和商品流通，保障债权的实现，发展社会主义市场经济，制定本法。

第二条　在借贷、买卖、货物运输、加工承揽等经济活动中，债权人需要以担保方式保障其债权实现的，可以依照本法规定设定担保。

本法规定的担保方式为保证、抵押、质押、留置和定金。

第三条　担保活动应当遵循平等、自愿、公平、诚实信用的原则。

第四条　第三人为债务人向债权人提供担保时，可以要求债务人提供反担保。

反担保适用本法担保的规定。

第五条　担保合同是主合同的从合同，主合同无效，担保合同无效。担保合同另有约定的，按照约定。

担保合同被确认无效后，债务人、担保人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

第二章　保证

第一节　保证和保证人

第六条　本法所称保证，是指保证人和债权人约定，当债务人不履行债务时，保证人按照约定履行债务或者承担责任的行为。

第七条　具有代为清偿债务能力的法人、其他组织或者公民，可以作保证人。

第八条　国家机关不得为保证人，但经国务院批准为使用外国政府或者国际经济组织贷款进行转贷的除外。

第九条　学校、幼儿园、医院等以公益为目的的事业单位、社会团体不得为保证人。

第十条　企业法人的分支机构、职能部门不得为保证人。

企业法人的分支机构有法人书面授权的，可以在授权范围内提供保证。

第十一条　任何单位和个人不得强令银行等金融机构或者企业为他人提供保证；银行等金融机构或者企业对强令其为他人提供保证的行为，有权拒绝。

第十二条　同一债务有两个以上保证人的，保证人应当按照保证合同约定的保证份额，承担保证责任。没有约定保证份额的，保证人承担连带责任，债权人可以要求任何一个保证人承担全部保证责任，保证人都负有担保全部债权实现的义务。已经承担保证责任的保证人，有权向债务人追偿，或者要求承担连带责任的其他保证人清偿其应当承担的份额。

第二节　保证合同和保证方式

第十三条　保证人与债权人应当以书面形式订立保证合同。

第十四条　保证人与债权人可以就单个主合同分别订立保证合同，也可以协议在最高债权额限度内就一定期间连续发生的借款合同或者某项商品交易合同订立一个保证合同。

第十五条　保证合同应当包括以下内容：

（一）被保证的主债权种类、数额；

（二）债务人履行债务的期限；

（三）保证的方式；

（四）保证担保的范围；

（五）保证的期间；

（六）双方认为需要约定的其他事项。

保证合同不完全具备前款规定内容的，可以补正。

第十六条　保证的方式有：

（一）一般保证；

（二）连带责任保证。

第十七条　当事人在保证合同中约定，债务人不能履行债务时，由保证人承担保证责任的，为一般保证。

一般保证的保证人在主合同纠纷未经审判或者仲裁，并就债务人财产依法强制执行仍不能履行债务前，对债权人可以拒绝承担保证责任。

有下列情形之一的，保证人不得行使前款规定的权利：

（一）债务人住所变更，致使债权人要求其履行债务发生重大困难的；

（二）人民法院受理债务人破产案件，中止执行程序的；

（三）保证人以书面形式放弃前款规定的权利的。

第十八条　当事人在保证合同中约定保证人与债务人对债务承担连带责任的，为连带责任保证。

连带责任保证的债务人在主合同规定的债务履行期届满没有履行债务的，债权人可以要求债务人履行债务，也可以要求保证人在其保证范围内承担保证责任。

第十九条　当事人对保证方式没有约定或者约定不明确的，按照连带责任保证承担保证责任。

第二十条　一般保证和连带责任保证的保证人享有债务人的抗辩权。债务人放弃对债务的抗辩权的，保证人仍有权抗辩。

抗辩权是指债权人行使债权时，债务人根据法定事由，对抗债权人行使请求权的权利。

第三节　保证责任

第二十一条　保证担保的范围包括主债权及利息、违约金、损害赔偿金和实现债权的费用。保证合同另有约定的，按照约定。

当事人对保证担保的范围没有约定或者约定不明确的，保证人应当对全部债务承担责任。

第二十二条　保证期间，债权人依法将主债权转让给第三人的，保证人在原保证担保的范围内继续承担保证责任。保证合同另有约定的，按照约定。

第二十三条　保证期间，债权人许可债务人转让债务的，应当取得保证人书面同意，保证人对未经其同意转让的债务，不再承担保证责任。

第二十四条　债权人与债务人协议变更主合同的，应当取得保证人书面同意，未经保证人书面同意的，保证人不再承担保证责任。保证合同另有约定的，按照约定。

第二十五条　一般保证的保证人与债权人未约定保证期间的，保证期间为主债务履行期届满之日起六个月。

在合同约定的保证期间和前款规定的保证期间，债权人未对债务人提起诉讼或者申请仲裁的，保证人免除保证责任；债权人已提起诉讼或者申请仲裁的，保证期间适用诉讼时效中断的规定。

第二十六条　连带责任保证的保证人与债权人未约定保证期间的，债权人有权自主债务履行期届满之日起六个月内要求保证人承担保证责任。

在合同约定的保证期间和前款规定的保证期间，债权人未要求保证人承担保证责任的，保证人免除保证责任。

第二十七条　保证人依照本法第十四条规定就连续发生的债权作保证，未约定保证期间的，保证人可以随时书面通知债权人终止保证合同，但保证人对于通知到债权人前所发生的债权，承担保证责任。

第二十八条　同一债权既有保证又有物的担保的，保证人对物的担保以外的债权承担保证责任。

债权人放弃物的担保的，保证人在债权人放弃权利的范围内免除保证责任。

第二十九条　企业法人的分支机构未经法人书面授权或者超出授权范围与债权人订立保证合同的，该合同无效或者超出授权范围的部分无效，债权人和企业法人有过错的，应当根据其过错各自承担相应的民事责任；债权人无过错的，由企业法人承担民事责任。

第三十条　有下列情形之一的，保证人不承担民事责任：

（一）主合同当事人双方串通，骗取保证人提供保证的；

（二）主合同债权人采取欺诈、胁迫等手段，使保证人在违背真实意思的情况下提供保证的。

第三十一条　保证人承担保证责任后，有权向债务人追偿。

第三十二条　人民法院受理债务人破产案件后，债权人未申报债权的，保证人可以参加破产财产分配，预先行使追偿权。

第三章　抵押

第一节　抵押和抵押物

第三十三条　本法所称抵押，是指债务人或者第三人不转移对本法第三十四条所列财产的占有，将该财产作为债权的担保。债务人不履行债务时，债权人有权依照本法规定以该财产折价或者以拍卖、变卖该财产的价款优先受偿。

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押物。

第三十四条　下列财产可以抵押：

（一）抵押人所有的房屋和其他地上定着物；

（二）抵押人所有的机器、交通运输工具和其他财产；

（三）抵押人依法有权处分的国有的土地使用权、房屋和其他地上定着物；

（四）抵押人依法有权处分的国有的机器、交通运输工具和其他财产；

（五）抵押人依法承包并经发包方同意抵押的荒山、荒沟、荒丘、荒滩等荒地的土地使用权；

（六）依法可以抵押的其他财产。

抵押人可以将前款所列财产一并抵押。

第三十五条　抵押人所担保的债权不得超出其抵押物的价值。

财产抵押后，该财产的价值大于所担保债权的余额部分，可以再次抵押，但不得超出其余额部分。

第三十六条　以依法取得的国有土地上的房屋抵押的，该房屋占用范围内的国有土地使用权同时抵押。

以出让方式取得的国有土地使用权抵押的，应当将抵押时该国有土地上的房屋同时抵

押。

乡（镇）村企业的土地使用权不得单独抵押。以乡（镇）村企业的厂房等建筑物抵押的，其占用范围内的土地使用权同时抵押。

第三十七条　下列财产不得抵押：

（一）土地所有权；

（二）耕地、宅基地、自留地、自留山等集体所有的土地使用权，但本法第三十四条第（五）项、第三十六条第三款规定的除外；

（三）学校、幼儿园、医院等以公益为目的的事业单位、社会团体的教育设施、医疗卫生设施和其他社会公益设施；

（四）所有权、使用权不明或者有争议的财产；

（五）依法被查封、扣押、监管的财产；

（六）依法不得抵押的其他财产。

第二节　抵押合同和抵押物登记

第三十八条　抵押人和抵押权人应当以书面形式订立抵押合同。

第三十九条　抵押合同应当包括以下内容：

（一）被担保的主债权种类、数额；

（二）债务人履行债务的期限；

（三）抵押物的名称、数量、质量、状况、所在地、所有权权属或者使用权权属；

（四）抵押担保的范围；

（五）当事人认为需要约定的其他事项。

抵押合同不完全具备前款规定内容的，可以补正。

第四十条　订立抵押合同时，抵押权人和抵押人在合同中不得约定在债务履行期届满抵押权人未受清偿时，抵押物的所有权转移为债权人所有。

第四十一条　当事人以本法第四十二条规定的财产抵押的，应当办理抵押物登记，抵押合同自登记之日起生效。

第四十二条　办理抵押物登记的部门如下：

（一）以无地上定着物的土地使用权抵押的，为核发土地使用权证书的土地管理部门；

（二）以城市房地产或者乡（镇）村企业的厂房等建筑物抵押的，为县级以上地方人民政府规定的部门；

（三）以林木抵押的，为县级以上林木主管部门；

（四）以航空器、船舶、车辆抵押的，为运输工具的登记部门；

（五）以企业的设备和其他动产抵押的，为财产所在地的工商行政管理部门。

第四十三条　当事人以其他财产抵押的，可以自愿办理抵押物登记，抵押合同自签订之日起生效。

当事人未办理抵押物登记的，不得对抗第三人。当事人办理抵押物登记的，登记部门为抵押人所在地的公证部门。

第四十四条　办理抵押物登记，应当向登记部门提供下列文件或者其复印件：

（一）主合同和抵押合同；

（二）抵押物的所有权或者使用权证书。

第四十五条　登记部门登记的资料，应当允许查阅、抄录或者复印。

第三节　抵押的效力

第四十六条　抵押担保的范围包括主债权及利息、违约金、损害赔偿金和实现抵押权的费用。抵押合同另有约定的，按照约定。

第四十七条　债务履行期届满，债务人不履行债务致使抵押物被人民法院依法扣押的，自扣押之日起抵押权人有权收取由抵押物分离的天然孳息以及抵押人就抵押物可以收取的法定孳息。抵押权人未将扣押抵押物的事实通知应当清偿法定孳息的义务人的，抵押权的效力不及于该孳息。

前款孳息应当先充抵收取孳息的费用。

第四十八条　抵押人将已出租的财产抵押的，应当书面告知承租人，原租赁合同继续有效。

第四十九条　抵押期间，抵押人转让已办理登记的抵押物的，应当通知抵押权人并告知受让人转让物已经抵押的情况；抵押人未通知抵押权人或者未告知受让人的，转让行为无效。

转让抵押物的价款明显低于其价值的，抵押权人可以要求抵押人提供相应的担保；抵押人不提供的，不得转让抵押物。

抵押人转让抵押物所得的价款，应当向抵押权人提前清偿所担保的债权或者向与抵押权人约定的第三人提存。超过债权数额的部分，归抵押人所有，不足部分由债务人清偿。

第五十条　抵押权不得与债权分离而单独转让或者作为其他债权的担保。

第五十一条　抵押人的行为足以使抵押物价值减少的，抵押权人有权要求抵押人停止其行为。抵押物价值减少时，抵押权人有权要求抵押人恢复抵押物的价值，或者提供与减少的价值相当的担保。

抵押人对抵押物价值减少无过错的，抵押权人只能在抵押人因损害而得到的赔偿范围内要求提供担保。抵押物价值未减少的部分，仍作为债权的担保。

第五十二条　抵押权与其担保的债权同时存在，债权消灭的，抵押权也消灭。

第四节　抵押权的实现

第五十三条　债务履行期届满抵押权人未受清偿的，可以与抵押人协议以抵押物折价或者以拍卖、变卖该抵押物所得的价款受偿；协议不成的，抵押权人可以向人民法院提起诉讼。

抵押物折价或者拍卖、变卖后，其价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

第五十四条　同一财产向两个以上债权人抵押的，拍卖、变卖抵押物所得的价款按照以下规定清偿：

（一）抵押合同以登记生效的，按照抵押物登记的先后顺序清偿；顺序相同的，按照债权比例清偿；

（二）抵押合同自签订之日起生效的，该抵押物已登记的，按照本条第（一）项规定清偿；未登记的，按照合同生效时间的先后顺序清偿，顺序相同的，按照债权比例清偿。抵押物已登记的先于未登记的受偿。

第五十五条　城市房地产抵押合同签订后，土地上新增的房屋不属于抵押物。需要拍卖该抵押的房地产时，可以依法将该土地上新增的房屋与抵押物一同拍卖，但对拍卖新增房屋所得，抵押权人无权优先受偿。

依照本法规定以承包的荒地的土地使用权抵押的，或者以乡（镇）村企业的厂房等建筑物占用范围内的土地使用权抵押的，在实现抵押权后，未经法定程序不得改变土地集体所有和土地用途。

第五十六条　拍卖划拨的国有土地使用权所得的价款，在依法缴纳相当于应缴纳的土地

使用权出让金的款额后，抵押权人有优先受偿权。

第五十七条　为债务人抵押担保的第三人，在抵押权人实现抵押权后，有权向债务人追偿。

第五十八条　抵押权因抵押物灭失而消灭。因灭失所得的赔偿金，应当作为抵押财产。

第五节　最高额抵押

第五十九条　本法所称最高额抵押，是指抵押人与抵押权人协议，在最高债权额限度内，以抵押物对一定期间内连续发生的债权作担保。

第六十条　借款合同可以附最高额抵押合同。

债权人与债务人就某项商品在一定期间内连续发生交易而签订的合同，可以附最高额抵押合同。

第六十一条　最高额抵押的主合同债权不得转让。

第六十二条　最高额抵押除适用本节规定外，适用本章其他规定。

第四章　质押

第一节　动产质押

第六十三条　本法所称动产质押，是指债务人或者第三人将其动产移交债权人占有，将该动产作为债权的担保。债务人不履行债务时，债权人有权依照本法规定以该动产折价或者以拍卖、变卖该动产的价款优先受偿。

前款规定的债务人或者第三人为出质人，债权人为质权人，移交的动产为质物。

第六十四条　出质人和质权人应当以书面形式订立质押合同。

质押合同自质物移交于质权人占有时生效。

第六十五条　质押合同应当包括以下内容：

（一）被担保的主债权种类、数额；

（二）债务人履行债务的期限；

（三）质物的名称、数量、质量、状况；

（四）质押担保的范围；

（五）质物移交的时间；

（六）当事人认为需要约定的其他事项。

质押合同不完全具备前款规定内容的，可以补正。

第六十六条　出质人和质权人在合同中不得约定在债务履行期届满质权人未受清偿时，质物的所有权转移为质权人所有。

第六十七条　质押担保的范围包括主债权及利息、违约金、损害赔偿金、质物保管费用和实现质权的费用。质押合同另有约定的，按照约定。

第六十八条　质权人有权收取质物所生的孳息。质押合同另有约定的，按照约定。

前款孳息应当先充抵收取孳息的费用。

第六十九条　质权人负有妥善保管质物的义务。因保管不善致使质物灭失或者毁损的，质权人应当承担民事责任。

质权人不能妥善保管质物可能致使其灭失或者毁损的，出质人可以要求质权人将质物提存，或者要求提前清偿债权而返还质物。

第七十条　质物有损坏或者价值明显减少的可能，足以危害质权人权利的，质权人可以

要求出质人提供相应的担保。出质人不提供的，质权人可以拍卖或者变卖质物，并与出质人协议将拍卖或者变卖所得的价款用于提前清偿所担保的债权或者向与出质人约定的第三人提存。

第七十一条　债务履行期届满债务人履行债务的，或者出质人提前清偿所担保的债权的，质权人应当返还质物。

债务履行期届满质权人未受清偿的，可以与出质人协议以质物折价，也可以依法拍卖、变卖质物。

质物折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

第七十二条　为债务人质押担保的第三人，在质权人实现质权后，有权向债务人追偿。

第七十三条　质权因质物灭失而消灭。因灭失所得的赔偿金，应当作为出质财产。

第七十四条　质权与其担保的债权同时存在，债权消灭的，质权也消灭。

第二节　权利质押

第七十五条　下列权利可以质押：

（一）汇票、支票、本票、债券、存款单、仓单、提单；

（二）依法可以转让的股份、股票；

（三）依法可以转让的商标专用权，专利权、著作权中的财产权；

（四）依法可以质押的其他权利。

第七十六条　以汇票、支票、本票、债券、存款单、仓单、提单出质的，应当在合同约定的期限内将权利凭证交付质权人。质押合同自权利凭证交付之日起生效。

第七十七条　以载明兑现或者提货日期的汇票、支票、本票、债券、存款单、仓单、提单出质的，汇票、支票、本票、债券、存款单、仓单、提单兑现或者提货日期先于债务履行期的，质权人可以在债务履行期届满前兑现或者提货，并与出质人协议将兑现的价款或者提取的货物用于提前清偿所担保的债权或者向与出质人约定的第三人提存。

第七十八条　以依法可以转让的股票出质的，出质人与质权人应当订立书面合同，并向证券登记机构办理出质登记。质押合同自登记之日起生效。

股票出质后，不得转让，但经出质人与质权人协商同意的可以转让。出质人转让股票所得的价款应当向质权人提前清偿所担保的债权或者向与质权人约定的第三人提存。

以有限责任公司的股份出质的，适用公司法股份转让的有关规定。质押合同自股份出质记载于股东名册之日起生效。

第七十九条　以依法可以转让的商标专用权，专利权、著作权中的财产权出质的，出质人与质权人应当订立书面合同，并向其管理部门办理出质登记。质押合同自登记之日起生效。

第八十条　本法第七十九条规定的权利出质后，出质人不得转让或者许可他人使用，但经出质人与质权人协商同意的可以转让或者许可他人使用。出质人所得的转让费、许可费应当向质权人提前清偿所担保的债权或者向与质权人约定的第三人提存。

第八十一条　权利质押除适用本节规定外，适用本章第一节的规定。

第五章　留置

第八十二条　本法所称留置，是指依照本法第八十四条的规定，债权人按照合同约定占有债务人的动产，债务人不按照合同约定的期限履行债务的，债权人有权依照本法规定留置该财产，以该财产折价或者以拍卖、变卖该财产的价款优先受偿。

第八十三条　留置担保的范围包括主债权及利息、违约金、损害赔偿金、留置物保管费用和实现留置权的费用。

第八十四条　因保管合同、运输合同、加工承揽合同发生的债权，债务人不履行债务的，债权人有留置权。

法律规定可以留置的其他合同，适用前款规定。

当事人可以在合同中约定不得留置的物。

第八十五条　留置的财产为可分物的，留置物的价值应当相当于债务的金额。

第八十六条　留置权人负有妥善保管留置物的义务。因保管不善致使留置物灭失或者毁损的，留置权人应当承担民事责任。

第八十七条　债权人与债务人应当在合同中约定，债权人留置财产后，债务人应当在不少于两个月的期限内履行债务。债权人与债务人在合同中未约定的，债权人留置债务人财产后，应当确定两个月以上的期限，通知债务人在该期限内履行债务。

债务人逾期仍不履行的，债权人可以与债务人协议以留置物折价，也可以依法拍卖、变卖留置物。

留置物折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债务人清偿。

第八十八条　留置权因下列原因消灭：

（一）债权消灭的；

（二）债务人另行提供担保并被债权人接受的。

第六章　定金

第八十九条　当事人可以约定一方向对方给付定金作为债权的担保。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行约定的债务的，无权要求返还定金；收受定金的一方不履行约定的债务的，应当双倍返还定金。

第九十条　定金应当以书面形式约定。当事人在定金合同中应当约定交付定金的期限。定金合同从实际交付定金之日起生效。

第九十一条　定金的数额由当事人约定，但不得超过主合同标的额的百分之二十。

第七章　附则

第九十二条　本法所称不动产是指土地以及房屋、林木等地上定着物。

本法所称动产是指不动产以外的物。

第九十三条　本法所称保证合同、抵押合同、质押合同、定金合同可以是单独订立的书面合同，包括当事人之间的具有担保性质的信函、传真等，也可以是主合同中的担保条款。

第九十四条　抵押物、质物、留置物折价或者变卖，应当参照市场价格。

第九十五条　海商法等法律对担保有特别规定的，依照其规定。

第九十六条　本法自１９９５年１０月１日起施行

ATTACHMENT 65

Public
File 203

Order of the President of the People's Republic of China

(No. 54)

The Law of the People's Republic of China on Enterprise Bankruptcy, which was adopted at the 23rd meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on August 27, 2006, is hereby promulgated and shall come into force as of June 1, 2007.

President of the People's Republic of China Hu Jingtao

August 27, 2006

Law of the People's Republic of China on Enterprise Bankruptcy

(Adopted at the 23rd meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on August 27, 2006)

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Chapter I General Provisions

Article 1 The present Law is formulated for purposes of regulating the procedures for enterprise bankruptcy, fairly settling the credits and debts, safeguarding the legitimate rights and interests of creditors and debtors, and maintaining the market order of the socialist economy.

Article 2 Where an enterprise legal person fails to clear off its debt as due, and if its assets are not enough to pay off all the debts or if it is obviously incapable of clearing off its debts, its liabilities shall be liquidated according to the provisions of the present Law.

Where an enterprise legal person is under the aforesaid circumstance or if it is obviously likely that it is unable to pay off its debts, it may be subject to revival according to the provisions of the present Law.

Article 3 A bankruptcy case shall be governed by the people's court where the relevant debtor is domiciled.

Article 4 The procedures for hearing a bankruptcy case shall, in the absence of relevant provisions in the present Law, be governed by the relevant provisions of the Civil Litigation Law.

Article 5 The procedures for bankruptcy which have been initiated according to the present Law shall have binding force over the assets of the relevant debtor beyond the territory of the People's Republic of China.

Where any legally effective judgment or ruling made by a foreign court involves any debtor's assets within the territory of the People's Republic of China and if the debtor applies with or requests the people's court to confirm or enforce it, the people's court shall, according to the relevant international treaties that China has concluded or acceded to or according to the principles of reciprocity, conduct an examination thereon and, when believing that it does not violate the basic principles of the laws of the People's Republic of China, does not damage the sovereignty, safety or social public interests of the state, does not damage the legitimate rights and interests of the debtors within the territory of the People's Republic of China, grant confirmation and permission for enforcement.

Article 6 In the hearing of a bankruptcy case, the people's court shall guarantee the legitimate rights and interests of the employers in the insolvent enterprise and subject its mangers to legal liabilities.

Chapter II Application and Acceptance

Section I Application

Article 7 Where a debtor is under the circumstance as prescribed by Article 2 of the present Law, it may file an application with the people's court for revival, compromise or bankrupt liquidation.

Where the debtor fails to pay off its due debts, it may file an application with the people's court for revival or bankrupt liquidation.

Where an enterprise legal person has been dissolved without any liquidation or without completing the liquidation and if the relevant assets are not enough to clear off the debts, the person liable for liquidation shall apply with the people's court for bankrupt liquidation.

Article 8 To apply for bankruptcy, an Application for Bankruptcy and the related evidences shall be submitted to the people's court.

The following matters shall be indicated in the Application for Bankruptcy:

(1)Basic introduction to the applicant and respondent;

(2)Purpose of application;

(3)Facts and ground of the application; and

(4)Any other matter that the people's court deems necessary to be indicated.

Where a debtor files an application, it shall submit the statements on financial status, a checklist of debts, a checklist of the credit right, the relevant financial statements, a reserve plan for employee arrangement as well as the payment documents of wages and social insurance premiums.

Article 9 Before the people's court accepts an application for bankruptcy, the applicant may request for withdrawing its application.

Section II Acceptance

Article 10 Where a creditor files an application for bankruptcy, the people's court shall, within 5 days as of the day when the application is received, inform the related debtor. Where a debtor has any different opinion to an application, it shall put forward its demurral to the people's court within 7 days as of the day when a notice is received from the people's court. The people's court shall decide whether or not to accept the case within 10 days as of expiration of the term for filing a demurral.

Except for the circumstance as prescribed in the preceding paragraph, the people's court shall decide whether or not to accept an application for bankruptcy within 15 days as of the day when the application is received.

Under any special circumstance where the term for accepting a case as prescribed in the preceding two paragraphs is required to be extended, it may be extended for another 15 days upon the approval of the people's court at a higher level.

Article 11 Where the people's court accepts an application for bankruptcy, it shall serve it on the relevant applicant within 5 days as of the day when the decision is made.

Where a creditor files an application, the people's court shall serve it on the relevant debtor within 5 days as of the day when a decision is made. The relevant debtor shall, within 15 days as of the day when a decision is served, submit to the people's court its statements on financial status, a checklist of debts, a checklist of the creditor's right, the relevant financial statements as well as the payment documents of wages and social insurance premiums.

Article 12 Where the people's court decides not to accept an application for bankruptcy, it shall serve its decision on the applicant within 5 days as of the day when the decision is made. Where an applicant is dissatisfied with the decision, it may, within 10 days as of the day when the decision is served, file an appeal with the people's court at the next higher level.

During the period from when the people's court accepts an application for bankruptcy to when a bankruptcy is announced, where it is found that the relevant debtor is not under the circumstance as prescribed by Article 2 of the present Law, its application may be rejected. Where an applicant is dissatisfied with a decision, it may, within 10 days as of the day when the decision is served on, file an appeal with the people's court at the next higher level.

Article 13 Where the people's court accepts an application for bankruptcy, it shall designate a bankruptcy administrator in the meanwhile.

Article 14 The people's court shall, within 25 days as of the day when it decides to accept an application for bankruptcy, notify the relevant creditors and announce its decision as well.

The following matters shall be indicated in the aforesaid notice and announcement:

(1)Name of the applicant and respondent;

(2)The time when the people's court accepts the application for bankruptcy;

(3)Term, address and points of attention in the declaration of the creditor's right;

(4)Name of the bankruptcy administrator as well as the address where it undertakes its business;

(5)Requirements that the debtors or asset holders of the debtor shall clear off the debts or deliver the assets;

(6)The time and place where the first creditors' meeting is held; and

(7)Any other matter that the people's court deems necessary to be notified and announced.

Article 15 During the period from the day when the people's court decides to accept an application for bankruptcy to the day when the procedures for bankruptcy are concluded, the relevant personnel of the debtor shall bear the following obligations:

(1)Properly preserving the assets, seals and account bookss as well as documents under its occupation and management;

(2)Working according to the requirements of the people's court and bankruptcy administrator and answering their inquiries in a faithful manner;

(3)Attending the creditor's meeting and answering the creditors' inquiries;

(4)Not leaving its domicile in the absence of permission of the people's court; and

(5)Not assuming any post of director, supervisor or senior manager in any other enterprise.

The term "relevant personnel" as mentioned in the preceding paragraph are the legal representatives of an enterprise, which may, upon approval of the people's court, include the financial managers and other operators of the enterprise.

Article 16 After the people's court accepts an application for bankruptcy, the repayment of debts made by a debtor to individual creditors shall be invalidated.

Article 17 After the people's court accepts an application for bankruptcy, the debtors or asset holders of the debtor shall pay off the debts or deliver the relevant assets to the bankruptcy administrator.

Where any debtor or asset holder purposely violates the provisions of the preceding paragraph by paying off its debts or delivering the assets to the debtor and thus incurs losses to the relevant creditors, its obligation of paying off the debts or delivering the assets shall not be exempted.

Article 18 After the people's court accepts an application for bankruptcy, the relevant bankruptcy administrator shall decide to rescind or continue to perform a contract that has been established before acceptance yet has not been fully performed by both parties concerned and notify the opposite party concerned of its decision. Where the bankruptcy administrator fails to inform the opposite party concerned within 2 months as of the day of acceptance or to make any reply to an urge made by the opposite party concerned, it shall be deemed as rescission of the contract.

Where the bankruptcy administrator decides to continue a contract, the opposite party concerned shall continue the performance of the contract yet has the right to request the administrator to provide guaranty. Where the administrator does not provide any guaranty, it shall be deemed as rescission of the contract.

Article 19 After the people's court accepts an application for bankruptcy, the relevant measures for preserving the debtor's assets shall be released and the procedures for ution shall be suspended.

Article 20 After the people's court accepts an application for bankruptcy, any civil action or arbitration involving the relevant debtor that is in the process of trial shall be suspended. The action or arbitration can be resumed after a bankruptcy administrator takes over the debtor's assets.

Article 21 After the people's court accepts an application for bankruptcy, the relevant debtor's civil action shall be filed with the very people's court only.

Chapter III Bankruptcy Administrator

Article 22 A bankruptcy administrator shall be designated by the people's court.

Where it is decided at the creditors' meeting that a bankruptcy administrator fails to perform or fulfill its duties and functions in a lawful and impartially manner, the creditors may apply with the people's court for alteration.

The measures for designating bankruptcy administrators and deciding the remunerations of bankruptcy administrators shall be made by the Supreme People's Court.

Article 23 A bankruptcy administrator shall, according to the provisions of the present Law, perform its functions and duties, report its work to the people's court and accept the supervision of the creditors' meeting and the creditors' committee.

A bankruptcy administrator shall attend the creditors' meeting, report the performance of its duties and functions and answer the relevant inquiries.

Article 24 The post of bankruptcy administrator may be assumed by a liquidation group comprised of the relevant departments and organs or by such social intermediary agencies as a law firm, an accounting firm, a bankruptcy liquidation firm that have been established according to law.

The people's court may, according to the real status of a debtor and upon consulting the opinions of the relevant social intermediary agencies, designate the relevant personnel who have a good command of specialties and have obtained the practice qualification for bankruptcy administrators.

Under any of the following circumstances, one shall not assume the post of bankruptcy administrator:

(1)Having been given a criminal punishment for deliberate crime;

(2)Having been deprive of the relevant practice qualification certificate of related specialty;

(3)Having any interest relation to the case; or

(4)Being under any other circumstance where the people's court deems it improper to act as a bankruptcy administrator.

Where an individual assumes the post of bankruptcy administrator, he shall purchase the responsibility insurance.

Article 25 A bankruptcy administrator shall perform the following functions and duties:

(1)Taking over the assets, seals as well as the account books and documents of the debtor;

(2)Investigating into the financial status of the debtor and formulating the financial statements;

(3)Deciding the internal management of the debtor;

(4)Deciding the daily expenditure and other necessary expenditures of the debtor;

(5)Deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business;

(6)Managing and disposing of the debtors' assets;

(7)Participating actions, arbitrations or any other legal procedures on behalf of the debtor;

(8)Proposing to hold creditors' meetings; and

(9)Performing any other functions and duties that the people's court believes it should perform.

In the case of any separate provision on the bankruptcy administrator's functions and duties in the present Law, it shall prevail.

Article 26 Before the first creditors' meeting is held, if a bankruptcy administrator decides to continue or suspend the business operation of a debtor or has any of the acts as prescribed by the provisions of Article 69 of the present Law, it shall be subject to the approval of the people's court.

Article 27 A bankruptcy administrator shall be diligent and dutiful, and shall faithfully perform its duties as well.

Article 28 A bankruptcy administrator may, upon approval of the people's court, employ the relevant work staff as necessary.

The remunerations of a bankruptcy administrator shall be decided by the people's court. In case the creditors' meeting has any different opinion to the remuneration of a bankruptcy administrator, it has the right to file demurral with the people's court.

Article 29 A bankruptcy administrator shall not quit its post without any justifiable reason. The resignation of a bankruptcy administrator shall be subject to the approval of the people's court.

Chapter IV A Debtor's Assets

Article 30 A debtor's assets refer to all the assets that belong to a debtor when an application for bankruptcy is accepted, as well as the assets as obtained by the debtor during the period from when an application for bankruptcy is accepted to when the procedures for bankruptcy are concluded.

Article 31 Within 1 year before the people's court accepts an application for bankruptcy, a bankruptcy administrator has the right to plead the court to revoke any act relating to the debtor's assets:

(1)Transferring the assets free of charge;

(2)Trading at an obviously unreasonable price;

(3)Providing asset guaranty to those debts without any asset guaranty;

(4)Paying off the undue debts in advance; or

(5)Giving up the creditor's right.

Article 32 Within 6 months before the people's court accepts an application for bankruptcy, if a debtor is under any circumstance as prescribed by paragraph 1, Article 2 of the present Law where it makes repayment to individual creditors, its bankruptcy administrator has the right to plead the people's court to revoke it, except where individual repayment may do good to the debtors' assets.

Article 33 Any of the following acts involving the debtor's assets shall be deemed as invalid:

(1)Concealing or transferring the assets in order to avoid the debts. or

(2)Fabricating any debt or acknowledging any unreal debt.

Article 34 As to any asset of a debtor as obtained under any circumstance as prescribed by Article 31, 32 or 33 of the present Law, the relevant bankruptcy administrator has the right to recover it.

Article 35 After the people's court accepts an application for bankruptcy, where any capital contributor of a debtor fails to fulfill its obligation of capital contribution, the relevant bankruptcy administrator shall require the capital contributor to make full contribution of the capital it has subscribed to, irrespective of the term for capital contribution.

Article 36 Where any director, supervisor or senior manger takes advantage of his power to obtain any abnormal income from his enterprise or embezzles any enterprise asset, the relevant bankruptcy administrator shall recover it.

Article 37 After the people's court accepts an application for bankruptcy, the bankruptcy administrator may take back its pledge or lien by means of paying off its debts or providing a guaranty that can be accepted by the relevant creditor.

As to the payment of debts or substitutive guaranty, where the value of the pledge or lien is lower than that of the amount of the creditor's right, a bottom line shall be set on the contemporary market value of the pledge or lien.

Article 38 After the people's court accepts an application for bankruptcy, where what the relevant debtor occupies are not its own assets, the owner of the assets may take the assets back through the bankruptcy administrator, unless it is separately prescribed by the present Law.

Article 39 After the people's court accepts an application for bankruptcy, if the seller has sent the subject matter to the debtor of the buyer and the latter has not yet received the goods and paid off the price, the seller may take back the goods on the way. However, the relevant bankruptcy administrator may pay off the price and request the seller to deliver the subject matter.

Article 40 Where a creditor is indebted with its debtor before an application for bankruptcy is accepted, it may claim for offset against the bankruptcy administrator. However, under any of the following circumstances, the relevant debts shall not be offset:

(1)Where a debtor of the debtor obtains the creditor's right of any other party against the debtor after the application for bankruptcy is accepted;

(2)Where a creditor learns that a debtor is incapable of paying off its due debts is in the process of applying for bankruptcy and if it is indebted with the debtor; with the exception, however, that the creditor assumes its liabilities according to the provisions of law or for any reason as incurred 1 year before the application for bankruptcy is filed;

(3)Where a debtor of the debtor learns that the debtor is incapable of paying off its debtd or is in the process of applying for bankruptcy, and therefore obtains the creditor's right from the debtor, except where the debtor's debtor obtains the creditor's right according to law or for any reason as incurred 1 year before the application for bankruptcy.

Chapter V Bankrupt Expenses and Community Liabilities

Article 41 The following expenses that occur after the people's court accepts an application for bankruptcy are bankrupt expenses:

(1)Costs of action on bankruptcy cases;

(2)Expenses for the administration, conversion and distribution of the debtor's assets; and

(3)Expenses for the bankruptcy administrator's performance of its functions and duties, for its remunerations and expenses for the recruitment of employees.

Article 42 The following liabilities that occur after the people's court accepts an application for bankruptcy are community liabilities:

(1)The liabilities as generated from a contract, the performance of which both parties concerned fail to fulfill upon the request of performance raised by the bankruptcy administrator or debtor against the opposite party;

(2)The liabilities as generated from the negotiorum gestio of the debtor's assets;

(3)The liabilities as generated from the ill-gotten gains;

(4)The labor cost for the continuance of business operations, social insurance premiums as well as other liabilities as incurred therefrom;

(5)The liabilities as generated from the damage that occurs in the performance of functions and duties by a bankruptcy administrator or other relevant personnel; and

(6)The liabilities as generated from any damage due to the debtor's assets.

Article 43 The bankrupt expenses and community liabilities shall be cleared off through the debtor's assets at any time.

Where the debtor's assets are not enough to clear off all the bankrupt expenses and community liabilities, the bankrupt expenses shall be paid off in priority.

Where the debtor's assets are not enough to clear off the bankrupt expenses or community liabilities, the liquidation shall be conducted pro rata.

Where the debtor's assets are not enough to clear off the bankrupt expenses, the relevant bankruptcy administrator shall apply with the people's court for concluding the procedures for bankruptcy. The people's court shall, with 15 days as of the day when an application is received, decide whether to conclude the procedures for bankruptcy and announce its decision as well.

Chapter VI Declaration of the Creditor's Right

Article 44 A creditor that enjoys the creditor's right against its debtor when the people's court accepts an application for bankruptcy may exercise its right according to the procedures as prescribed herein.

Article 45 The people's court shall, after accepting an application for bankruptcy, decide the term for a creditor to its creditor's right. The term for declaration of the creditor's right shall be calculated as of the day when the people's court announces its acceptance of an application for bankruptcy within a range of no less than 30 days and no more than 3 months.

Article 46 Any undue creditor's right shall be deemed as due when the relevant application for bankruptcy is accepted.

The calculation of the interest of any creditor's right shall be stopped when the relevant application for bankruptcy is accepted.

Article 47 As to any creditor's right attached with certain conditions or time limit or any creditor's right that fails to be settled through an action or arbitration, the relevant creditor may it with the people's court.

Article 48 A debtor shall, within the term for declaration of the creditor's right as decided by the people's court, its creditor's right.

The wages, subsidies for medical treatment and disability, comfort and compensatory funds as defaulted by a debtor, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred into the employees' personal accounts as well as the compensation for the employees as prescribed by the relevant laws and administrative regulations are not required to be d, for which the relevant bankruptcy administrator shall produce a corresponding checklist upon investigation and make an announcement as well. Where any employee has any different opinion to the relevant checkliist, he may request the bankruptcy administrator to make correction. Where a bankruptcy administrator fails to correct it, the relevant employee may file an action with the people's court.

Article 49 Where a creditor s its creditor's right, it shall make a written statement on the amount of the creditor's right and on whether there is any property guaranty and submit the relevant evidences as well. In the case of any joint and several creditor's right, an explanation shall be given.

Article 50 The joint and several creditors may choose one from among them to their creditor's right or may jointly the creditor's right together.

Article 51 Where the guarantor of a debtor or any other related joint and several debtor has cleared off the liabilities on behalf of the debtor, it may its creditor's right on the basis of its right to recourse against the debtor.

Where the guarantor of a debtor or any other related joint and several debtor has not yet paid off the debts on behalf of the debtor, it may claim its creditor's right on the basis of its future right to recourse against the debtor, unless the creditors have d all the creditor's right against the relevant bankruptcy administrator.

Article 52 Where several joint and several debtors are ruled to be governed by the procedures as prescribed in the present Law, the creditors thereof have the right to their creditors' rights as a whole in each bankruptcy case respectively.

Article 53 Where a bankruptcy administrator or creditor rescinds a contract according to the provisions of the present Law, the opposite party concerned may its creditor's right on the basis of the right to compensation for the damage as generated therefrom.

Article 54 Where a debtor is the entrusting party of an entrustment contract which has been ruled to be governed by the procedures as prescribed in the present Law and if the entrusted party has no knowledge of the aforesaid facts and continues to deal with the entrusted business, the entrusted party may its creditor's right on the basis of the right of claim as generated therefrom.

Article 55 Where a debtor is a producer of instruments which have been ruled to be governed by the procedures as prescribed in the present Law and if the relevant payer of the instruments continues its payment or acceptance, the payer may its creditor's right on the basis of the right of claim as generated therefrom.

Article 56 Within the term for declaration of the creditor's right as decided by the people's court, where a creditor fails to claim its creditor's right, it may make up its declaration before the final distribution of insolvent assets. However, if the relevant distribution has already been conducted, no more declaration may be made. The expenses for examining and confirming the supplementary declaration of the creditor's right shall be borne by the party who has applied for supplementary declaration.

Where a creditor fails to its creditor's right according to the provisions of the present Law, it may not exercise the relevant right according to the procedures prescribed in the present Law.

Article 57 Where a bankruptcy administrator receives the declaration materials of the creditor's right, it shall register them into a book, conduct an examination on the d creditor's right and formulate a form of the creditor's right as well.

The form of the creditor's right and the declaration materials of the creditor's right shall be kept by the relevant bankruptcy administrator for reference by the interested parties.

Article 58 A form of the creditor's right as formulated according to the provisions of Article 57 of the present Law shall be submitted to the first creditors' meeting for examination.

Where the relevant debtors and creditors have no different opinion to the form of the creditors' right, it shall be ruled by the people's court.

Where any debtor or creditor has any different opinion to a form of the creditors' right, it may file an action with the people's court that has accepted the application for bankruptcy.

Chapter VII The Creditors' Meeting

Section I General Provisions

Article 59 A creditor declaring its creditor's right according to law is a member of the creditors' meeting that has the right to attend the creditors' meeting and enjoy the right to vote.

Any creditor whose creditor's right has not yet been decided is not entitled to exercise any right to vote unless the people's court can temporarily decide the amount of the creditor's right for the sake of exercising the right to vote.

Any creditor that has the right to guaranty on the particular assets of its debtor and that has not given up the priority right to be repaid may not enjoy the right to vote for any matter as prescribed in Item (7) or (10), paragraph 1 of Article 61 of the present Law.

A creditor may entrust its agent to attend the creditors' meeting and exercise the right to vote. Where an agent attends the creditors' meeting, it shall submit a Power of Attorney with the people's court or the chairman of the creditors' meeting.

A creditors' meeting shall be attended by the employees of the relevant debtor as well as the representatives of its work union, who may therefore air their views on the relevant issues.

Article 60 There shall be a chairman of the creditors' meeting, who shall be designated by the people's court from among the creditors with the right to vote.

The chairman of the creditors' meeting shall preside over the creditors' meeting.

Article 61 The creditors' meeting shall exercise the following functions and duties:

(1)Examining the creditor's right;

(2)Applying with the people's court for alteration of the bankruptcy administrators and examining the expenses and remunerations of the bankruptcy administrator;

(3)Supervising the bankruptcy administrator;

(4)Selecting and altering the members of the creditors' meeting;

(5)Deciding to continue or stop the debtor's business operations;

(6)Deciding whether to adopt a revival plan;

(7)Deciding whether to adopt a compromise;

(8)Deciding whether to adopt a management plan of the debtor's assets;

(9)Deciding whether to adopt a conversion plan of the insolvent assets;

(10)Deciding whether to adopt a distribution plan of the insolvent assets; and

(11)Exercising any other functions and powers that the people's court deems the creditors' meeting shall exercise.

Meeting minutes shall be made for the resolutions made for the matters deliberated at the creditors' meeting.

Article 62 The first creditors' meeting shall be held by the people's court within 15 days as of expiration of the term for declaration of creditor's right.

Subsequent creditors' meetings may be held when the people's court deems it necessary or where the bankruptcy administrator, the creditors' committee, or any creditor representing 1/4 or more of the total creditor's right proposes the chairman of the creditors' meeting to hold one.

Article 63 Where a creditors' meeting is held, the relevant bankruptcy administrator shall notify the already-known creditors 15 days before.

Article 64 A resolution of the creditors' meeting may be adopted only upon the consent of 1/2 or more of the creditors that attend the meeting and have the right to vote, representing 1/2 or more of the aggregate amount of the creditors' right free from property guaranty, unless it is separately prescribed by this Law.

Where any creditor believes that any resolution of the creditors' meeting has violated any law or damaged its interest, it may, within 15 days as of the day when the creditors' meeting makes a resolution, plead the people's court to revoke the resolution and order the creditors' meeting to re-make a resolution according to law.

A resolution as adopted at the creditors' meeting shall be binding on all creditors.

Article 65 Any matter as prescribed in items (8) and (9), paragraph 1, Article 61 of the present Law that has not been adopted at the creditors' meeting shall be ruled by the people's court.

Any matter as prescribed in item (10), paragraph 1, Article 61 of the present Law that has not been adopted after a second voting at the creditors' meeting shall be ruled by the people's court.

As to the ruling as prescribed in the preceding paragraph, the people's court may announce it at the creditors' meeting or separately notify the relevant creditors.

Article 66 Where a creditor is dissatisfied with any ruling made by the people's court according to paragraph 1, Article 65 of the present Law, or where a creditor representing 1/2 or more of the aggregate creditor's right free from property guaranty is dissatisfied with any ruling made by the people's court according to paragraph 2, Article 65 of the present Law, it may apply with the very people's court for review within 15 days as of the day when

the ruling is announced or when the relevant notice is received. The ution of the ruling shall not be stopped in the duration of review.

Section II The Creditors' Committee

Article 67 The creditors' meeting may decide to establish the creditors' committee, which shall comprise of the creditor representatives as selected at the creditors' meeting as well as a employee representative of the relevant debtor or a representative of the work union. The members of the creditors' committee shall be no more than 9 persons.

The members of the creditors' committee shall be confirmed by the people's court in written form.

Article 68 The creditors' committee shall perform the following functions and duties:

(1)Supervising the management and disposal of the debtor's assets;

(2)Supervising the distribution of the insolvent assets;

(3)Proposing to hold a creditors' meeting; and

(4)Performing the other functions and duties as entrusted at the creditors' meeting.

Where the creditors' committee performs its functions and duties, it has the right to require the relevant bankruptcy administrator and debtor to give an explanation on any matter within the scope of its functions and duties or provide the relevant documents.

Where the relevant personnel of a bankruptcy administrator or debtor refuse to accept the supervision in violation of the provisions of the present Law, the creditors' committee has the right to plead the court to make a decision on supervision, and the latter shall make a decision thereon within 5 days.

Article 69 Where a bankruptcy administrator conducts any of the following acts, it shall report it to the creditors' committee in a timely manner.

(1)Transfer of the right and interests of such realties as land and houses;

(2)Transfer of such property rights as the right to mine exploitation, mining right and intellectual property right;

(3)Transfer of all the inventory or business operation;

(4)Loans;

(5)Setting of property guaranty;

(6)Transfer of the creditors' right and securities;

(7)Performance of any contract that has not been fully performed by the debtor and the opposite party concerned;

(8)Waiver of the right;

(9)Withdrawal of the pledge; and

(10)Any other property disposal that has an important impact on the creditor's interest.

In the case of no such creditors' committee, a bankruptcy administrator shall, when implementing the aforesaid provisions, report it to the people's court in a timely manner.

Chapter VIII Revival

Section I Application for and Period of Revival

Article 70 A debtor or creditor may, according to the provisions of the present Law, apply directly with the people's court for revival against the debtor.

Where any creditor applies for bankrupt liquidation against its debtor, after the people's court accepts the application for bankruptcy and before the debtor is announced bankrupt, the debtor or its capital contributor whose capital contribution makes up 1/10 or more of the debtor's registered capital may apply with the people's court for revival.

Article 71 Where the people's court deems, upon examination, that an application for revival complies with the provisions of the present Law, it shall order the debtor to be revived and announce its decision as well.

Article 72 The period of revival lasts from the day when the people's court rules that a debtor shall conduct revival to the day when the procedures for revival are terminated.

Article 73 In the duration of revival, a debtor may, upon filing an application and obtaining an approval from the people's court, manage its assets and business operation under the supervision of its bankruptcy administrator.

Under the circumstance as prescribed in the preceding paragraph, a bankruptcy administrator that has taken over the assets and business operation shall deliver the assets and business operation to the debtor according to the provisions of the present Law, and the bankruptcy administrator's functions and duties as prescribed herein shall be exercised by the debtor.

Article 74 A bankruptcy administrator that takes charge of assets and business operations may employ the business managers of the debtor to take care of the business operations.

Article 75 In the duration of revival, the right to guaranty on the particular assets of a debtor shall be suspended. However, in the case of possible damage or significant depreciation of value, which may injure the guarantor's right, the guarantor may apply with the people's court for recovering the right to guaranty.

In the period of revival, a debtor or bankruptcy administrator that borrows money for business carry-on may set a guaranty on the loan.

Article 76 Where a debtor legally occupies any other's property and if the owner of the property right requests to take back the property, it shall meet the requirements as stipulated in advance.

Article 77 During the period of revival, no capital contributor of a debtor may request for distribution of any investment proceeds.

During the period of revival, no director, supervisor or senior manager of a debtor may transfer the equity it has held to a third party, unless the people's court approves it.

Article 78 In the duration of revival, under any of the following circumstances, the people's court shall, upon the request of a bankruptcy administrator or any interested party, rule to terminate the procedures for revival and announce the relevant debtor bankrupt:

(1)Where the business operation or financial status of a debtor goes worse off and cannot be remediedin any way;

(2)Where a debtor has any act of cheating or maliciously deducting its assets or has any act obviously against its creditors; or

(3)Where the act of a debtor makes its bankruptcy administrator unable to perform its duties and functions.

Section II Formulation and Approval of a Revival Plan

Article 79 A debtor or bankruptcy administrator may, within 6 months as of the day when the people's court approves its revival, submit a draft of the revival plan to the people's court and the creditors' meeting.

Where the term as prescribed in the preceding paragraph expires, the people's court may, upon request of any debtor or the bankruptcy administrator, and on a justifiable ground, rule an extension of 3 months.

Where a debtor or bankruptcy administrator fails to submit a draft of the revival plan according to the schedule, the people's court shall rule to terminate the procedures for revival and announce the debtor bankrupt.

Article 80 Where a debtor manages its own assets and business operations, it shall formulate a draft of revival plan.

Where a bankruptcy administrator takes charge of the assets and business operations of a debtor, it shall formulate a draft of revival plan.

Article 81 A draft of revival plan shall include the following contents:

(1)A business plan of a debtor;

(2)Classification of the creditor's right;

(3)An adjustment plan of the creditor's right;

(4)A repayment plan of the creditor's right;

(5)Term for implementing the revival plan;

(6)Term for supervising the performance of the revival plan; and

(7)Any other plan conducive to the debtor's revival.

Article 82 Where the relevant creditors who have the following creditor's rights attend the creditor's meeting to discuss a draft of revival plan, they shall be grouped according to the following creditor's rights so as to vote a draft of revival plan:

(1)The creditor's right with guaranty on the debtor's particular assets;

(2)The wages, subsidies for medical treatment and disability and comfort and compensatory funds as defaulted by the debtor, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred into the individual accounts of employers as well as the compensation for the employees as prescribed by the relevant laws and administrative regulations;

(3)The taxes as defaulted by the debtor; and

(4)The common creditor's right.

The people's court shall, when it so requires, decide to set a group of the small-amount creditor's right in the group of the common creditor's right so as to vote a draft of revival plan.

Article 83 A revival plan shall not cover any stipulation on the exemption of the social insurance premium as defaulted by a debtor other than what is prescribed in item (2), paragraph 1, Article 82 of the present Law. The creditor of social insurance premiums shall not attend the voting of a draft of revival plan.

Article 84 The people's court shall, within 30 days as of the day when a draft of revival plan is received, hold a creditor's meeting so as to vote the draft.

Where 1/2 or more of the creditors in a same voting group at the creditors' meeting agree to a draft of revival plan, representing 2/3 or more of the total amount of the creditor's right, it shall be deemed as an adoption of the draft of revival plan.

The relevant creditors or bankruptcy administrator shall give an explanation to the draft of the revival plan and answer the relevant inquiries at the creditors' meeting.

Article 85 The representatives of capital contributors of a debtor may attend the creditor's meeting to discuss a draft of revival plan.

Where a draft of revival plan involves the adjustment of the right and interest of capital contributors, a group of capital contributors shall be formed to vote this issue.

Article 86 Where all the voting groups agree to a draft of revival plan, it shall be deemed that the plan is adopted.

Within 10 days as of the day when a revival plan is adopted, a creditor or bankruptcy administrator shall file an application with the people's court for approving the revival plan. Where the people's court deems, upon examination, that the application complies with the present Law, it shall, within 30 days as of the day when the application is received, grant an approval, terminate the relevant procedures for revival and announce it as well.

Article 87 Where some voting groups do not agree to a draft of revival plan, the relevant debtor or bankruptcy administrator may negotiate with the aforesaid voting groups. The latter may vote for one more times upon negotiation. The result of negotiation shall not damage the interest of any other voting group.

Where a voting group that does not agree to a draft of revival plan refuses to re-vote or disagrees with the draft of revival plan upon re-voting yet if the draft of revival plan meets the following requirements, the relevant debtor or bankruptcy administrator may apply with the people's court for approving the draft of revival plan.

(1)Where, according to a draft of revival plan, the creditor's right as prescribed in item (1), paragraph 1, Article 82 of the present Law shall be cleared off by means of the particular assets and the losses as incurred from postponed payment shall be compensated for in a fair manner, given that the right to guaranty has not been materially damaged, or the relevant voting groups have adopted the draft of revival plan;

(2)Where, according to the draft of revival plan, the creditor's right as prescribed in items (2) and (3) of paragraph 1, Article 82 of the present Law shall be cleared off, or the relevant voting groups have adopted the draft of revival plan;

(3)Where, according to the draft of revival plan, the repayment proportion of the common creditor's right shall not be any lower than that as set in the procedures for bankrupt liquidation when the draft of revival plan is submitted for approval, or the relevant contributor group has adopted the draft of revival plan;

(4)Where the draft of revival plan can bring a fair and justifiable adjustment to the rights and interests of capital contributors, or the contributor group has adopted the draft of revival plan;

(5)Where the draft of revival plan treats the members of a same voting group fairly and the liquidation order of the creditor's right does not violate the provisions of Article 113 of the present Law;

(6)Where the debtor's business plan is feasible.

Where the people's court deems that the draft of revival plan complies with the provisions of the preceding paragraph, it shall, within 30 days as of the day when an application is received, approve it, terminate the procedures for revival and announce it.

Article 88 Where a draft of revival plan fails to be adopted and fails to be approved according to the provisions of Article 87 of the present Law, or where an adopted draft of revival plan fails to be approved, the people's court shall rule to terminate the procedures for revival and announce the debtor bankrupt.

Section III Implementation of a Revival Plan

Article 89 A revival plan shall be implemented under the debtor's charge.

Where the people's court decides to approve a revival plan, the bankruptcy administrator that has taken over the assets and business operation shall transfer the assets and business operation to the debtor.

Article 90 As of the day when the people's court decides to approve a revival plan and within the term for supervision as prescribed by the revival plan, the relevant bankruptcy administrator shall supervise the implementation thereof.

Within the term for supervision, a debtor shall report the implementation of its revival plan as well as its financial status to the relevant bankruptcy administrator.

Article 91 Upon expiration of the term for supervision, a bankruptcy administrator shall submit a supervision report to the people's court. As of the day when a supervision report is submitted, a bankruptcy administrator's functions and duties shall be terminated.

Where a bankruptcy administrator submits a supervision report with the people's court, any interested party to the revival plan has the right to consult therewith.

Upon application by a bankruptcy administrator, the people's court may decide to extend the term for supervision over the implementation of a revival plan.

Article 92 A revival plan as approved by the people's court has binding force on the debtor and all the creditors.

Where a creditor fails to its creditor's right according to the provisions of the present law, it shall not exercise any right when a revival plan is implemented. When the implementation of a revival plan is concluded, the relevant creditor may exercise its right according to the requirements for liquidation of identical creditor's right as prescribed in the revival plan.

The right of a creditor against the guarantor of its debtor as well as all the joint and several debtors shall not be affected by a revival plan.

Article 93 Where a debtor fails to or refuses to implement a revival plan, the people's court may, upon request of the relevant bankruptcy administrator or interested party, terminate the implementation of the revival plan and announce the debtor bankrupt.

Where the people's court decides to terminate the implementation of a revival plan, the commitment of the relevant creditor on the adjustment of the creditor's right in the revival plan shall be invalidated. The liquidation for the relevant creditor when the revival plan is implemented remains effective and the creditor's right that has not been repaid shall be regarded as the credit of bankruptcy.

The creditor as prescribed in the preceding paragraph may, only when the other creditors in the sequential order of the liquidation are repaid at a same proportion, continue to join the distribution.

Under any circumstance as prescribed in paragraph 1 of this Article, any guaranty set for the implementation of a revival plan shall continue to be effective.

Article 94 As to the liabilities that is exempted according to a revival plan, the relevant debtor is not required to make repayment therefor upon conclusion of the revival plan.

Chapter IX Compromise

Article 95 A debtor may, according to the provisions of the present Law, apply for compromise with the people's court, or may, after the people's court accepts its application for bankruptcy and before it is announced bankrupt, apply with the people's court for compromise.

Where the debtor applies for reconciliation, it shall put forwards a draft of the conciliation agreement.

Article 96 Where the people's court deems upon examination that an application for compromise complies with the provisions of the present Law, it shall rule on a compromise, announce it and hold a creditors' meeting so as to discuss the draft of a composition deed.

A holder of the right to guaranty on the debtor's particular assets may exercise its right as of the day when the people's court rules on a compromise.

Article 97 The adoption of a resolution of a composition deed at the creditors' meeting shall be based on the consent of 1/2 or more of the creditors with the right to vote who attend the meeting, representing 2/3 or more of the total credit amount free from property guaranty.

Article 98 Where a composition deed is adopted at the creditors' meeting, the people's court shall decide whether to confirm it, terminate the procedures for compromise and announce it. The relevant bankruptcy administrator shall transfer the assets and business operation to the debtor and submit a report on the performance of its functions and duties to the people's court.

Article 99 Where the draft of a composition deed fails to be adopted at the creditors' meeting or a composition deed that has been adopted at the creditors' meeting fails to be confirmed by the people's court, the people's court shall rule to terminate the procedures for compromise and announce the debtor bankrupt.

Article 100 A composition deed that has been confirmed by the people's court shall have a binding force on the debtor and all the creditors in the composition.

The term "creditor in the composition" refers to a party that enjoys the creditor's right free from property guaranty against its debtor when the people's court accepts the relevant application for bankruptcy.

Where any creditor in the composition fails to its creditor's right according to the provisions of the present Law, it may not exercise its right during the period when the composition deed is conducted. After the implementation of a composition deed is concluded, it may exercise its right according to the requirements for repayment as prescribed by the composition deed.

Article 101 The right as enjoyed by the creditor in the composition against the guarantor of its debtor and other joint and several debtors shall not be affected by any composition deed.

Article 102 A debtor shall pay off its debts according to the conditions as prescribed in the relevant composition deed.

Article 103 As to any composition deed that is established by fraud or based on any illegal act of a debtor, the people's court shall rule it as ineffective and announce the debtor bankrupt.

Under any of the aforesaid circumstances, the repayment that a creditor in the composition gets when the composition deed is performed shall not be returned at the same proportion as the other creditors.

Article 104 Where a debtor is unable or fails to implement a composition deed, the people's court shall, upon request of the creditor in the composition, rule to terminate the implementation of the composition deed, and announce the debtor bankrupt.

Where the people's court terminates the implementation of a composition deed, the commitment as made by the creditor in the composition on the adjustment of the creditor's right shall be invalidated. The repayment made to the creditor in the composition when the composition deed is implemented shall still be effective and the creditor's right in the composition that has not been repaid shall be the credit of bankruptcy.

The creditor as prescribed in the preceding paragraph may, only when sharing the repayment at a same proportion as the other creditors, continue to join the distribution.

Under the circumstance as prescribed in paragraph 1 of this Article, the guaranty set on the implementation of a composition deed shall remain effective.

Article 105 After the people's court accepts an application for bankruptcy, if the relevant debtor and all the creditors conclude an agreement on settlement of credits and debts by themselves, they may request the court to confirm it and terminate the procedures for bankruptcy.

Article 106 As to the liabilities that has been exempted according to a composition deed, the relevant debtor may, as of the day when the composition deed is concluded, not bear the liabilities of compensation.

Chapter X Bankrupt Liquidation

Section I Announcement of Bankruptcy

Article 107 Where the people's court announces a debtor bankrupt according to the provisions of the present Law, it shall, within 5 days as of the day when the decision is made, serve it on the relevant debtor and bankruptcy administrator, and shall, within 10 days as of the day when the decision is made, notify the already-known creditors and announce it as well.

Where a debtor is announced bankrupt, the debtor is named as the bankrupt and the debtor's assets are taken as the insolvent assets. The creditor's right against the debtor when the people's court accepts an application for bankruptcy is the credit of bankruptcy.

Article 108 Before any bankruptcy is announced, under any of the following circumstances, the people's court shall decide to terminate the procedures for bankruptcy and announce it as well:

(1)Where a third party provides any full-amount guaranty to or pays off all the debts as due for the debtor; or

(2)Where the debtor has paid off all the due debts.

Article 109 An owner of the right to guaranty on the particular assets of the bankrupt may enjoy the priority right to be repaid by means of the particular assets.

Article 110 Where a creditor that enjoys the right as prescribed in the provisions of Article 109 of the present Law exercises the priority right to be repaid, the un-repaid creditor's right shall be the common creditor's right. Where the priority right to be repaid is given up, the creditor's right shall be taken as the common creditor's right.

Section II Conversion and Distribution

Article 111 A bankruptcy administrator shall draft a conversion plan of insolvent assets and submit it to the creditor's meeting for discussion.

A bankruptcy administrator shall, according to the conversion plan of insolvent assets that has been adopted at the creditor's meeting or that has been confirmed by the people's court according to the provisions of paragraph 1, Article 65 of the present Law, sell the insolvent assets by means of conversion at a proper time.

Article 112 A sale of insolvent assets by means of conversion shall be conducted through auction, unless there is any other resolution at the creditor's meeting.

An insolvent enterprise may be wholly or partially sold by means of conversion. Where an enterprise is sold by means of conversion, the intangible assets and other assets thereof may be solely sold by means of conversion.

As to the assets that shall not be auctioned or whose transfer is restricted, it shall be handled through the method as prescribed by the state.

Article 113 The insolvent assets shall, after the costs for bankruptcy proceedings and community liabilities are repaid in priority, be liquidated according to the following sequence:

(1)The wages and subsidies for medial treatment and disability, comfort and compensatory expenses as defaulted by the bankrupt, the fundamental old-age insurance premiums, fundamental medical insurance premiums that shall have been transferred to the employees' personal account as well as the compensation for employees as prescribed by the relevant laws and administrative regulations;

(2)The social insurance premiums and tax fees as defaulted by the bankrupt other than those as prescribed by the aforesaid provisions; and

(3)The common credit of bankruptcy.

Where the insolvent assets are not enough to satisfy the requirements for liquidation in a same sequence, it shall be distributed according to the proportion.

The wages of the directors, supervisors as well as senior managers of an insolvent enterprise shall be calculated in light of the average wage of employees.

Article 114 The insolvent assets shall be subject to monetary distribution, unless it is separately decided at the creditors' meeting.

Article115 A bankruptcy administrator shall formulate a distribution plan of insolvent assets in a timely manner, and submit it to the creditor's meeting for discussion:

A distribution plan of insolvent assets shall indicate the following matters:

(1) Names and domiciles of the creditors that attend the distribution of insolvent assets;

(2) The amount of the creditor's right that is involved in the distribution of insolvent assets;

(3) The amount of insolvent assets as ready for distribution;

(4) The sequence, proportion and amount of insolvent assets subject to distribution; and

(5) The measures for distributing insolvent assets.

After a distribution plan of insolvent assets is adopted at the creditors' meeting, the relevant bankruptcy administrator shall submit the plan to the people's court for confirmation.

Article 116 A distribution plan of insolvent assets shall, upon confirmation of the people's court, be uted by the relevant bankruptcy administrator.

Where a bankruptcy administrator implements a distribution in installments according to a distribution plan of insolvent assets, it shall announce the amount of assets and the creditor's right in the distnbution. Where a bankruptcy administrator implements a conclusive distribution in a lump sum, it shall be indicated in the announcement, wherein the matters as prescribed in paragraph 2, Article 117 of the present Law shall be indicated as well.

Article 117 As to any creditor's right subject to the requirement for effectiveness or rescission, a bankruptcy administrator shall preserve the distribution share in advance.

As to the distribution share as preserved by the bankruptcy administrator in advance in the preceding paragraph, on the announcement day of the conclusive distribution, where the requirement for effectiveness is not satisfied or the requirement for rescission is satisfied, it shall be distributed to the other creditors; on the announcement day of the conclusive distribution, where the requirement for effectiveness is satisfied or the requirement for rescission is not satisfied, it shall be delivered to the creditors.

Article 118 The distribution shares of the insolvent assets that have not been collected by creditors shall be preserved by the relevant bankruptcy administrator in advance. Where a creditor fails to collect its share within 2 months as of the last day of distribution announcement, it shall be deemed as a waiver of the right to collect the distribution share. The bankruptcy administrator or the people's court shall distribute the preserved distribution share to other creditors.

Article 119 Where the insolvent assets are distributed, as to any creditor's right that has not been settled by action or arbitration, a bankruptcy administrator shall preserve the distribution share in advance. Where any distribution share fails to be collected within 2 years as of the day when the procedures for bankruptcy are concluded, the people's court shall distribute the preserved distribution share to other creditors.

Section III Conclusion of the Procedures for Bankruptcy

Article 120 In the case of no asset for the bankrupt to distribute, the relevant bankruptcy administrator shall request the people's court to terminate the procedures for bankruptcy.

A bankruptcy administrator shall, upon conclusion of a conclusive distribution, report to the people's court a report on the distribution of insolvent assets in a timely manner and request the people's court to terminate the procedures for bankruptcy.

The people's court shall, within 15 days as of the day when a request of a bankruptcy administrator to conclude the procedures for bankruptcy is received, make a decision on whether to conclude the procedures. Any decision on concluding the procedures shall be announced.

Article 121 A bankruptcy administrator shall, within 10 days as of the day when the procedures for bankruptcy are concluded, handle the formalities for write-off in the organ as originally in charge of the registration of the bankrupt upon the strength of the decision of the people's court on concluding the procedures for bankruptcy.

Article122 A bankruptcy administrator shall terminate the performance of its functions and duties on the following day after it completes the formalities for the registration of write-off, unless the relevant action or arbitration has not been concluded.

Article 123 Within 2 years as of the day when the procedures for bankruptcy are concluded according to the provisions of paragraph 4, Article 43 or Article 120 of the present Law, under any of the following circumstances, a creditor may request the people's court to make an additional distribution according to the distribution plan of insolvent assets:

(1)Where the relevant assets shall be recovered according to the provisions of Article 31, 32, 33 or 36 of the present Law; and

(2)Where the bankrupt has any other asset that shall have been distributed.

Under any of the following circumstances as prescribed in the preceding paragraph, yet where the amount of assets are not enough to meet the expenses for distribution, no

additional distribution may be held and the relevant assets shall be turned over by the people's court into the state treasury.

Article 124 The guarantor and other joint and several debtors of the bankrupt shall, upon conclusion of the procedures for bankruptcy, bear the joint and several liabilities of repayment of the creditor's right that has not been repaid according to the procedures for bankrupt liquidation and according to law.

Chapter XI Legal Liabilities

Article 125 Where a director, supervisor or senior manager violates his obligations of being honest and diligent and thus leads to enterprise bankruptcy, he shall be subject to the relevant civil liabilities according to law.

No person under any circumstance as prescribed in the preceding paragraph may, within 3 years as of the day when the procedures for bankruptcy are concluded, assume the post of director, supervisor or senior manager of any enterprise.

Article 126 For any staff member of a debtor who is obligated to attend the creditor's meeting yet fails to do so upon summon of the people's court without any justifiable reason, the people's court may summon him by force and impose upon him a fine according to law. Where any staff member of a debtor violates the provisions of the present Law by refusing to illustrate or answer, or producing any false statement or answer, the people's court may impose upon him a fine according to law.

Article 127 Where a debtor violates the provisions of the present Law by refusing to submit any required material to the people's court or submit thereto any fraud statement on financial status, checklist of debts, checklist of the creditor's right, financial statement or payment statement of its employees' wages or social insurance premiums, the people's court may impose a fine upon the directly liable person according to law.

Where any debtor violates the provisions of the present Law by refusing to transfer its assets, seals or such materials as book accounts and documents, or fabricating or destroying the relevant materials of financial evidences, thereby making its financial status ambiguous, the people's court may impose a fine upon the directly liable person according to law.

Article 128 Where a debtor has any act as prescribed in Article 31, 32 or 33 by damaging the interest of its creditors, the legal representative of the debtor or any other directly liable person shall be subject to the liabilities of compensation according to law.

Article 129 Where any staff member of a debtor violates the provisions of the present Law by unlawfully leaving his domicile, the people's court can give an admonition or detainment, and may impose a fine upon him concurrently according to law.

Article 130 Where a bankruptcy administrator fails to perform its functions and duties in a diligent and faithful manner according to the provisions of the present Law, the people's court can impose upon it a fine according to law. Where any loss is incurred to a creditor, a

debtor or a third party, the bankruptcy administrator shall be subject to the liabilities of compensation according to law.

Article 131 Any entity that violates the provisions of the present Law and thus constitutes a crime shall be subject to criminal liabilities according to law.

Chapter XII Supplementary Provisions

Article 132 After the present Law is implemented, as to the defaulted wages and subsidies for medical treatment and disability, comfort and compensatory expenses, the fundamental old-age insurance premiums and fundamental medical insurance premiums that shall have transferred into the individual accounts of employees as well as the compensation for the employees as prescribed by the relevant laws and administrative regulations, where the assets are not enough for repayment upon liquidation according to the provisions of Article 113 of the present Law, the particular assets as prescribed in Article 109 of the present Law shall be liquidated prior to the repayment for the owner of the right to guaranty on the particular assets.

Article 133 Any special matter in the bankruptcy of a state-owned enterprise within the term and scope as prescribed by the State Council before the present Law comes into force shall be handled according to the relevant provision of the State Council.

Article 134 Where such financial institutions as a commercial bank, securities company or insurance company is under any of the following circumstances as prescribed in Article 2 of the present Law, the financial supervision organ under the State Council shall file an application with the people's court for revival or bankruptcy liquidation of the financial institution. Where the financial supervision organ under the State Council adopts, according to law, such measures as take-over and custody to a financial institutions carrying major business risks, it may apply with the people's court for suspending the procedures for civil action or ution, wherein the said financial institution is the defendant or party against whom a judgment or order is being uted.

Where a financial institution is under bankruptcy, the State Council may, according to the present Law and other relevant laws, formulate the corresponding measures for implementation.

Article 135 The liquidation of the organizations other than enterprise legal persons as prescribed by law, which falls within the category of bankrupt liquidation, shall be governed by the procedures as prescribed by the present Law.

Article 136 The present Law shall come into force as of June 1, 2007. The Law of the People's Republic of China on Enterprise Bankruptcy (for Trial Implementation) shall be simultaneously abolished.

中华人民共和国主席令

（第54号）

《中华人民共和国企业破产法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十三次会议于2006年8月27日通过，现予公布，自2007年6月1日起施行。

中华人民共和国主席　胡锦涛

2006年8月27日□□□

中华人民共和国企业破产法

（2006年8月27日第十届全国人民代表大会常务委员会第二十三次会议通过）

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第一章　总则

第一条　为规范企业破产程序，公平清理债权债务，保护债权人和债务人的合法权益，维护社会主义市场经济秩序，制定本法。

第二条　企业法人不能清偿到期债务，并且资产不足以清偿全部债务或者明显缺乏清偿能力的，依照本法规定清理债务。

企业法人有前款规定情形，或者有明显丧失清偿能力可能的，可以依照本法规定进行重整。

第三条　破产案件由债务人住所地人民法院管辖。

第四条　破产案件审理程序，本法没有规定的，适用民事诉讼法的有关规定。

第五条　依照本法开始的破产程序，对债务人在中华人民共和国领域外的财产发生效力。

对外国法院作出的发生法律效力的破产案件的判决、裁定，涉及债务人在中华人民共和国领域内的财产，申请或者请求人民法院承认和执行的，人民法院依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查，认为不违反中华人民共和国法律的基本原则，不损害国家主权、安全和社会公共利益，不损害中华人民共和国领域内债权人的合法权益的，裁定承认和执行。

第六条　人民法院审理破产案件，应当依法保障企业职工的合法权益，依法追究破产企业经营管理人员的法律责任。

第二章　申请和受理

第一节　申请

第七条　债务人有本法第二条规定的情形，可以向人民法院提出重整、和解或者破产清算申请。

债务人不能清偿到期债务，债权人可以向人民法院提出对债务人进行重整或者破产清算的申请。

企业法人已解散但未清算或者未清算完毕，资产不足以清偿债务的，依法负有清算责任的人应当向人民法院申请破产清算。

第八条　向人民法院提出破产申请，应当提交破产申请书和有关证据。

破产申请书应当载明下列事项：

（一）申请人、被申请人的基本情况；

（二）申请目的；

（三）申请的事实和理由；

（四）人民法院认为应当载明的其他事项。

债务人提出申请的，还应当向人民法院提交财产状况说明、债务清册、债权清册、有关财务会计报告、职工安置预案以及职工工资的支付和社会保险费用的缴纳情况。

第九条　人民法院受理破产申请前，申请人可以请求撤回申请。　　第二节　受理

第十条　债权人提出破产申请的，人民法院应当自收到申请之日起五日内通知债务人。债务人对申请有异议的，应当自收到人民法院的通知之日起七日内向人民法院提出。人民法院应当自异议期满之日起十日内裁定是否受理。

除前款规定的情形外，人民法院应当自收到破产申请之日起十五日内裁定是否受理。

有特殊情况需要延长前两款规定的裁定受理期限的，经上一级人民法院批准，可以延长十五日。

第十一条　人民法院受理破产申请的，应当自裁定作出之日起五日内送达申请人。

债权人提出申请的，人民法院应当自裁定作出之日起五日内送达债务人。债务人应当自裁定送达之日起十五日内，向人民法院提交财产状况说明、债务清册、债权清册、有关财务会计报告以及职工工资的支付和社会保险费用的缴纳情况。

第十二条　人民法院裁定不受理破产申请的，应当自裁定作出之日起五日内送达申请人并说明理由。申请人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院提起上诉。

人民法院受理破产申请后至破产宣告前，经审查发现债务人不符合本法第二条规定情形的，可以裁定驳回申请。申请人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院提起上诉。

第十三条　人民法院裁定受理破产申请的，应当同时指定管理人。

第十四条　人民法院应当自裁定受理破产申请之日起二十五日内通知已知债权人，并予以公告。

通知和公告应当载明下列事项：

（一）申请人、被申请人的名称或者姓名；

（二）人民法院受理破产申请的时间；

（三）申报债权的期限、地点和注意事项；

（四）管理人的名称或者姓名及其处理事务的地址；

（五）债务人的债务人或者财产持有人应当向管理人清偿债务或者交付财产的要求；

（六）第一次债权人会议召开的时间和地点；

（七）人民法院认为应当通知和公告的其他事项。

第十五条　自人民法院受理破产申请的裁定送达债务人之日起至破产程序终结之日，债务人的有关人员承担下列义务：

（一）妥善保管其占有和管理的财产、印章和账簿、文书等资料；

（二）根据人民法院、管理人的要求进行工作，并如实回答询问；

（三）列席债权人会议并如实回答债权人的询问；

（四）未经人民法院许可，不得离开住所地；

（五）不得新任其他企业的董事、监事、高级管理人员。

前款所称有关人员，是指企业的法定代表人；经人民法院决定，可以包括企业的财务管理人员和其他经营管理人员。

第十六条　人民法院受理破产申请后，债务人对个别债权人的债务清偿无效。

第十七条　人民法院受理破产申请后，债务人的债务人或者财产持有人应当向管理人清偿债务或者交付财产。

债务人的债务人或者财产持有人故意违反前款规定向债务人清偿债务或者交付财产，使债权人受到损失的，不免除其清偿债务或者交付财产的义务。

第十八条　人民法院受理破产申请后，管理人对破产申请受理前成立而债务人和对方当事人均未履行完毕的合同有权决定解除或者继续履行，并通知对方当事人。管理人自破产申请受理之日起二个月内未通知对方当事人，或者自收到对方当事人催告之日起三十日内未答复的，视为解除合同。

管理人决定继续履行合同的，对方当事人应当履行；但是，对方当事人有权要求管理人提供担保。管理人不提供担保的，视为解除合同。

第十九条　人民法院受理破产申请后，有关债务人财产的保全措施应当解除，执行程序应当中止。

第二十条　人民法院受理破产申请后，已经开始而尚未终结的有关债务人的民事诉讼或者仲裁应当中止；在管理人接管债务人的财产后，该诉讼或者仲裁继续进行。

第二十一条　人民法院受理破产申请后，有关债务人的民事诉讼，只能向受理破产申请的人民法院提起。

第三章　管理人

第二十二条　管理人由人民法院指定。

债权人会议认为管理人不能依法、公正执行职务或者有其他不能胜任职务情形的，可以申请人民法院予以更换。

指定管理人和确定管理人报酬的办法，由最高人民法院规定。

第二十三条　管理人依照本法规定执行职务，向人民法院报告工作，并接受债权人会议和债权人委员会的监督。

管理人应当列席债权人会议，向债权人会议报告职务执行情况，并回答询问。

第二十四条　管理人可以由有关部门、机构的人员组成的清算组或者依法设立的律师事务所、会计师事务所、破产清算事务所等社会中介机构担任。

人民法院根据债务人的实际情况，可以在征询有关社会中介机构的意见后，指定该机构具备相关专业知识并取得执业资格的人员担任管理人。

有下列情形之一的，不得担任管理人：

（一）因故意犯罪受过刑事处罚；

（二）曾被吊销相关专业执业证书；

（三）与本案有利害关系；

（四）人民法院认为不宜担任管理人的其他情形。

个人担任管理人的，应当参加执业责任保险。

第二十五条　管理人履行下列职责：

（一）接管债务人的财产、印章和账簿、文书等资料；

（二）调查债务人财产状况，制作财产状况报告；

（三）决定债务人的内部管理事务；

（四）决定债务人的日常开支和其他必要开支；

（五）在第一次债权人会议召开之前，决定继续或者停止债务人的营业；

（六）管理和处分债务人的财产；

（七）代表债务人参加诉讼、仲裁或者其他法律程序；

（八）提议召开债权人会议；

（九）人民法院认为管理人应当履行的其他职责。

本法对管理人的职责另有规定的，适用其规定。

第二十六条　在第一次债权人会议召开之前，管理人决定继续或者停止债务人的营业或者有本法第六十九条规定行为之一的，应当经人民法院许可。

第二十七条　管理人应当勤勉尽责，忠实执行职务。

第二十八条　管理人经人民法院许可，可以聘用必要的工作人员。

管理人的报酬由人民法院确定。债权人会议对管理人的报酬有异议的，有权向人民法院提出。

第二十九条　管理人没有正当理由不得辞去职务。管理人辞去职务应当经人民法院许可。

第四章　债务人财产

第三十条　破产申请受理时属于债务人的全部财产，以及破产申请受理后至破产程序终结前债务人取得的财产，为债务人财产。

第三十一条　人民法院受理破产申请前一年内，涉及债务人财产的下列行为，管理人有权请求人民法院予以撤销：

（一）无偿转让财产的；

（二）以明显不合理的价格进行交易的；

（三）对没有财产担保的债务提供财产担保的；

（四）对未到期的债务提前清偿的；

（五）放弃债权的。

第三十二条　人民法院受理破产申请前六个月内，债务人有本法第二条第一款规定的情形，仍对个别债权人进行清偿的，管理人有权请求人民法院予以撤销。但是，个别清偿使债务人财产受益的除外。

第三十三条　涉及债务人财产的下列行为无效：

（一）为逃避债务而隐匿、转移财产的；

（二）虚构债务或者承认不真实的债务的。

第三十四条　因本法第三十一条、第三十二条或者第三十三条规定的行为而取得的债务人的财产，管理人有权追回。

第三十五条　人民法院受理破产申请后，债务人的出资人尚未完全履行出资义务的，管理人应当要求该出资人缴纳所认缴的出资，而不受出资期限的限制。

第三十六条　债务人的董事、监事和高级管理人员利用职权从企业获取的非正常收入和侵占的企业财产，管理人应当追回。

第三十七条　人民法院受理破产申请后，管理人可以通过清偿债务或者提供为债权人接受的担保，取回质物、留置物。

前款规定的债务清偿或者替代担保，在质物或者留置物的价值低于被担保的债权额时，以该质物或者留置物当时的市场价值为限。

第三十八条　人民法院受理破产申请后，债务人占有的不属于债务人的财产，该财产的权利人可以通过管理人取回。但是，本法另有规定的除外。

第三十九条　人民法院受理破产申请时，出卖人已将买卖标的物向作为买受人的债务人发运，债务人尚未收到且未付清全部价款的，出卖人可以取回在运途中的标的物。但是，管理人可以支付全部价款，请求出卖人交付标的物。

第四十条　债权人在破产申请受理前对债务人负有债务的，可以向管理人主张抵销。但是，有下列情形之一的，不得抵销：

（一）债务人的债务人在破产申请受理后取得他人对债务人的债权的；

（二）债权人已知债务人有不能清偿到期债务或者破产申请的事实，对债务人负担债务的；但是，债权人因为法律规定或者有破产申请一年前所发生的原因而负担债务的除外；

（三）债务人的债务人已知债务人有不能清偿到期债务或者破产申请的事实，对债务人取得债权的；但是，债务人的债务人因为法律规定或者有破产申请一年前所发生的原因而取得债权的除外。

第五章 破产费用和共益债务

第四十一条 人民法院受理破产申请后发生的下列费用，为破产费用：

（一）破产案件的诉讼费用；

（二）管理、变价和分配债务人财产的费用；

（三）管理人执行职务的费用、报酬和聘用工作人员的费用。

第四十二条 人民法院受理破产申请后发生的下列债务，为共益债务：

（一）因管理人或者债务人请求对方当事人履行双方均未履行完毕的合同所产生的债务；

（二）债务人财产受无因管理所产生的债务；

（三）因债务人不当得利所产生的债务；

（四）为债务人继续营业而应支付的劳动报酬和社会保险费用以及由此产生的其他债务；

（五）管理人或者相关人员执行职务致人损害所产生的债务；

（六）债务人财产致人损害所产生的债务。

第四十三条 破产费用和共益债务由债务人财产随时清偿。

债务人财产不足以清偿所有破产费用和共益债务的，先行清偿破产费用。

债务人财产不足以清偿所有破产费用或者共益债务的，按照比例清偿。

债务人财产不足以清偿破产费用的，管理人应当提请人民法院终结破产程序。人民法院应当自收到请求之日起十五日内裁定终结破产程序，并予以公告。

第六章 债权申报

第四十四条 人民法院受理破产申请时对债务人享有债权的债权人，依照本法规定的程序行使权利。

第四十五条 人民法院受理破产申请后，应当确定债权人申报债权的期限。债权申报期限自人民法院发布受理破产申请公告之日起计算，最短不得少于三十日，最长不得超过三个月。

第四十六条 未到期的债权，在破产申请受理时视为到期。

附利息的债权自破产申请受理时起停止计息。

第四十七条 附条件、附期限的债权和诉讼、仲裁未决的债权，债权人可以申报。

第四十八条 债权人应当在人民法院确定的债权申报期限内向管理人申报债权。

债务人所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金，不必申报，由管理人调查后列出清单并予以公示。职工对清单记载有异议的，可以要求管理人更正；管理人不予更正的，职工可以向人民法院提起诉讼。

第四十九条　债权人申报债权时，应当书面说明债权的数额和有无财产担保，并提交有关证据。申报的债权是连带债权的，应当说明。

第五十条　连带债权人可以由其中一人代表全体连带债权人申报债权，也可以共同申报债权。

第五十一条　债务人的保证人或者其他连带债务人已经代替债务人清偿债务的，以其对债务人的求偿权申报债权。

债务人的保证人或者其他连带债务人尚未代替债务人清偿债务的，以其对债务人的将来求偿权申报债权。但是，债权人已经向管理人申报全部债权的除外。

第五十二条　连带债务人数人被裁定适用本法规定的程序的，其债权人有权就全部债权分别在各破产案件中申报债权。

第五十三条　管理人或者债务人依照本法规定解除合同的，对方当事人以因合同解除所产生的损害赔偿请求权申报债权。

第五十四条　债务人是委托合同的委托人，被裁定适用本法规定的程序，受托人不知该事实，继续处理委托事务的，受托人以由此产生的请求权申报债权。

第五十五条　债务人是票据的出票人，被裁定适用本法规定的程序，该票据的付款人继续付款或者承兑的，付款人以由此产生的请求权申报债权。

第五十六条　在人民法院确定的债权申报期限内，债权人未申报债权的，可以在破产财产最后分配前补充申报；但是，此前已进行的分配，不再对其补充分配。为审查和确认补充申报债权的费用，由补充申报人承担。

债权人未依照本法规定申报债权的，不得依照本法规定的程序行使权利。

第五十七条　管理人收到债权申报材料后，应当登记造册，对申报的债权进行审查，并编制债权表。

债权表和债权申报材料由管理人保存，供利害关系人查阅。

第五十八条　依照本法第五十七条规定编制的债权表，应当提交第一次债权人会议核查。

债务人、债权人对债权表记载的债权无异议的，由人民法院裁定确认。

债务人、债权人对债权表记载的债权有异议的，可以向受理破产申请的人民法院提起诉讼。

第七章　债权人会议

第一节　一般规定

第五十九条　依法申报债权的债权人为债权人会议的成员，有权参加债权人会议，享有表决权。

债权尚未确定的债权人，除人民法院能够为其行使表决权而临时确定债权额的外，不得行使表决权。

对债务人的特定财产享有担保权的债权人，未放弃优先受偿权利的，对于本法第六十一条第一款第七项、第十项规定的事项不享有表决权。

债权人可以委托代理人出席债权人会议，行使表决权。代理人出席债权人会议，应当向人民法院或者债权人会议主席提交债权人的授权委托书。

债权人会议应当有债务人的职工和工会的代表参加，对有关事项发表意见。

第六十条　债权人会议设主席一人，由人民法院从有表决权的债权人中指定。

债权人会议主席主持债权人会议。

第六十一条　债权人会议行使下列职权：

（一）核查债权；

（二）申请人民法院更换管理人，审查管理人的费用和报酬；

（三）监督管理人；

（四）选任和更换债权人委员会成员；

（五）决定继续或者停止债务人的营业；

（六）通过重整计划；

（七）通过和解协议；

（八）通过债务人财产的管理方案；

（九）通过破产财产的变价方案；

（十）通过破产财产的分配方案；

（十一）人民法院认为应当由债权人会议行使的其他职权。

债权人会议应当对所议事项的决议作成会议记录。

第六十二条　第一次债权人会议由人民法院召集，自债权申报期限届满之日起十五日内召开。

以后的债权人会议，在人民法院认为必要时，或者管理人、债权人委员会、占债权总额四分之一以上的债权人向债权人会议主席提议时召开。

第六十三条　召开债权人会议，管理人应当提前十五日通知已知的债权人。

第六十四条　债权人会议的决议，由出席会议的有表决权的债权人过半数通过，并且其所代表的债权额占无财产担保债权总额的二分之一以上。但是，本法另有规定的除外。

债权人认为债权人会议的决议违反法律规定，损害其利益的，可以自债权人会议作出决议之日起十五日内，请求人民法院裁定撤销该决议，责令债权人会议依法重新作出决议。

债权人会议的决议，对于全体债权人均有约束力。

第六十五条　本法第六十一条第一款第八项、第九项所列事项，经债权人会议表决未通过的，由人民法院裁定。

本法第六十一条第一款第十项所列事项，经债权人会议二次表决仍未通过的，由人民法院裁定。

对前两款规定的裁定，人民法院可以在债权人会议上宣布或者另行通知债权人。

第六十六条　债权人对人民法院依照本法第六十五条第一款作出的裁定不服的，债权额占无财产担保债权总额二分之一以上的债权人对人民法院依照本法第六十五条第二款作出的裁定不服的，可以自裁定宣布之日或者收到通知之日起十五日内向该人民法院申请复议。复议期间不停止裁定的执行。

第二节　债权人委员会

第六十七条　债权人会议可以决定设立债权人委员会。债权人委员会由债权人会议选任的债权人代表和一名债务人的职工代表或者工会代表组成。债权人委员会成员不得超过九人。

债权人委员会成员应当经人民法院书面决定认可。

第六十八条　债权人委员会行使下列职权：

（一）监督债务人财产的管理和处分；

（二）监督破产财产分配；

（三）提议召开债权人会议；

（四）债权人会议委托的其他职权。

债权人委员会执行职务时，有权要求管理人、债务人的有关人员对其职权范围内的事务作出说明或者提供有关文件。

管理人、债务人的有关人员违反本法规定拒绝接受监督的，债权人委员会有权就监督事项请求人民法院作出决定；人民法院应当在五日内作出决定。

第六十九条　管理人实施下列行为，应当及时报告债权人委员会：

（一）涉及土地、房屋等不动产权益的转让；

（二）探矿权、采矿权、知识产权等财产权的转让；

（三）全部库存或者营业的转让；

（四）借款；

（五）设定财产担保；

（六）债权和有价证券的转让；

（七）履行债务人和对方当事人均未履行完毕的合同；

（八）放弃权利；

（九）担保物的取回；

（十）对债权人利益有重大影响的其他财产处分行为。

未设立债权人委员会的，管理人实施前款规定的行为应当及时报告人民法院。

第八章　重整

第一节　重整申请和重整期间

第七十条　债务人或者债权人可以依照本法规定，直接向人民法院申请对债务人进行重整。

债权人申请对债务人进行破产清算的，在人民法院受理破产申请后、宣告债务人破产前，债务人或者出资额占债务人注册资本十分之一以上的出资人，可以向人民法院申请重整。

第七十一条　人民法院经审查认为重整申请符合本法规定的，应当裁定债务人重整，并予以公告。

第七十二条　自人民法院裁定债务人重整之日起至重整程序终止，为重整期间。

第七十三条　在重整期间，经债务人申请，人民法院批准，债务人可以在管理人的监督下自行管理财产和营业事务。

有前款规定情形的，依照本法规定已接管债务人财产和营业事务的管理人应当向债务人移交财产和营业事务，本法规定的管理人的职权由债务人行使。

第七十四条　管理人负责管理财产和营业事务的，可以聘任债务人的经营管理人员负责营业事务。

第七十五条　在重整期间，对债务人的特定财产享有的担保权暂停行使。但是，担保物有损坏或者价值明显减少的可能，足以危害担保权人权利的，担保权人可以向人民法院请求恢复行使担保权。

在重整期间，债务人或者管理人为继续营业而借款的，可以为该借款设定担保。

第七十六条　债务人合法占有的他人财产，该财产的权利人在重整期间要求取回的，应当符合事先约定的条件。

第七十七条　在重整期间，债务人的出资人不得请求投资收益分配。

在重整期间，债务人的董事、监事、高级管理人员不得向第三人转让其持有的债务人的股权。但是，经人民法院同意的除外。

第七十八条　在重整期间，有下列情形之一的，经管理人或者利害关系人请求，人民法院应当裁定终止重整程序，并宣告债务人破产：

（一）债务人的经营状况和财产状况继续恶化，缺乏挽救的可能性；

（二）债务人有欺诈、恶意减少债务人财产或者其他显著不利于债权人的行为；

（三）由于债务人的行为致使管理人无法执行职务。

第二节 重整计划的制定和批准

第七十九条 债务人或者管理人应当自人民法院裁定债务人重整之日起六个月内，同时向人民法院和债权人会议提交重整计划草案。

前款规定的期限届满，经债务人或者管理人请求，有正当理由的，人民法院可以裁定延期三个月。

债务人或者管理人未按期提出重整计划草案的，人民法院应当裁定终止重整程序，并宣告债务人破产。

第八十条 债务人自行管理财产和营业事务的，由债务人制作重整计划草案。

管理人负责管理财产和营业事务的，由管理人制作重整计划草案。

第八十一条 重整计划草案应当包括下列内容：

（一）债务人的经营方案；

（二）债权分类；

（三）债权调整方案；

（四）债权受偿方案；

（五）重整计划的执行期限；

（六）重整计划执行的监督期限；

（七）有利于债务人重整的其他方案。

第八十二条 下列各类债权的债权人参加讨论重整计划草案的债权人会议，依照下列债权分类，分组对重整计划草案进行表决：

（一）对债务人的特定财产享有担保权的债权；

（二）债务人所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金；

（三）债务人所欠税款；

（四）普通债权。

人民法院在必要时可以决定在普通债权组中设小额债权组对重整计划草案进行表决。

第八十三条 重整计划不得规定减免债务人欠缴的本法第八十二条第一款第二项规定以外的社会保险费用；该项费用的债权人不参加重整计划草案的表决。

第八十四条 人民法院应当自收到重整计划草案之日起三十日内召开债权人会议，对重整计划草案进行表决。

出席会议的同一表决组的债权人过半数同意重整计划草案，并且其所代表的债权额占该组债权总额的三分之二以上的，即为该组通过重整计划草案。

债务人或者管理人应当向债权人会议就重整计划草案作出说明，并回答询问。

第八十五条　债务人的出资人代表可以列席讨论重整计划草案的债权人会议。

重整计划草案涉及出资人权益调整事项的，应当设出资人组，对该事项进行表决。

第八十六条　各表决组均通过重整计划草案时，重整计划即为通过。

自重整计划通过之日起十日内，债务人或者管理人应当向人民法院提出批准重整计划的申请。人民法院经审查认为符合本法规定的，应当自收到申请之日起三十日内裁定批准，终止重整程序，并予以公告。

第八十七条　部分表决组未通过重整计划草案的，债务人或者管理人可以同未通过重整计划草案的表决组协商。该表决组可以在协商后再表决一次。双方协商的结果不得损害其他表决组的利益。

未通过重整计划草案的表决组拒绝再次表决或者再次表决仍未通过重整计划草案，但重整计划草案符合下列条件的，债务人或者管理人可以申请人民法院批准重整计划草案：

（一）按照重整计划草案，本法第八十二条第一款第一项所列债权就该特定财产将获得全额清偿，其因延期清偿所受的损失将得到公平补偿，并且其担保权未受到实质性损害，或者该表决组已经通过重整计划草案；

（二）按照重整计划草案，本法第八十二条第一款第二项、第三项所列债权将获得全额清偿，或者相应表决组已经通过重整计划草案；

（三）按照重整计划草案，普通债权所获得的清偿比例，不低于其在重整计划草案被提请批准时依照破产清算程序所能获得的清偿比例，或者该表决组已经通过重整计划草案；

（四）重整计划草案对出资人权益的调整公平、公正，或者出资人组已经通过重整计划草案；

（五）重整计划草案公平对待同一表决组的成员，并且所规定的债权清偿顺序不违反本法第一百一十三条的规定；

（六）债务人的经营方案具有可行性。

人民法院经审查认为重整计划草案符合前款规定的，应当自收到申请之日起三十日内裁定批准，终止重整程序，并予以公告。

第八十八条　重整计划草案未获得通过且未依照本法第八十七条的规定获得批准，或者已通过的重整计划未获得批准的，人民法院应当裁定终止重整程序，并宣告债务人破产。

第三节　重整计划的执行

第八十九条　重整计划由债务人负责执行。

人民法院裁定批准重整计划后，已接管财产和营业事务的管理人应当向债务人移交财产和营业事务。

第九十条　自人民法院裁定批准重整计划之日起，在重整计划规定的监督期内，由管理人监督重整计划的执行。

在监督期内，债务人应当向管理人报告重整计划执行情况和债务人财务状况。

第九十一条　监督期届满时，管理人应当向人民法院提交监督报告。自监督报告提交之日起，管理人的监督职责终止。

管理人向人民法院提交的监督报告，重整计划的利害关系人有权查阅。

经管理人申请，人民法院可以裁定延长重整计划执行的监督期限。

第九十二条　经人民法院裁定批准的重整计划，对债务人和全体债权人均有约束力。

债权人未依照本法规定申报债权的，在重整计划执行期间不得行使权利；在重整计划执行完毕后，可以按照重整计划规定的同类债权的清偿条件行使权利。

债权人对债务人的保证人和其他连带债务人所享有的权利，不受重整计划的影响。

第九十三条　债务人不能执行或者不执行重整计划的，人民法院经管理人或者利害关系人请求，应当裁定终止重整计划的执行，并宣告债务人破产。

人民法院裁定终止重整计划执行的，债权人在重整计划中作出的债权调整的承诺失去效力。债权人因执行重整计划所受的清偿仍然有效，债权未受清偿的部分作为破产债权。

前款规定的债权人，只有在其他同顺位债权人同自己所受的清偿达到同一比例时，才能继续接受分配。

有本条第一款规定情形的，为重整计划的执行提供的担保继续有效。

第九十四条　按照重整计划减免的债务，自重整计划执行完毕时起，债务人不再承担清偿责任。

第九章　和解

第九十五条　债务人可以依照本法规定，直接向人民法院申请和解；也可以在人民法院受理破产申请后、宣告债务人破产前，向人民法院申请和解。

债务人申请和解，应当提出和解协议草案。

第九十六条　人民法院经审查认为和解申请符合本法规定的，应当裁定和解，予以公告，并召集债权人会议讨论和解协议草案。

对债务人的特定财产享有担保权的权利人，自人民法院裁定和解之日起可以行使权利。

第九十七条　债权人会议通过和解协议的决议，由出席会议的有表决权的债权人过半数同意，并且其所代表的债权额占无财产担保债权总额的三分之二以上。

第九十八条　债权人会议通过和解协议的，由人民法院裁定认可，终止和解程序，并予以公告。管理人应当向债务人移交财产和营业事务，并向人民法院提交执行职务的报告。

第九十九条　和解协议草案经债权人会议表决未获得通过，或者已经债权人会议通过的和解协议未获得人民法院认可的，人民法院应当裁定终止和解程序，并宣告债务人破产。

第一百条　经人民法院裁定认可的和解协议，对债务人和全体和解债权人均有约束力。

和解债权人是指人民法院受理破产申请时对债务人享有无财产担保债权的人。

和解债权人未依照本法规定申报债权的，在和解协议执行期间不得行使权利；在和解协议执行完毕后，可以按照和解协议规定的清偿条件行使权利。

第一百零一条　和解债权人对债务人的保证人和其他连带债务人所享有的权利，不受和解协议的影响。

第一百零二条　债务人应当按照和解协议规定的条件清偿债务。

第一百零三条　因债务人的欺诈或者其他违法行为而成立的和解协议，人民法院应当裁定无效，并宣告债务人破产。

有前款规定情形的，和解债权人因执行和解协议所受的清偿，在其他债权人所受清偿同等比例的范围内，不予返还。

第一百零四条　债务人不能执行或者不执行和解协议的，人民法院经和解债权人请求，应当裁定终止和解协议的执行，并宣告债务人破产。

人民法院裁定终止和解协议执行的，和解债权人在和解协议中作出的债权调整的承诺失去效力。和解债权人因执行和解协议所受的清偿仍然有效，和解债权未受清偿的部分作为破产债权。

前款规定的债权人，只有在其他债权人同自己所受的清偿达到同一比例时，才能继续接受分配。

有本条第一款规定情形的，为和解协议的执行提供的担保继续有效。

第一百零五条　人民法院受理破产申请后，债务人与全体债权人就债权债务的处理自行达成协议的，可以请求人民法院裁定认可，并终结破产程序。

第一百零六条　按照和解协议减免的债务，自和解协议执行完毕时起，债务人不再承担清偿责任。

第十章　破产清算

第一节　破产宣告

第一百零七条　人民法院依照本法规定宣告债务人破产的，应当自裁定作出之日起五日内送达债务人和管理人，自裁定作出之日起十日内通知已知债权人，并予以公告。

债务人被宣告破产后，债务人称为破产人，债务人财产称为破产财产，人民法院受理破产申请时对债务人享有的债权称为破产债权。

第一百零八条　破产宣告前，有下列情形之一的，人民法院应当裁定终结破产程序，并予以公告：

（一）第三人为债务人提供足额担保或者为债务人清偿全部到期债务的；

（二）债务人已清偿全部到期债务的。

第一百零九条　对破产人的特定财产享有担保权的权利人，对该特定财产享有优先受偿的权利。

第一百一十条　享有本法第一百零九条规定权利的债权人行使优先受偿权利未能完全受偿的，其未受偿的债权作为普通债权；放弃优先受偿权利的，其债权作为普通债权。

第二节　变价和分配

第一百一十一条　管理人应当及时拟订破产财产变价方案，提交债权人会议讨论。

管理人应当按照债权人会议通过的或者人民法院依照本法第六十五条第一款规定裁定的破产财产变价方案，适时变价出售破产财产。

第一百一十二条　变价出售破产财产应当通过拍卖进行。但是，债权人会议另有决议的除外。

破产企业可以全部或者部分变价出售。企业变价出售时，可以将其中的无形资产和其他财产单独变价出售。

按照国家规定不能拍卖或者限制转让的财产，应当按照国家规定的方式处理。

第一百一十三条　破产财产在优先清偿破产费用和共益债务后，依照下列顺序清偿：

（一）破产人所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金；

（二）破产人欠缴的除前项规定以外的社会保险费用和破产人所欠税款；

（三）普通破产债权。

破产财产不足以清偿同一顺序的清偿要求的，按照比例分配。

破产企业的董事、监事和高级管理人员的工资按照该企业职工的平均工资计算。

第一百一十四条　破产财产的分配应当以货币分配方式进行。但是，债权人会议另有决议的除外。

第一百一十五条　管理人应当及时拟订破产财产分配方案，提交债权人会议讨论。

破产财产分配方案应当载明下列事项：

（一）参加破产财产分配的债权人名称或者姓名、住所；

（二）参加破产财产分配的债权额；

（三）可供分配的破产财产数额；

（四）破产财产分配的顺序、比例及数额；

（五）实施破产财产分配的方法。

债权人会议通过破产财产分配方案后，由管理人将该方案提请人民法院裁定认可。

第一百一十六条　破产财产分配方案经人民法院裁定认可后，由管理人执行。

管理人按照破产财产分配方案实施多次分配的，应当公告本次分配的财产额和债权额。管理人实施最后分配的，应当在公告中指明，并载明本法第一百一十七条第二款规定的事项。

第一百一十七条　对于附生效条件或者解除条件的债权，管理人应当将其分配额提存。

管理人依照前款规定提存的分配额，在最后分配公告日，生效条件未成就或者解除条件成就的，应当分配给其他债权人；在最后分配公告日，生效条件成就或者解除条件未成就的，应当交付给债权人。

第一百一十八条　债权人未受领的破产财产分配额，管理人应当提存。债权人自最后分配公告之日起满二个月仍不领取的，视为放弃受领分配的权利，管理人或者人民法院应当将提存的分配额分配给其他债权人。

第一百一十九条　破产财产分配时，对于诉讼或者仲裁未决的债权，管理人应当将其分配额提存。自破产程序终结之日起满二年仍不能受领分配的，人民法院应当将提存的分配额分配给其他债权人。　　第三节　破产程序的终结

第一百二十条　破产人无财产可供分配的，管理人应当请求人民法院裁定终结破产程序。

管理人在最后分配完结后，应当及时向人民法院提交破产财产分配报告，并提请人民法院裁定终结破产程序。

人民法院应当自收到管理人终结破产程序的请求之日起十五日内作出是否终结破产程序的裁定。裁定终结的，应当予以公告。

第一百二十一条　管理人应当自破产程序终结之日起十日内，持人民法院终结破产程序的裁定，向破产人的原登记机关办理注销登记。

第一百二十二条　管理人于办理注销登记完毕的次日终止执行职务。但是，存在诉讼或者仲裁未决情况的除外。

第一百二十三条　自破产程序依照本法第四十三条第四款或者第一百二十条的规定终结之日起二年内，有下列情形之一的，债权人可以请求人民法院按照破产财产分配方案进行追加分配：

（一）发现有依照本法第三十一条、第三十二条、第三十三条、第三十六条规定应当追回的财产的；

（二）发现破产人有应当供分配的其他财产的。

有前款规定情形，但财产数量不足以支付分配费用的，不再进行追加分配，由人民法院将其上交国库。

第一百二十四条　破产人的保证人和其他连带债务人，在破产程序终结后，对债权人依照破产清算程序未受清偿的债权，依法继续承担清偿责任。　　第十一章　法律责任

第一百二十五条　企业董事、监事或者高级管理人员违反忠实义务、勤勉义务，致使所在企业破产的，依法承担民事责任。

有前款规定情形的人员，自破产程序终结之日起三年内不得担任任何企业的董事、监事、高级管理人员。

第一百二十六条　有义务列席债权人会议的债务人的有关人员，经人民法院传唤，无正当理由拒不列席债权人会议的，人民法院可以拘传，并依法处以罚款。债务人的有关人员违反本法规定，拒不陈述、回答，或者作虚假陈述、回答的，人民法院可以依法处以罚款。

第一百二十七条　债务人违反本法规定，拒不向人民法院提交或者提交不真实的财产状况说明、债务清册、债权清册、有关财务会计报告以及职工工资的支付情况和社会保险费用的缴纳情况的，人民法院可以对直接责任人员依法处以罚款。

债务人违反本法规定，拒不向管理人移交财产、印章和账簿、文书等资料的，或者伪造、销毁有关财产证据材料而使财产状况不明的，人民法院可以对直接责任人员依法处以罚款。

第一百二十八条　债务人有本法第三十一条、第三十二条、第三十三条规定的行为，损害债权人利益的，债务人的法定代表人和其他直接责任人员依法承担赔偿责任。

第一百二十九条　债务人的有关人员违反本法规定，擅自离开住所地的，人民法院可以予以训诫、拘留，可以依法并处罚款。

第一百三十条　管理人未依照本法规定勤勉尽责，忠实执行职务的，人民法院可以依法处以罚款；给债权人、债务人或者第三人造成损失的，依法承担赔偿责任。

第一百三十一条　违反本法规定，构成犯罪的，依法追究刑事责任。　　第十二章　附则

第一百三十二条　本法施行后，破产人在本法公布之日前所欠职工的工资和医疗、伤残补助、抚恤费用，所欠的应当划入职工个人账户的基本养老保险、基本医疗保险费用，以及法律、行政法规规定应当支付给职工的补偿金，依照本法第一百一十三条的规定清偿后不足以清偿的部分，以本法第一百零九条规定的特定财产优先于对该特定财产享有担保权的权利人受偿。

第一百三十三条　在本法施行前国务院规定的期限和范围内的国有企业实施破产的特殊事宜，按照国务院有关规定办理。

第一百三十四条　商业银行、证券公司、保险公司等金融机构有本法第二条规定情形的，国务院金融监督管理机构可以向人民法院提出对该金融机构进行重整或者破产清算的申请。国务院金融监督管理机构依法对出现重大经营风险的金融机构采取接管、托管等措施的，可以向人民法院申请中止以该金融机构为被告或者被执行人的民事诉讼程序或者执行程序。

金融机构实施破产的，国务院可以依据本法和其他有关法律的规定制定实施办法。

第一百三十五条　其他法律规定企业法人以外的组织的清算，属于破产清算的，参照适用本法规定的程序。

第一百三十六条　本法自 2007 年 6 月 1 日起施行，《中华人民共和国企业破产法（试行）》同时废止。

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ATTACHMENT 64

Public
File 159

Order of the President of the People's Republic of China

(No. 62)

The Property Law of the People's Republic of China, which was adopted at the 5th session of the Tenth National People's Congress on March 16, 2007, is hereby promulgated for effect as of October 1, 2007.

President of the People's Republic of China Hu Jintao

March 16, 2007

Property Law of the People's Republic of China

(Adopted at the 5th session of the Tenth National People's Congress on March 16, 2007)

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Part One General Provisions

Chapter I Basic Principles

Article 1 For the purpose of safeguarding the basic economic system of the state, maintaining the socialist market economic order, clarifying property ownerships, giving play to the utilities of properties and protecting the real right of the right holders, this Law has been formulated in accordance with the Constitution Law.

Article 2 This Law shall apply to the civil relationships generated from the ownership and utilization of properties.

The term "property" as mentioned in this Law includes real estates (immovable property) and movable property. In case other laws also stipulate certain rights to be the objects of real right, those provisions shall be followed.

The term 'real right' as mentioned in this Law refers to the exclusive right of direct control enjoyed by the holder according to law over a specific property, including ownership, usufructuary right and real rights for security.

Article 3 In the primary stage of socialism, the state upholds the basic economic system under which the public (state) ownership shall play a dominant role and diversified forms of ownerships may develop side by side.

The state consolidates and develops the public (state) economy, and encourages, supports and guides the development of the nonpublic economy.

The state practices the socialist market economy system and safeguards the equal legal status and development rights of all market operators.

Article 13 No registration organ may conduct any of the following behaviors:

(1) Demanding a piece of real property to be evaluated;

(2) Making repeated registration in the name of annual inspection; or

(3) Other behaviors conducted beyond its scope of registration duties.

Article 14 The creation, change, transfer or elimination of the real right of a real property shall, in case it shall be registered as required by law, become effective since the date when it is recorded in the real property register.

Article 15 A contract concluded by the parties concerned on the creation, change, transfer or elimination of the real right of a real property shall become effective upon the conclusion of the contract, except it is otherwise prescribed by any law; and whether the real right has been registered does not affect the validity of the contract.

Article 16 The real property register shall be the basis for determining the ownership and contents of a real property. Realty registers shall be managed by the registration organ.

Article 17 The real property ownership certificate shall be the proof on the holder's ownership of a real property. The items recorded in the real property ownership certificate shall be consistent with those recorded in the real property register; in case there is any inconsistence, the one recorded in the real property register shall prevail, except there is evidence to prove that it is wrong.

Article 18 Any right holder or interested party may apply for inquiring about or copying the registration materials, and the registration organ shall not refuse.

Article 19 Any right holder or interested party that believes that any item recorded in the real property registry is wrong may apply for correcting the registration. Where the right holder recorded in the real property registry agrees to revise the registration in written form or has evidence to prove that the registration is wrong, the registration organ shall revise the registration accordingly.

Where the right holder recorded in the real property registry does not agree to the change, the interested party may apply for dissidence registration. If the registration organ approves the dissidence registration but the applicant fails to bring an action within 15 days since the date of dissidence registration, the dissidence registration shall cease to be effective. If the dissidence registration is inappropriate and causes damages to the right holder, the holder may request the applicant to make compensation for damages.

Article 20 Where the parties concerned conclude a purchase agreement on a premise or the real right of any other real property, they may apply to the registration organ for advance notice registration to guarantee the realization of the real right in the future. After the advance notice registration, any disposal of the real property without obtaining the consent of the holder in the advance notice registration shall produce no effect of real right.

Article 4 The real rights of the state, collectives, individuals or any other right holder shall be protected by law and shall not be infringed by any entities or individuals.

Article 5 The varieties and contents of real rights shall be stipulated by law.

Article 6 The creation, change, transfer or elimination of the real right of a real estate shall be registered according to law. The creation or transfer of the real right of a movable property shall be delivered according to law.

Article 7 In acquiring or exercising a real right, one shall abide by the law, respect social morals and may not damage the public interests or the legitimate rights and interests of any other person.

Article 8 Where there is any other special provision on real right in any other law, such special provision shall apply.

Chapter II Creation, Change, Transfer and Elimination of Real Right

Section 1 Registration of Real Properties

Article 9 The creation, change, transfer or elimination of the real right of a real property shall become effective after it is registered according to law; it shall have no effect if it is not registered according to law, except it is otherwise prescribed by any law.

The ownership of the natural resources which are owned by the state according to law are not required to be registered.

Article 10 The registration of a real property shall be executed by the registration organ of the place where the real property is located.

The state applies a uniform registration system over real properties. The scope, organ and measures of uniform registration shall be stipulated by the relevant laws and administrative regulations.

Article 11 An applicant for the registration of a real property shall, in light of the different registration items, provide the certificate of ownership of the real property and such required materials as the location and area of the real property.

Article 12 A registration organ shall perform the following duties:

(1) Examining the certificate of ownership and other required materials submitted by the applicant;

(2) Inquiring the applicant about the relevant registration items;

(3) Registering the relevant items according to the facts and in a timely manner; and

(4) Other duties prescribed in any law or administrative regulation.

Where it is necessary to further prove the relevant situation of the real property involved in the application for registration, the registration organ may require the applicant to submit additional materials and carry out on-the-spot inspection when necessary.

If, after the advance notice registration is made, the obligee's right is eliminated or the application for the registration of the real property is not made within 3 months since the date when it can be registered, the advance notice registration shall cease to be effective.

Article 21 Any party concerned that provides false application materials for registration and causes damages to any other person shall undertake the liability for compensation.

Where a registration organ causes damages to any other person because of any mistake in registration, it shall undertake the liability for compensation. After making the compensation, the registration organ may recover the amount from the person causing the registration error.

Article 22 Real property registration fees shall be collected on each piece, and may not be collected according to the size, volume or on the basis of certain proportion of the value of the real property. The specific charging rates shall be stipulated by the relevant departments under the State Council together with the competent department of pricing.

Section 2 Delivery of Movable Properties

Article 23 The creation or transfer of the real right of a movable property shall become effective upon delivery, except it is otherwise prescribed by any law.

Article 24 The creation, change, transfer or elimination of the real right of any vessel, aircraft or motor vehicle, etc, if it is not registered, may not challenge any bona fide third party.

Article 25 If, before the real right of a movable property is established or transferred, the right holder has legally possessed the movable property, the real right shall become effective upon the effectiveness of the legal act.

Article 26 If, before the real right of a movable property is established or transferred, a third party has legally possessed the movable property, the person bearing the obligation of delivery may request the third party to return the rights over the original object by means of transfer to substitutive delivery.

Article 27 If, when the real right of a movable property is transferred, both parties agree to let the transferor continue possessing the movable property, the real right shall become effective upon the effectiveness of the agreement.

Section 3 Other Provisions

Article 28 Where a real right is created, changed, transferred or eliminated for a legal document of the people's court or arbitration commission or a requisition decision of the people's government, etc, the real right shall become effective upon the effectiveness of the legal document or the requisition decision of the people's court.

Article 29 Where a real right is acquired through inheritance or bequest, it shall become effective since the beginning of the inheritance or bequest.

Article 30 Where a real right is created or eliminated for such factual behaviors as the legal construction or demolition of premises, it shall become effective upon the accomplishment of the factual behavior.

Article 31 As for a real right of real property enjoyed in accordance with the provisions of Articles 28 through 30 of this Law, any disposal of the real right shall produce no effect of real right if it is not registered as required by law.

Chapter III Protection of Real Right

Article 32 In case a real right is injured, the right holder may solve the problem through such channels as conciliation, mediation or arbitration, etc.

Article 33 As for a dispute over the ownership or content of real right, the interested parties may petition for confirming the right.

Article 34 As for the untitled possession of a real property or movable property, the right holder may petition for returning the original object.

Article 35 Where a real right has been or may be obstructed, the right holder may petition for removing the impediment or eliminating the danger.

Article 36 Where a real property or movable property is damaged, the right holder may petition for repairing, remaking, changing or restoring the original state.

Article 37 Where a real right is injured and the right holder suffers losses from it, the right holder may petition for the compensation for the losses or the undertaking of any other civil liability.

Article 38 The ways for the protection of real right as stipulated in this Law may apply either independently or by combining with each other in light of the specific circumstance of an injury of real right.

In addition to undertaking civil liabilities, any entity or individual injuring a real right shall undertake the administrative liabilities in case any provision on administrative regulation is violated; if any crime is constituted, he shall be subject to the criminal liabilities.

Part Two Ownership

Chapter IV General Provisions

Article 39 The owner of a real property or movable property has the rights to possess, use, seek profits from and dispose of the real property or movable property according to law.

Article 40 The owner of a real property or movable property has the right to establish a usufructuary right or real right for security over the real property or movable property. When exercising the right, the holder of usufructuary right or the holder of real right for security may not damage the rights and interests of the owner.

Article 41 As for a real property or movable property exclusively owned by the state as prescribed by law, no entity or individual may acquire its ownership.

Article 42 To meet the needs of public interests, collectively-owned lands, premises owned by entities and individuals or other real properties may be expropriated in accordance with the power scope and procedures provided by laws.

As for the expropriation of collectively-owned land, it is necessary to, according to law and in full amount, pay such fees as land compensation fees, placement subsidies, compensations for the above-ground fixtures of the lands and seedlings, arrange for social security fees for the farmers whose land is expropriated, secure their livelihood and safeguard their legitimate rights and interests.

As for the expropriation of the premises owned by entities and individuals or other real properties, it is necessary to make compensation for demolishment and relocation according to law and safeguard the legitimate rights and interests of the owners of the real properties expropriated; as for the expropriation of the individuals' residential houses, it is necessary to safeguard the housing conditions of the owners of the houses expropriated.

No entity or individual may embezzle, misappropriate, privately share, detain or delay in the payment of the compensation fees for expropriation.

Article 43 The state provides special protection for farm lands, strictly restricts the conversion of farm lands into lands for construction and controls the aggregate quantity of lands for construction. No one may requisition any collectively-owned land by violating the statutory power limit and procedures.

Article 44 In case of the needs of emergent dangers or disasters, it is allowed for one to use the real properties or movable properties of entities and individuals in accordance with the statutory power limit and procedures. These real properties or movable properties shall be returned to the owners after the emergent use. Where any real property or movable property of any entity or individual is used or damaged or lost after it is used, corresponding compensation shall be made.

Chapter V State Ownership, Collective Ownership and Private Ownership

Article 45 The properties that shall be owned by the state as prescribed by law belong to the state or all the people as a whole.

The ownership of state-owned properties shall be exercised by the State Council on behalf of the state; where there is any other provision in any law, this provision shall prevail.

Article 46 Mineral deposits, waters and sea areas shall be owned by the state.

Article 47 Urban lands shall be owned by the state. Lands in the rural areas and suburban areas that shall be owned by the state as prescribed by law belong to the state.

Article 48 Natural resources such as forests, mountains, grasslands, waste lands and tidal flats shall be owned by the state, except those that shall be collectively owned as prescribed by law.

Article 49 The wildlife resources that shall be owned by the state as prescribed by law shall be owned by the state.

Article 50 Radio frequency spectrum resources shall be owned by the state.

Article 51 The cultural relics that shall be owned by the state as prescribed by law belong to the state.

Article 52 Assets of national defense shall be owned by the state.

Infrastructures such as railways, highways, electric power facilities, telecommunication facilities, and petrol and gas pipelines that shall be owned by the state as prescribed by law belong to the state.

Article 53 State organs have the right to possess, use and dispose of any real property or movable property directly controlled by them in accordance with the laws and the relevant provisions of the State Council.

Article 54 The public institutions held by the state have the right to possess, use, seek profits from and dispose of any real property or movable property directly under their control in accordance with the laws and the relevant provisions of the State Council.

Article 55 As for the enterprises established with the funds contributed by the state, the State Council and the local people's governments shall, in accordance with the relevant laws and administrative regulations, perform the contributor's duties and enjoy the contributor's rights and interests on behalf of the state.

Article 56 The properties owned by the state shall be under the protection of law, and no entity or individual may embezzle,, loot, privately divide, retain or destroy them.

Article 57 The institutions and their staff that perform the duties of managing and supervising state-owned assets shall make more efforts in the management and supervision of state-owned assets according to law so as to promote the value maintenance and appreciation of state-owned assets and prevent the losses of state-owned assets; any entity or individual causing any loss of state-owned assets for the misuse of authority or neglect of duty shall undertake legal responsibilities according to law.

Any entity or individual violating the provisions on the management of state-owned assets and causing losses of state-owned assets in the process of enterprise restructuring, merger, division or affiliated transactions by way of transferring at a low price, conspiring to distribute them secretly, providing guarantee with them without authorization or any other way shall undertake legal responsibilities according to law.

Article 58 The collectively-owned real properties and movable properties shall include:

(1) Lands, forests, mountains, grasslands, unclaimed lands and tidal flats that shall be collectively owned as prescribed by law;

(2) Collectively-owned buildings, production facilities, farmland, and water conservancy facilities;

(3) Collectively-owned facilities for education, science, culture, sanitation and sports, etc;

(4) Other collectively-owned real properties and movable properties.

Article 59 The real properties and movable properties owned by a farmers' collective shall be collectively owned by all the members of the collective.

The following items shall be decided by the members of the collective in accordance with the statutory procedures:

(1) Land contracting plan and whether to give out a land contract to an entity or individual other than those of the collective;

(2) Adjustment of the contracted lands among the holders of the right to the contracted management of land;

(3) Methods for the use and distribution of such fees as land compensation fees;

(4) The change of ownership or any other relevant issue of an enterprise established with the funds contributed by the collective;

(5) Other items prescribed by any law.

Article 60 The ownership of a collectively-owned land, forest, mountain, grassland, unclaimed land or tidal flat shall be exercised in accordance with the following provisions:

(1) If it is owned by a farmers' collective of a village, the ownership shall be exercised by a collective economic organization or the villagers' committee of the village on behalf of the collective;

(2) If it is owned by two or more farmers' collectives, the ownership shall be exercised by all the collective economic organizations or the villagers' groups of the village on behalf of the collective; and

(3) If it is owned by a farmers' collective of a town, the ownership shall be exercised by a collective economic organization of the town on behalf of the collective.

Article 61 An urban collective has the rights to possess, use, seek profits from and dispose of any real property or movable property it owns in accordance with the relevant laws and administrative regulations.

Article 62 The collective economic organization, villager's committee or villagers' group shall publicize the status of the properties owned by a collective to the members of the collective in accordance with the relevant laws, administrative regulations, articles of association and village regulations and villagers' pledges.

Article 63 Collectively-owned properties shall be under the protection of law, and no entity or individual may embezzle, loot, privately divide, retain, or destroy them.

If a decision made by a collective economic organization, villagers' committee or the person in charge infringes upon the legitimate rights and interests of any member of the

collective, the infringed member of the collective may petition the people's court to withdraw the decision.

Article 64 An individual is entitled to the ownership of his legal income, premise, household goods, instruments of production, raw materials and other real properties and movable properties.

Article 65 The legal savings, investments and the corresponding proceeds of an individual shall be under the protection of law.

The state shall protect an individual's right of inheritance and other legal rights and interests according to law.

Article 66 An individual's legal property shall be under the protection of law, no entity or individual may encroach, plunder or destroy it.

Article 67 The state, any collective or individual may contribute funds to establish a limited liability company, a company limited by shares or any other enterprise. Where the real properties or movable properties owned by the state, a collective or an individual are invested in an enterprise, the contributor shall enjoy such rights as obtaining asset returns, making important decisions and selecting operators and managers and perform their duties in accordance with the agreement or on the basis of his proportion of investment.

Article 68 An enterprise legal person has the right to possess, use, seek profits from and dispose of any real property or movable property it owns in accordance with the laws, administrative regulations and its articles of association.

The rights of a legal person other than an enterprise legal person over the real properties and movable properties it owns shall be governed by the provisions of the relevant laws, administrative regulations and its articles of associations.

Article 69 The real properties and movable properties owned by social organizations according to law shall be under the protection of law.

Chapter VI Owners' Partitioned Ownership of Building Areas (Owners' Condominium Rights)

Article 70 An owner shall have ownership over the exclusive parts within the buildings, such as the residential houses or the houses used for business purposes, and shall have common ownership and the right of common management over the common parts other than the exclusive parts.

Article 71 An owner has the rights to possess, use, seek profits from and dispose of the exclusive parts of the building. No owner may, when exercising his or its rights, endanger the safety of the building or damage the legitimate rights and interests of any other owner.

Article 72 An owner enjoys the rights and undertakes the obligations over the common parts other than the exclusive parts of the building, and may not refuse to fulfill the obligations under the pretext of waiver of rights.

Where an owner transfers his residential house or the house used for business purposes within the building, the common ownership and the right to common management he/she is entitled to over the common parts shall be transferred concurrently.

Article 73 The roads within the building zone (or community) shall be commonly owned by the owners, except the public roads of cities and towns. The green lands within the building area shall be commonly owned by all the owners, except the public green lands of cities and towns or those which are expressly ascribed to individuals. The other public places, common facilities and houses used for real property services within the building zone shall be commonly owned by all the owners.

Article 74 The parking spaces and garages that are within the building area and planned for parking cars shall be used to satisfy, above all else, the needs of the owners.

The ownership of the parking spaces and garages shall be stipulated by the parties concerned by way of selling, complementary using or leasing, etc.

The parking spaces occupying the roads or other fields commonly owned by all owners shall belong to all the owners.

Article 75 The owners may establish an owners' assembly and select an owners' committee.

The relevant departments of the local people's governments shall provide guidance and assistance for the establishment of the owners' assembly and the selection of the owners' committee.

Article 76 The following issues shall be commonly decided by all owners:

(1) Formulating or amending the rules of procedure for the owners' assembly;

(2) Formulating or amending the stipulations on the management of the building and its affiliated facilities;

(3) Selecting the owners' committee or changing the members of the owners' committee;

(4) Selecting or dismissing the real property service enterprise or any other manager;

(5) Raising or using the funds for the maintenance of the building and its affiliated facilities;

(6) Rebuilding the building or any of its affiliated facilities;

(7) Other important issues concerning the common ownership and the right to common management.

The decisions related to the issues prescribed in Item (5) or Item (6) of the preceding paragraph shall be made by the owners who exclusively own 2/3 or more of the total area of the building and who account for 2/3 or more of the total number of the owners. on the decisions related to any other issue prescribed in the preceding paragraph shall be made by the owners who exclusively own half of the total area of the building and who account for half of the total number of the owners.

Article 77 No owner may change a residential house into a house used for business purposes by violating any law, regulation or stipulation on building management. When changing a residential house into a house used for business purposes, the owner shall, in addition to observing laws, regulations and stipulations on building management, obtain the consent of all the other owners who have interests in the change.

Article 78 The decision made by an owners' assembly or an owners' committee is binding to all the owners.

Where any decision made by the owners' assembly or the owners' committee has infringed upon the legitimate rights and interests of an owner, such an owner may petition the people's court for withdrawing the decision.

Article 79 The funds for the maintenance of a building and its affiliated facilities shall be commonly owned by the owners of the building. The funds may be used for the maintenance of such common facilities as elevators and water tanks as codetermined by the owners. The information regarding the raise and use of the maintenance funds shall be published to all the owners.

Article 80 As for such issues as the allocation of the expenses spent for and the distribution of the income obtained from a building or any of its affiliated facilities, where there is any stipulation on it, this stipulation shall apply; where there is no stipulation on it or the stipulation is not clear, these issues shall be determined on the basis the proportion of each owner's exclusive parts to the total area of the building.

Article 81 The owners of a building may manage the building and its affiliated facilities by themselves or by entrusting a real property service enterprise or any other management personnel.

The owners are entitled to change the real property service enterprise or any other management personnel hired by the construction entity according to law.

Article 82 The real property service enterprise or any other management personnel shall manage the building and its affiliated facilities within the building area upon the entrustment of the owners and be subject to the supervision of the owners.

Article 83 The owners shall abide by the laws, regulations and management stipulations.

As for an act injuring the legitimate rights and interests of other persons, such as discarding wastes at will, discharging atmospheric pollutants and noise, breeding animals by violating the relevant regulations, illegally building shelters, occupying passages or refusing to pay real property management fees, etc, the owners' assembly and the owners' committee are entitled to request the actor to cease the infringing act, eliminate the danger, remove the impediments and make compensation for the losses in accordance with the relevant laws, regulations and stipulations on management. An owner may bring a lawsuit to the people's court according to law in case there is any infringement upon his legitimate rights and interests.

Chapter VII Relationships of Adjacency

Article 84 Right holders who are adjacent to one another on a real property shall correctly handle the relationship of adjacency in accordance with the principles of facilitating production, making things convenient in life, showing unity and providing mutual assistance, and fairness and equity.

Article 85 Where there is any provision on the handling of contiguous relationship, such provision shall apply; where there isn't any provision on it, the contiguous relationship shall be handled in light of the local customs.

Article 86 The holder of a real property shall provide necessary convenience for the use of water and drainage of the adjacent right holders.

The utilization of natural running water shall be rationally distributed to the adjacent right holders of a real property. As for the drainage of natural running water, the natural current direction shall be respected.

Article 87 The right holder of a real property shall provide necessary convenience in case a adjacent right holder has to use his land because of passage or any other reason.

Article 88 Where the right holder of a real property has to use a adjacent land or building for such reasons as constructing or repairing a building, or laying wires, cables, water pipes, heating pipelines or fuel gas pipelines, etc, the right holder of the land or building shall provide necessary convenience.

Article 89 As for the construction of a building, no entity or individual may violate the relevant engineering construction standards of the state or block the ventilation, lighting or sunshine of any adjacent building.

Article 90 An holder of real property may not discard solid wastes or discharge atmospheric pollutants, water pollutants, or such harmful substances as noise, light and magnetic radiation by violating the relevant provisions of the state.

Article 91 When excavating a land, constructing a building, laying a pipeline or installing an equipment, the right holder of the real property may not endanger the safety of any adjacent real property.

Article 92 In case the right holder of a real property has to use a adjacent real property for reasons of using water, drainage, passage or laying pipelines, etc, he shall do his best to avoid causing any damage to the right holder of the adjacent real property; if any damage is caused, he shall make corresponding compensations.

Chapter VIII Common Ownership

Article 93 A real property or movable property may be commonly owned by two or more entities or individuals. Common ownership includes several co-ownership and joint ownership.

Article 94 A several co-owner of a commonly owned real property or movable property shall enjoy the ownership of the real property or movable property according to his shares.

Article 95 A joint owner of a commonly owned real property or movable property shall enjoy the ownership of the real property or movable property on a common basis.

Article 96 The co-owners of a commonly owned real property or movable property shall manage the real property or movable property as stipulated; where it is not stipulated or clearly stipulated, all co-owners have the right and obligation of management.

Article 97 As for the disposal or major repair of a commonly owned real property or movable property, the consent of the several co-owners possessing 2/3 of the shares or all joint owners shall be obtained, except it is stipulated otherwise by the co-owners.

Article 98 As for the management expenses or any other liabilities of a commonly owned property, if there is any stipulation on it, such stipulation shall apply; if there isn't any stipulation on it or the stipulation is not clear, the expenses shall be borne by the several co-owners on the basis of their respective shares or commonly borne by all joint owners.

Article 99 In case the co-owners of a commonly owned real property or movable property have stipulated that, in order to maintain the relationship of common ownership, it is not allowed to partition the real property or movable property, such stipulation shall apply; but if any of the co-owners needs to partition the real property or movable property for certain significant reasons, he may petition for partitioning it; if there is no stipulation or the stipulation is not clear, a several co-owner may petition for partitioning it at any time, and a joint owner may petition for partitioning it in case the basis for the common ownership disappears or he needs to partition it for certain significant reasons. If the partition causes any damage to any other person, the corresponding compensation shall be made.

Article 100 The co-owners of a commonly owned real property or movable property may determine the way of partition by means of negotiation. If no agreement is reached and the real property or movable property may be partitioned without affecting its value, the real object shall be partitioned; if it is difficult to partition it or its value would be affected because of the partition, the partition shall be executed by distributing the purchase price obtained from converting its value into money, the auction or selling off the real property or movable property.

In case the real property or movable property obtained by a co-owner from the partition of a commonly owned real property or movable property has any flaw, the other co-owners shall partake the losses together.

Article 101 A several co-owner of a commonly owned real property or movable property may transfer his share of the real property or movable property. The other several co-owners have the preemptive right to purchase the share.

Article 102 As for an obligee's right or a debt generated from a commonly owned real property or movable property, a co-owner shall enjoy joint and several creditor's right or assume joint and several debt in terms of external relationship, except it is otherwise prescribed by any law or that the third party is aware of the fact that the co-owner does not have the relationship of joint and several creditor's right or debt. In terms of the internal relationship among the co-owners, a co-owner shall enjoy the creditor's right or assume

the debt on the basis of his own share, except it is otherwise stipulated by the co-owners; joint owners shall enjoy the creditor's right or assume the debt on a common basis. Any several co-owner who overpays his share of the debt is entitled to recover the overpaid amount from the other co-owners.

Article 103 Where the co-owners of a real property or movable property does not stipulate whether the real property or movable property is subject to several co-ownership or joint ownership, or where the stipulation is not clear, it shall be deemed as a several co-ownership unless there is a family relationship among the co-owners.

Article 104 A several co-owner's share of a commonly owned real property or movable property shall be determined on the basis of his amount of contribution in case it is not stipulated or the stipulation is not clear; if it is impossible to determine the amount of contribution, each several co-owner shall enjoy an equal share.

Article 105 Where the usufructuary right or real right for security of a real property or movable property is owned by two or more entities or individuals, the provisions of this Chapter shall apply by analogy.

Chapter IX Special Provisions on the Acquisition of Ownership

Article 106 Where a person untitled to dispose a real property or movable property transfers the real property or movable property to an assignee, the owner has the right to recover the real property or movable property. Except it is otherwise prescribed by law, once it is under any of the following circumstances, the assignee shall obtain the ownership of the real property or movable property:

(1) The assignee accepted the real property or movable property in good faith;

(2) The real property or movable property is transferred at a reasonable price; or

(3) The transferred real property or movable property shall have been registered in case registration is required by law, and shall have been delivered to the assignee in case registration is not required.

Where an assignee obtains the ownership of a real property or movable property in accordance with the preceding paragraph, the original owner may ask the person untitled to dispose of the real property or movable property to make compensation for his losses.

Where a party concerned obtains any other real right in good faith, he shall be governed by the preceding two paragraphs by analogy.

Article 107 The owner or any other holder is entitled to recover a lost property. Where the lost property is possessed by any other person through transfer, the owner is entitled to ask the person untitled to dispose of the property to make compensations for damages, or, within 2 years since the date when he knows who is the assignee, ask the assignee to return the original property. But if the assignee purchases the lost property by way of auction or from a qualified operator, the holder shall, when asking for returning the original property, pay the amount paid by the assignee for purchasing the property to the assignee. Where there is any other provision, such provision shall apply. After paying the amount

paid by the assignee for purchasing the property to the assignee, the owner is entitled to recover the amount from the person untitled to dispose of the property.

Article 108 After a bona fide assignee obtains a real property, the original rights on the real property shall be eliminated, except the right that the bona fide assignee has already been or should be aware of when the transfer is made.

Article 109 A lost-and-found object shall be returned to the right holder of the object. The person who finds such object shall notify the right holder to claim the object or hand it over to the public security department or any other department in a timely manner.

Article 110 A relevant department shall, after receiving a lost-and-found object, in case it knows the right holder of the object, notify him to claim the object in a timely manner; in case it does not know, it shall publish an announcement on the finding of the lost property in a timely manner.

Article 111 A lost-and-found object shall be properly kept by the person who finds the object before it is handed over to the relevant department and by the relevant department before it is claimed by the right holder of the object. In case the object is damaged or lost deliberately or for gross negligence, the relevant personnel shall undertake the civil liabilities.

Article 112 When obtaining a lost-and-found object, the right holder of the object shall pay such necessary expenses as the cost for safekeeping the object to the person who finds the object or the relevant department.

In case a right holder offers a reward for finding the object, he shall fulfill the obligation of granting the reward when claiming the object.

In case the object is misappropriated by the person who finds the object, the person who finds the object shall have no right to ask for paying the expenses paid for safekeeping the object or petition the holder to fulfill the obligation as promised.

Article 113 A lost-and-found object that fails to be claimed within 6 months since the date when the announcement on the finding of the object is published shall be owned by the state.

Article 114 The finding of a drifter or the discovery of an object buried underground or a hidden property shall be governed by the relevant provisions on the finding of a lost-and-found property. In case there is any other provision in such laws as the law on the protection of cultural relics, such provisions shall apply.

Article 115 Where a principal property is transferred, the accessory property shall be transferred together with the principal property, except it is otherwise stipulated by the parties concerned.

Article 116 Natural fruits shall be obtained by the owner; in case there are both owner and holder of usufructuary right on the natural fruits, it shall be obtained by the holder of usufructuary right. Where it is stipulated otherwise by the parties concerned, such stipulation shall apply.

Statutory fruits shall be obtained by the parties concerned as stipulated by them; where it is not stipulated or clearly stipulated, it shall be obtained in accordance with the practices of trading.

Part Three Usufructuary Right

Chapter X General Provisions

Article 117 A usufructuary right holder shall enjoy the right to possess, use and seek proceeds from the real property or movable property owned by someone else according to legal provisions.

Article 118 An entity or individual may possess, use and seek proceeds from the natural resources that are owned by the state or that are owned by the state but used by the collective as well as those that are owned by the collective.

Article 119 The state implements the system of fee-based use of natural resources, unless it is otherwise prescribed by any other laws.

Article 120 A usufructuary right holder shall, when exercising its or his right, abide by the provisions on protection, reasonable exploration and utilization of resources as prescribed in the laws. An owner shall not intervene in the exercise of rights by the usufructuary right holder.

Article 121 In case a real property or movable property is expropriated or requisitioned, and thus causes loss of usufructuary right or affects the use of usufructuary right, the usufructuary right holder shall be entitled to obtain corresponding compensations according to Articles 42 and 44 of this Law.

Article 122 The right to use sea areas as lawfully obtained shall be governed by the law.

Article 123 The mineral prospecting right, the mining right, the water intake right and the right to use water areas or tidal flats for engaging in breeding or fishery shall be protected by law.

Chapter XI Right to the Contracted Management of Land

Article 124 A rural collective economic organization shall implement a dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of household contracted management.

The system of land contracted management shall be implemented to the cultivated land, wood land, grassland, and land for other agricultural uses that are owned by farmers' collectives as well as those that are owned by the state and exploited by farmers' collectives.

Article 125 The holder of the right to the contracted management of land shall enjoy the right to possess, use and seek proceeds from the cultivated land, wood land and grassland, etc. under the contracted management thereof, and have the right to engage in planting, forestry, stockbreeding or other agricultural production activities.

Article 126 The term of a contract for cultivated land shall be 30 years. The term of a contract for grassland shall be 30 up to 50 years. The term of a contract for wood land shall be more than 30 years but less than 70 years. The term of a contract for special forest land may be extended upon approval of the forestry administrative department under the State Council.

After the term of a contract as mentioned in the preceding paragraph expires, the holder of the right to the contracted management of land may continue to fulfill the contract according to the relevant provisions of the state.

Article 127 The right to the contracted management of land shall be established as of the effectiveness of the contract on the right to the contracted management of land.

The local people's government at or above the county level shall issue a certificate of the right to the contracted management of land, a forestry right certificate or a grassland-use right certificate to the holder of right to the contracted management of land, register it in the brochure and confirm the right to the contracted management of land.

Article 128 The holder of the right to the contracted management of land shall be entitled to circulate the right to the contracted management of land according to the provisions in the law on the contracting of rural land. The circulated term shall not exceed the remnant term of the original contract on right to the contracted management of land. Without approval, no contracted land may be used for non-agricultural constructions.

Article 129 In the event that the circulation of the right to the contracted management of land is realized through exchange or transfer, if the parties concerned require that the circulation be registered, an application for the alteration registration of right to the contracted management of land shall be submitted to the local people's government at or above the county level. Without registration, neither party may challenge any bona fide third party.

Article 130 Within the duration of a contract, the contract-letting party shall not readjust the contracted land.

If proper readjustment of cultivated land or grassland as contracted is required due to such special events as natural calamities that have materially damaged the contracted land, it shall be conducted according to the legal provisions in the law on the contracting of rural land and other relevant laws.

Article 131 Within the term of a contract, the contract-letting party shall not take back the contracted land. Where there are separate provisions in the law on the contracting of rural land or any other law, such provisions shall prevail.

Article 132 If a contracted land is expropriated, corresponding compensations shall be given to the holder of the right to the contracted management of land according to Paragraph 2, Article 42 of this Law.

Article 133 The right to the contracted management of land to barren land or other rural land that is contracted by means of bid invitation, auction, or open negotiation, etc. may be circulated by means of transfer, lease, equity contribution, or mortgage, etc.

Article 134 The implementation of contracted management to the rural land that is owned by the state shall be governed by the relevant provisions in this Law by analogy.

Chapter XII Right to Use Land for Construction Purpose

Article 135 The holder of the right to use land for construction shall be entitled to possess, use and seek proceeds from the land owned by the state, and be entitled to make use of the land for constructing buildings, fixtures and their auxiliary facilities.

Article 136 The right to use land for construction may be established separately on the surface of or above or under the land. The newly-established right to use land for construction shall not damage the usufructuary right that has already been established.

Article 137 The right to use land for construction may be established by means of transfer or allotment, etc.

The land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or the land for which there are two or more intended users shall be transferred by means of auction, bid invitation or any other public bidding method.

It is strictly prohibited to establish the right to use land for construction by means of allotment. The means of allotment shall be adopted according to the provisions on land uses in the laws and administrative regulations.

Article 138 Where the right to use land for construction is established by means of auction, bid invitation, or agreement, etc., the parties concerned shall enter into a written contract on the transfer of the right to use land for construction.

A contract on transfer of the right to use land for construction shall generally include the following clauses:

(1) Name and domicile of the parties;

(2) Location and acreage, etc. of the land;

(3) Space occupied by buildings, fixtures and their affiliated facilities;

(4) Purposes of use;

(5) Term of use;

(6) Payment methods for allotment fees and other fees; and

(7) Dispute resolution method.

Article 139 For the creation of the right to use land for construction, an application for the registration of the right to use land for construction shall be filed with the registration organ. The right to use land for construction shall be established upon registration. The

Article 150 In case the right to use land for construction is eliminated, the transferor shall go through deregistration procedures in a timely manner, and the registration organ shall take back the certificate on the right to use land for construction.

Article 151 In case a piece of collectively-owned land is used as land for construction, it shall be handled according to the law on land administration and other relevant laws.

Chapter XIII Right to Use House Sites (or Right to Use Lands for Building Houses)

Article 152 The holder of the right to use house sites shall be entitled to possess and use collectively-owned land, and to make use of the land for constructing residential houses and their affiliated facilities.

Article 153 The acquisition, exercise and transfer of the right to use house sites shall be governed by the law on land administration, other relevant laws and the relevant provisions of the state.

Article 154 In case a house site is eliminated due to any natural disaster, etc., the right to use house site shall be eliminated. A villager without a house site shall be allotted a house site again.

Article 155 In case the registered right to use house sites is transferred or eliminated, the alteration or cancellation registration shall be made in a timely manner.

Chapter XIV Easement Rights

Article 156 An easement holder shall be entitled to make use of the real property of someone else according to the contract so as to increase the efficiency of his own real property.

The expression of "real property of someone else" as mentioned in the preceding Paragraph shall be the servient tenement, and the expression of "one's own real property" shall be the dominant tenement.

Article 157 For the creation of an easement, the parties concerned shall conclude an easement contract in written form.

An easement contract shall generally include the following clauses:

(1) Name and domicile of the parties concerned;

(2) Locations of servient tenement and dominant tenement;

(3) Purposes and methods of utilization;

(4) Term of utilization;

(5) Fees and payment method; and

(6) Dispute resolution method.

Article 158 The easement shall be established as of the effectiveness of an easement contract. In case the parties concerned think it necessary to have it registered, they can

registration organ shall issue a certification on the right to use land for construction to the holder of the right to use land for construction.

Article 140 The holder of the right to use land for construction shall reasonably utilize the land, shall not change the purpose of land use, and shall be subject to the approval of the relevant administrative department if the purpose of land use needs to be changed.

Article 141 The holder of the right to use land for construction shall pay transfer fees and other fees according to the legal provisions and the contract.

Article 142 The ownership of the buildings, fixtures and their affiliated facilities built by the holder of the right to use land for construction shall belong to the holder of the right to use land for construction, unless it is otherwise proved by contrary evidence.

Article 143 The holder of the right to use land for construction shall be entitled to transfer, exchange, use as equity contributions, endow or mortgage the right to use land for construction, unless it is otherwise prescribed by any law.

Article 144 In case the right to use land for construction is transferred, exchanged, used as equity contributions, endowed or mortgaged, the parties shall conclude a corresponding contract in written form. The contractual term shall be stipulated by the parties concerned, but shall not exceed the remnant term as stipulated in the contract on transfer of the right to use land for construction.

Article 145 In case the right to use land for construction is transferred, exchanged, used as equity contributions, or endowed, an application for alteration registration shall be filed with the registration organ.

Article 146 In case the right to use land for construction is transferred, exchanged, used as equity contributions or endowed, the buildings, fixtures and their affiliated facilities on the land shall be disposed of concurrently.

Article 147 In case the buildings, fixtures and their affiliated facilities are transferred, exchanged, used as equity contributions or endowed, the right to use land for construction occupied by the aforesaid buildings, fixtures and their affiliated facilities shall be disposed of concurrently.

Article 148 Before the term of the right to use land for construction expires, if the land needs to be taken back in advance due to public interests, compensations shall be given to the houses and other real properties on the land according to Article 42 of this Law, and corresponding land transfer fees shall be refunded.

Article 149 The term of the right to use land for construction for dwelling houses shall be automatically renewed upon expiration.

The term of the right to use land for construction not for dwelling houses shall be renewed according to legal provisions. Where there are stipulations about the ownership of houses and other real properties on the aforesaid land, such stipulations shall prevail; if there is no such stipulation or the stipulations are not explicit, the ownership shall be determined according to the provisions in the laws and administrative regulations.

apply for easement registration with the registration organ; otherwise, they shall not challenge any bona fide third party.

Article 159 The holder of servient tenement shall permit an easement holder to make use of his/its land according to the contract, and shall not hamper the latter's exercise of the right.

Article 160 An easement holder shall make use of the servient tenement according to the purposes and methods as stipulated in the contract, and try to reduce the real right restrictions on the holder of the servient tenement.

Article 161 The term of easement shall be stipulated by the parties concerned, however, it can not exceed the remnant term of the right to the contracted management of land, the right to use land for construction or any other usufructuary right.

Article 162 In case a land owner enjoys or assumes the easement, when the right to the contracted management of land or the right to use house site is established, the holder of the right to the contracted management of land or the right to use house site may continue enjoying or assuming the established easement.

Article 163 In case the right to the contracted management of land, the right to use house site or any other usufructuary right on the land has already been created, the land owner shall not establish any easement without consent of the aforesaid usufructuary right holder.

Article 164 The easement shall not be transferred alone. In case the right to the contracted management of land, the right to use land for construction, the right to use house site or any other usufructuary right is transferred, the easement shall be transferred concurrently, unless it is otherwise stipulated by the contract.

Article 165 The easement shall not be mortgaged by itself. In case the right to the contracted management of land or the right to use land for construction, etc. is mortgaged, the easement shall be transferred concurrently when the mortgage is realized.

Article 166 When the dominant tenement as well as the right to the contracted management of land, the right to use land for construction or the right to use house site thereon is partially transferred, and if the easement is involved in the transferred part, the transferee shall enjoy the easement at the same time.

Article 167 When the servient tenement and the right to the contracted management of land, the right to use land for construction or the right to use house site thereon is partially transferred, and if the easement is involved in the part as transferred, the easement shall be binding on the transferee.

Article 168 In case an easement holder is under any of the following circumstances, the holder of the servient tenement shall be entitled to rescind the easement relationship, and the easement shall be eliminated:

(1) Violating the legal provisions or the contract, or abusively using the easement; or

(2) Failing to pay fees for the paid use of servient tenement after being urged to do so within a reasonable period for two times upon expiration of the stipulated time limit for payment.

Article 169 The alteration or cancellation registration shall be timely executed for the alteration, transfer or elimination of the registered easement.

Part Four Real Rights for Security (Secured Property Rights)

Chapter XV General Provisions

Article 170 The holder of real rights for security shall enjoy priority to receive payments from the property for security in case the obligor fails to pay its due debts or the circumstance for the realization of real rights for security as stipulated by the parties concerned occurs, unless it is otherwise prescribed by any law.

Article 171 An obligee (creditor) may, in such civil activities as loans or sales, establish the real rights for security according to this Law or any other law where the security is required for safeguarding the realization of its/his credits.

To provide security to the obligee for an obligor (debtor), a third party may require the obligor to provide countersecurity. The countersecurity shall be governed by this Law and other relevant laws.

Article 172 For the creation of real rights for security, a security contract shall be concluded according to this Law and other relevant laws. A security contract shall be subordinated to the principal contract. When the principal contract is nullified, the security contract shall be invalidated, unless it is otherwise prescribed by any law.

After a security contract is nullified upon confirmation, the obligor, the security provider and the obligee that has faults shall assume relevant civil liabilities in light of their respective faults.

Article 173 The security range of the real rights for security shall include principal obligee's rights and their interests, default fines, damages and expenses for keeping the property for security and for realizing the real rights for security. Where there are separate stipulations between the parties concerned, such stipulations shall prevail.

Article 174 In case the property for security is damaged, lost or expropriated during the term of security, the holder of the real rights for security may seek preferred compensations from the insurance money, damages or indemnities, etc. incurred there from, or may submit such insurance money, damages or indemnities, etc. to a competent authority if the term for performing the obligee's rights as secured has not expired.

Article 175 Where a third party provides any security, if the obligee allows the obligor to transfer all or part of its obligations without the written consent of the third party, the security provider does not have to assume corresponding security liabilities.

Article 176 Where a secured credit involves both physical and personal security, if the obligor fails to pay its due debts or any circumstance for realizing the property for security

as stipulated by the parties concerned occurs, the obligee shall realize the obligee's rights according to the stipulations; where there is no such stipulation or the stipulations are not explicit, and the obligor provides his/its own property for the security, the obligee shall realize the obligee's rights firstly by the security by property; and where a third party provides the security by property, the obligee may realize the obligee's rights with the physical security or may require the guarantor to assume the guaranty liability. The third party for providing the security may, after assuming the security liability, is entitled to recourse payments against the obligor.

Article 177 In any of the following circumstances, the real rights for security may be eliminated:

(1) The principal obligee's rights are eliminated;

(2) The real rights for security have been realized;

(3) The obligee abandons the real rights for security; or

(4) Any other circumstance as prescribed by any law under which the real rights for security will be eliminated.

Article 178 In case any provision in the Security Law conflicts with this Law, the latter shall prevail.

Chapter XVI Right to Mortgage

Section 1 General Right to Mortgage

Article 179 An obligor (debtor) or a third party may, for the security of the payment of debts, mortgage his properties to the obligee (creditor) without transferring the possession of such properties, and when the obligor fails to pay due debts or any circumstance for realizing the mortgage right as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from such properties.

The 'obligor' or 'third party' as prescribed in the preceding paragraph shall be the mortgagor, the 'obligee' shall be the mortgagee, and the 'properties for security' shall be the properties under mortgage.

Article 180 The following properties to which the obligor or the third party has the right to dispose of may be used for mortgage:

(1) Buildings and other fixed objects on the ground;

(2) The right to use land for construction;

(3) The right to contracted management of barren land, etc. as obtained by means of bid invitation, auction and public consultation, etc.;

(4) Manufacturing facilities, raw materials, semi-manufactured goods and products;

(5) Buildings, vessels and aircraft that are under construction;

(6) Means of communications and transportation;

(7) The properties other than those that shall not be mortgaged according to any law or administrative regulation.

A mortgagor may mortgage all the properties listed in the previous paragraph together.

Article 181 Upon the written agreement between the parties concerned, an enterprise, individual industrial and commercial household or agricultural production operator may mortgage the manufacturing facilities, raw materials, semi-manufactured goods and products it has already owned or is going to own, and when the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the movable properties that exist when the parties concerned stipulate to realize the right to mortgage.

Article 182 In case a building is mortgaged, the right to use land for construction occupied by this building shall be mortgaged together. In case the right to use land for construction is mortgaged, all the buildings on this land shall be mortgaged together.

In case a mortgagor fails to mortgage the properties according to the preceding paragraph, the properties that have not been mortgaged shall be regarded as having been mortgaged together.

Article 183 The right to use land for construction of a township or village enterprise shall not be mortgaged by itself. In case the plant of a township and village enterprise is mortgaged, the right to use land for construction occupied by this plant shall be mortgaged together.

Article 184 None of the following properties may be mortgaged:

(1) Land ownership;

(2) The right to use cultivated land, house sites, land set aside for farmers to cultivate for their private use, hilly land allotted for private use and other collectively-owned land, unless it is otherwise prescribed by any law;

(3) Educational, medical, healthy and other public welfare facilities of schools, kindergartens, hospitals and other institutions and social groups with the aim of benefiting the public;

(4) Properties whose ownership or use rights are unclear or controversial;

(5) Properties that are legally confiscated, seized or controlled; or

(6) Other properties that cannot be mortgaged according to any law or administrative regulation.

Article 185 To create a right to mortgage, the parties concerned shall conclude a mortgage contract in written form.

A mortgage contract shall generally include the following clauses:

(1) The variety and amount of the obligee's rights as secured;

(2) The time limit for the obligor to pay debts;

(3) The name, amount, quality, condition, location, attribution of ownership or use right of the property under mortgage; and

(4) The range of security.

Article 186 Before the time limit for paying debts expires, a mortgagee shall not stipulate with the mortgagor that the ownership of the property under mortgage will be transferred to the obligee when the obligor fails to pay its due debts.

Article 187 As for the mortgage of a property as prescribed in Item (1), (2) or (3) of Paragraph 1 of Article 180 of this Law or a building under construction as prescribed in Item (5), mortgage registration shall be made. The right to mortgage shall be established as of the date of registration.

Article 188 As for the mortgage of a property as prescribed in Item (4) or (6) of Paragraph 1 of Article 180 of this Law or a vessel or aircraft under construction as prescribed in Item (5), the right to mortgage shall come into effect as of the effectiveness of the mortgage contract; without the registration, the right to mortgage shall not challenge any bone fide third party.

Article 189 In case an enterprise, individual industrial and commercial household or agricultural production operator mortgages any of the movable properties prescribed in Article 181 of this Law, it shall file registration with the administrative department for industry and commerce at the place where the mortgagor resides. The right to mortgage shall come into effect as of the effectiveness of the mortgage contract; without the registration, the right to mortgage shall not challenge any bone fide third party.

The registration of the mortgage prescribed in Article 181 of this Law shall not challenge the buyer which has paid a reasonable price in normal business operations and has obtained the property under mortgage.

Article 190 In case the property under mortgage has been leased before the conclusion of the mortgage contract, the original leasehold relations shall not be affected by the right to mortgage. In case the property under mortgage is leased after the right to mortgage has been established, the leasehold relation shall be affected by the registered right to mortgage.

Article 191 In case a mortgagor transfers the property under mortgage during the mortgage term upon consent of the mortgagee, the mortgagor shall pay off its debts to the mortgagee with the money incurred from the transfer in advance or submit the said money to a competent authority for keeping. The value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

A mortgagor shall not transfer the property under mortgage during the mortgage term without the mortgagee's consent, unless the transferee pays off the debts on its behalf so as to eliminate the right to mortgage.

Article 192 The right to mortgage shall not be separated from the obligee's rights or be transferred alone, or be used as a security for other obligee's rights. When the obligee's rights are transferred, the right to mortgage for the said obligee's rights shall be transferred together, unless it is otherwise prescribed by any law or is otherwise stipulated by the parties concerned.

Article 193 In case any act of the mortgagor may sufficiently result in lowering the value of the property under mortgage, the mortgagee shall be entitled to request the mortgagor to stop such act. In case the value of the property under mortgage has been affected, the mortgagee shall be entitled to request the mortgagor to restore the value of the property under mortgage, or provide a security equal to the decreased value. In case the mortgagor neither restores the value of the property under mortgage nor provides any security, the mortgagee shall be entitled to request the mortgagee to pay off the debts in advance.

Article 194 A mortgagee may waive the right to mortgage or the sequence of the right to mortgage. A mortgagee and a mortgagor may change the sequence of the right of mortgage or the amount of obligee's rights as secured, etc., through negotiations, however, the change of the right to mortgage without the written consent of other mortgagees shall not produce unfavorable influences on any other mortgagee.

In case an obligor establishes the mortgage by his own properties, and the mortgagee waives the right to mortgage or the sequence of the right to mortgage or changes the right to mortgage, other security providers shall be exempted from the security liability within the scope for which the said mortgagee has lost the right to seek preferred payments, unless any of other security providers promises to provide the same security.

Article 195 When the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the mortgagee may, by concluding an agreement with the mortgagor, convert the property under mortgage into money or seek preferred payments from the money incurred from the auction or sale of the property under mortgage. In case the said agreement has damaged the interests of any other obligee, the obligee may request the people's court to cancel this agreement within one year after he/it has known or should know the cause for cancellation.

In case the mortgagee and the mortgagor fail to conclude an agreement on the means of realizing the right to mortgage, the mortgagee may request the people's court to auction or sell off the property under mortgage.

The property under mortgage shall be converted into cash or be sold off by referring to its marker price.

Article 196 With respect to the mortgage established according to Article 181 of this Law, the property under mortgage shall be determined when any of the following circumstances occurs:

(1) The obligee's rights have not been fulfilled upon expiration of the time limit for paying debts;

(2) The mortgagor has been declared bankrupt or has been dissolved;

(3) Any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs; or

(4) Any other circumstance that will seriously affect the realization of obligee's rights.

Article 197 When the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, and the property under mortgage is thus seized by the people's court according to law, the mortgagee may, as of the date of seizure, be entitled to collect natural or statutory derivatives of the property under mortgage, unless the mortgagee has failed to notify the obligor to pay off statutory fruits.

The "derivatives" as prescribed in the preceding paragraph shall be used for paying the expenses for the collection of fruits in the first place.

Article 198 After the property under mortgage has been converted into money, auctioned or sold off, the value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

Article 199 If a same property is mortgaged to two or more obligees simultaneously, the money incurred from the auction or sale of the property under mortgage shall be used as payments in light of the following prescriptions:

(1) If all the rights to mortgage have been registered, the payments shall be made in light of the sequence of registration; and if the sequence of registration is the same, the payments shall be made in light of the proportion of obligee's rights;

(2) The right to mortgage that has been registered shall be cleared off prior to the one that has not been registered; and

(3) If no right to mortgage has been registered, the payments shall be made in light of the proportion of obligee's rights.

Article 200 After the right to use land for construction is mortgaged, the newly-constructed buildings on the land shall not belong to the properties under mortgage. When the aforesaid right to use land for construction needs to be disposed of for the realization of the right to mortgage, the newly-constructed buildings on the land can be disposed of together, however, the mortgagee shall not be entitled to seek preferred payments from the money incurred from the disposal of these newly-constructed buildings.

Article 201 In case the right to the contracted management of land prescribed in Item (3) of Paragraph 1 of Article 180 of this Law is mortgaged, or the right to use land for construction occupied by the plant or any other building of a township or village enterprise is mortgaged according to Article 183 of this Law, after the right to mortgage is realized, no nature of land ownership or land use may be changed without completing the statutory procedures.

Article 202 A mortgagee shall exercise the right to mortgage within the limitation of action for the principal obligee's rights, otherwise, such right to mortgage will not be protected by the people's court.

Section 1 Right to Mortgage at Maximum Amount

Article 203 An obligor or third party may, for the security of payment of debts, provide security of mortgage to the obligee for the obligee's rights that will continuously occur within a certain term, and when the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the mortgagee shall be entitled to seek preferred payments from the security properties within the maximum amount of obligee's rights.

The obligee's rights that have existed before the right to mortgage at maximum amount is established may be incorporated into the scope of obligee's rights under the security by mortgage at maximum amount.

Article 204 In case part of obligee's rights are transferred before the security by mortgage at maximum amount is established, the right to mortgage at maximum amount shall not be transferred, unless it is otherwise stipulated by the parties concerned.

Article 205 Before the obligee's rights under the security by mortgage at maximum amount are determined, the mortgagee and the mortgagor may change the term for determining the obligee's rights, the scope of obligee's rights or the maximum amount of obligee's rights by agreement, however, such change shall not produce any unfavorable influence on any other mortgagee.

Article 206 If any of the following circumstances occurs, the mortgagee's obligee's rights shall be determined:

(1) The term for determining the obligee's rights as stipulated expires;

(2) There is no stipulation about the term for determining the obligee's rights or the relevant stipulations are unclear, and the mortgagee or the mortgagor requests to determine the obligee's rights after two years as of the date for establishing the right to mortgage at maximum amount;

(3) No new obligee's right may occur;

(4) The property under mortgage is sealed up or seized;

(5) The obligor or the mortgagor is announced as bankrupt or is revoked; or

(6) Any other circumstance for determining the obligee's rights as prescribed by any other law occurs.

Article 207 The right to mortgage at maximum amount shall be applicable to the provisions on general right to mortgage as prescribed in Section 1 of this Chapter in addition to the provisions in this Section.

Chapter XVII Right of Pledge

Section 1 Pledge of Movable Properties

Article 208 An obligor or third party may, for the security of the payment of debts, pledge his (its) movable properties to the obligee for possession, and when the obligor fails to pay due debts or any circumstance for realizing the right of pledge as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the said movable properties.

The 'debtor' or 'third party' as prescribed in the preceding paragraph shall be the pledger, the 'obligee' shall be the pledgee, and the 'movable properties' as delivered shall be the pledge.

Article 209 The movable properties prohibited to be pledged by any law or administrative regulation shall not be pledged.

Article 210 For the creation of the right of pledge, the parties concerned shall conclude a contract on the right of pledge in written form.

A contract on the right of pledge shall generally include the following clauses:

(1) The variety and amount of the principal obligee's rights;

(2) The time limit for the obligor to pay off debts;

(3) The name, amount, quality and condition of the pledge;

(4) The range of security; and

(5) The time for the transfer of pledge.

Article 211 Before the time limit for paying debts expires, the pledgee and the pledger shall not stipulate that the ownership of pledge be transferred to the obligee when the obligor fails to pay due debts.

Article 212 The right of pledge shall be established after the pledgee has transferred the pledge.

Article 213 A pledgee shall be entitled to obtain the derivatives of the pledge, unless it is otherwise stipulated in the contract.

The "derivatives" as prescribed in the preceding paragraph shall be used for paying the expenses for the collection of the derivatives in the first place.

Article 214 In case a pledgee, within the duration of the right of pledge, illegally uses or disposes of the pledge without consent of the pledger, and thus causes damages to the pledger, he/it shall be liable for compensations.

Article 215 A pledgee shall be liable for properly keeping the pledge; and in case the pledge is destroyed or lost due to improper keeping, the pledgee shall be liable for compensations.

In case any act of the pledgee may make the pledge damaged or lost, the pledger may require the pledgee to submit the pledge to a competent authority or require to the payment of debts in advance and take back the pledge.

Article 216 In case any cause not attributable to the fault of the pledgee may result in the destruction of the pledge or an evident decrease of the value of the pledge, and which is sufficient to damage the rights of the pledgee, the pledgee shall be entitled to request the pledger to provide corresponding security. In case the pledger refuses to do so, the pledgee may auction or sell off the pledge, and may, by concluding an agreement with the pledger, seek preferred payments for the obligee's rights in advance with the money incurred from the auction or sell-off of the pledge, or submit the said money to a competent authority.

Article 217 In case a pledgee transfers the pledge within the duration of the right of pledge without consent of the pledger, and thus causes the destroy or loss of the pledge, he shall be liable for making compensations to the pledger.

Article 218 A pledgee may waive the right of pledge. In case an obligor establishes the right of pledge by own properties, and the pledgee waives the right of pledge, other security providers will be exempted from the security liability within the scope for which the pledgee has lost the right to seek preferred payments, unless any of other security providers promises to provide the security all the same.

Article 219 In case the obligor has paid off the debts or the pledger has fulfilled the obligee's rights as secured in advance, the pledgee shall return the pledge.

In case an obligor fails to pay off its due debts or any circumstance for realizing the right of pledge as stipulated by the parties concerned occurs, the pledgee may, by concluding an agreement with the pledger, convert the pledge into money or seek preferred payments from the money incurred from the auction or sell-off of the pledge.

The pledge shall be converted into money or be sold off by referring to its market price.

Article 220 A pledger may require the pledgee to timely exercise the right of pledge upon expiration of the time limit for paying debts; in case the pledgee fails to do so, the pledger may request the people's court to auction or sell off the pledge.

In case a pledger requires the pledgee to timely exercise the right of pledge, but the pledgee is lazy to exercise such right and thus causes the damages, the pledgee shall be liable for compensations.

Article 221 After the pledge is converted into cash, auctioned or sold off, the value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

Article 222 The pledger and the pledgee may establish the right of pledge of maximum amount through negotiations.

The right of pledge of maximum amount shall be governed by the relevant provisions prescribed in this Section, and also be governed by the provisions on the right to

mortgage at maximum amount prescribed in Section 1 of Chapter 16 of this Law by analogy.

Section 1 Pledge of Rights

Article 223 The following rights which an obligor or third party has the right to dispose of may be pledged:

(1) Money orders, checks, and cashier's checks;

(2) Securities and deposit receipts;

(3) Warehouse receipts and bills of lading;

(4) Transferable fund units and stock rights;

(5) Exclusive trademark rights, patent rights, copyrights or other property rights in intellectual property that can be transferred;

(6) Account receivables; and

(7) Other property rights that can be pledged according to any law or administrative regulation.

Article 224 As for the pledge of a money order, check, cashier's check, securities, deposit receipt, warehouse receipt or bill of lading, the parties concerned shall conclude a written contract. The right of pledge shall be established after the title certificate of the pledge has been transferred to the pledgee. If there is no title certificate, the right of pledge shall be established after the relevant department has registered the pledge.

Article 225 If the date of redemption or delivery of the money order, check, cashier's check, securities, deposit receipt, warehouse receipt or bill of lading before the deadline of principal obligee's rights, the pledgee may make redemption or pick up the goods, and may, by concluding an agreement with the pledger, seek preferred payments in advance with the money redeemed or the goods picked up, or submit the said money or goods to a competent authority for keeping.

Article 226 As for the pledge of fund units or stock rights, the parties concerned shall conclude a written contract. As for the pledge of fund units or the stock rights registered in the securities depository and clearing institution, the right of pledge shall be established after the securities depository and clearing institution has registered the pledge. As for the pledge of other stock rights, the right of pledge shall be established after the administrative department for industry and commerce has registered the pledge.

After the fund units or stock rights have been pledged, they shall not be transferred, unless it is otherwise agreed to by the pledger and the pledgee upon negotiations. The pledger shall fulfill the obligee's rights to the pledgee in advance with the money incurred from the transfer of fund units or stock rights, or submit the aforesaid money to a competent authority for keeping.

Article 227 In the case of the pledge of registered trademark rights, patent rights, copyrights or other property rights in the intellectual property, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant competent authority has registered the pledge.

After the property rights in the intellectual property have been pledged, the pledger shall not transfer the pledge or permit anyone else to use it, unless it is otherwise agreed to between the pledger and the pledgee after negotiations. The pledger shall use the money incurred from transferring the pledged intellectual property or permitting anyone else to use it to fulfill the obligee's rights in advance, or submit the aforesaid money to a competent authority for keeping.

Article 228 As for the pledge of receivables, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant credit rating institution has registered the pledge.

After the receivables have been pledged, the pledger shall not transfer the pledge, unless it is otherwise agreed on by the pledger and the pledgee upon negotiations. The pledger shall use the money incurred form the transfer of accounts receivable to fulfill the obligee's rights in advance, or submit the aforesaid money to a competent authority.

Article 229 The pledge of rights shall be governed by the provisions on the pledge of movable properties prescribed in Section 1 of this Chapter in addition to the provisions prescribed in this Section.

Chapter XVIII Lien

Article 230 In case an obligor (debtor) fails to pay its due debts, the obligee (creditor) may take the lien of the obligor's movable properties he has lawfully possessed, and be entitled to seek preferred payments from these movable properties.

The 'obligee' prescribed in the preceding Paragraph shall be the lienor (lien holder), and the 'movable properties' as occupied shall be the property under lien.

Article 231 The movable properties taken as lien by the obligee shall fall into a same legal relationship with the obligee's rights, except for the lien between the enterprises.

Article 232 No lien may be taken if any law prohibits to do so or the parties concerned stipulate not to do so.

Article 233 In case a property under lien is a divisible object, the value of the property under lien shall be equal to the amount of debts.

Article 234 A lienor shall be obliged to properly keep the property under lien, and shall be liable for compensations if the property under lien is damaged or lost due to improper keeping.

Article 235 A lienor shall be entitled to obtain the fruits of the property under lien.

The 'fruits' prescribed in the preceding paragraph shall be used for paying off the expenses for the collection of the fruits in the first place.

Article 236 A lienor shall stipulate the term for fulfilling the obligee's rights with the obligor after the property is taken as lien; and in case there is no such stipulation or such stipulations are unclear, the lienor shall give two months or more to the obligor for him (it) to fulfill the obligee's rights, except for fresh goods, perishable goods or those movable properties that are not easy to be kept. In case the obligor fails to fulfill the obligee's rights within the time limit, the lienor may, by concluding an agreement with the obligor, convert the property under lien into money, or seek preferred payments from the money incurred from the auction or sell-off the property under lien.

The property under lien shall be converted into money or sold off by referring to its market price.

Article 237 An obligor may request the lienor to exercise the lien upon expiration of the time limit for fulfilling the obligee's rights; and in case the lienor fails to do so, the obligor may request the people's court to auction or sell off the property under lien.

Article 238 After the property under lien is converted into money, auctioned or sold off, the value exceeding the obligee's rights shall belong to the obligor, and the gap shall be paid off by the obligor.

Article 239 In case the right to mortgage or the right of pledge has been established on a movable property, and this movable property is taken as lien again, the lienor shall be entitled to seek preferred payments.

Article 240 In case a lienor losses the possession of the property under lien or accepts other security separately provided by the obligor, the lien shall perish.

Part Five Possession

Chapter XIX Possession

Article 241 With respect to the possession occurred on the basis of a contractual relationship, the use, proceedings and default liability of the relevant real property or movable property shall be governed by the stipulations in the contract; and in case there is no such stipulation in the contract or the stipulations are unclear, the relevant legal provisions shall be applied.

Article 242 In case a possessor uses the real property or movable property under his (its) possession, and causes this real property or movable property to be damaged, a malicious possessor shall be liable for compensations.

Article 243 In case a real property or movable property is possessed by a possessor, the holder may request the return of original object and its fruits, but shall pay necessary expenses to the bone fide possessor for the maintenance of this real property or movable property.

Article 244 In case a real property or movable property under possession is damaged or lost, and the holder of this real property or movable property requests for compensations, the possessor shall return the insurance money, damages or indemnities obtained from

the said destruction or loss to the holder; and in case the impairment to the holder has not been sufficiently made up, a malicious possessor shall be liable for compensations.

Article 245 In case a real property or movable property under possession is encroached on, the possessor shall be entitled to demand the return of the original object (property); with respect to any act that may impair the possession, the possessor shall be entitled to require the elimination of impairment or danger; and in case any impairment is caused due to encroachment or interference, the possessor shall be entitled to ask for damages.

The claim of a possessor for returning the original object shall be exercised within one year as of the date of encroachment, otherwise, such claim shall perish.

Supplementary Provisions

Article 246 Before any law or administrative regulation prescribes the scope, organ and measures for uniform registration of real properties, a local regulation may prescribe relevant matters according to the relevant provisions in this Law.

Article 247 This Law shall come into effect as of October 1, 2007.

中华人民共和国主席令

第 六十二 号

《中华人民共和国物权法》已由中华人民共和国第十届全国人民代表大会第五次会议于 2007 年 3 月 16 日通过，现予公布，自 2007 年 10 月 1 日起施行。

中华人民共和国主席　胡锦涛

2007 年 3 月 16 日

中华人民共和国物权法

（2007 年 3 月 16 日第十届全国人民代表大会第五次会议通过）

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第一编　总　　则

第一章　基本原则

第一条　为了维护国家基本经济制度，维护社会主义市场经济秩序，明确物的归属，发挥物的效用，保护权利人的物权，根据宪法，制定本法。

第二条　因物的归属和利用而产生的民事关系，适用本法。

本法所称物，包括不动产和动产。法律规定权利作为物权客体的，依照其规定。

本法所称物权，是指权利人依法对特定的物享有直接支配和排他的权利，包括所有权、用益物权和担保物权。

第三条　国家在社会主义初级阶段，坚持公有制为主体、多种所有制经济共同发展的基本经济制度。

国家巩固和发展公有制经济，鼓励、支持和引导非公有制经济的发展。

国家实行社会主义市场经济，保障一切市场主体的平等法律地位和发展权利。

第四条　国家、集体、私人的物权和其他权利人的物权受法律保护，任何单位和个人不得侵犯。

第五条　物权的种类和内容，由法律规定。

第六条　不动产物权的设立、变更、转让和消灭，应当依照法律规定登记。动产物权的设立和转让，应当依照法律规定交付。

第七条 物权的取得和行使，应当遵守法律，尊重社会公德，不得损害公共利益和他人合法权益。

第八条 其他相关法律对物权另有特别规定的，依照其规定。

第二章 物权的设立、变更、转让和消灭

第一节 不动产登记

第九条 不动产物权的设立、变更、转让和消灭，经依法登记，发生效力；未经登记，不发生效力，但法律另有规定的除外。

依法属于国家所有的自然资源，所有权可以不登记。

第十条 不动产登记，由不动产所在地的登记机构办理。

国家对不动产实行统一登记制度。统一登记的范围、登记机构和登记办法，由法律、行政法规规定。

第十一条 当事人申请登记，应当根据不同登记事项提供权属证明和不动产界址、面积等必要材料。

第十二条 登记机构应当履行下列职责：

（一）查验申请人提供的权属证明和其他必要材料；

（二）就有关登记事项询问申请人；

（三）如实、及时登记有关事项；

（四）法律、行政法规规定的其他职责。

申请登记的不动产的有关情况需要进一步证明的，登记机构可以要求申请人补充材料，必要时可以实地查看。

第十三条 登记机构不得有下列行为：

（一）要求对不动产进行评估；

（二）以年检等名义进行重复登记；

（三）超出登记职责范围的其他行为。

第十四条 不动产物权的设立、变更、转让和消灭，依照法律规定应当登记的，自记载于不动产登记簿时发生效力。

第十五条 当事人之间订立有关设立、变更、转让和消灭不动产物权的合同，除法律另有规定或者合同另有约定外，自合同成立时生效；未办理物权登记的，不影响合同效力。

第十六条 不动产登记簿是物权归属和内容的根据。不动产登记簿由登记机构管理。

第十七条 不动产权属证书是权利人享有该不动产物权的证明。不动产权属证书记载的事项，应当与不动产登记簿一致；记载不一致的，除有证据证明不动产登记簿确有错误外，以不动产登记簿为准。

第十八条 权利人、利害关系人可以申请查询、复制登记资料，登记机构应当提供。

第十九条 权利人、利害关系人认为不动产登记簿记载的事项错误的，可以申请更正登记。不动产登记簿记载的权利人书面同意更正或者有证据证明登记确有错误的，登记机构应当予以更正。

不动产登记簿记载的权利人不同意更正的，利害关系人可以申请异议登记。登记机构予以异议登记的，申请人在异议登记之日起十五日内不起诉，异议登记失效。异议登记不当，造成权利人损害的，权利人可以向申请人请求损害赔偿。

第二十条 当事人签订买卖房屋或者其他不动产物权的协议，为保障将来实现物权，按照约定可以向登记机构申请预告登记。预告登记后，未经预告登记的权利人同意，处分该不动产的，不发生物权效力。

预告登记后，债权消灭或者自能够进行不动产登记之日起三个月内未申请登记的，预告登记失效。

第二十一条 当事人提供虚假材料申请登记，给他人造成损害的，应当承担赔偿责任。

因登记错误，给他人造成损害的，登记机构应当承担赔偿责任。登记机构赔偿后，可以向造成登记错误的人追偿。

第二十二条 不动产登记费按件收取，不得按照不动产的面积、体积或者价款的比例收取。具体收费标准由国务院有关部门会同价格主管部门规定。

第二节 动产交付

第二十三条 动产物权的设立和转让，自交付时发生效力，但法律另有规定的除外。

第二十四条 船舶、航空器和机动车等物权的设立、变更、转让和消灭，未经登记，不得对抗善意第三人。

第二十五条 动产物权设立和转让前，权利人已经依法占有该动产的，物权自法律行为生效时发生效力。

第二十六条 动产物权设立和转让前，第三人依法占有该动产的，负有交付义务的人可以通过转让请求第三人返还原物的权利代替交付。

第二十七条 动产物权转让时，双方又约定由出让人继续占有该动产的，物权自该约定生效时发生效力。

第三节 其他规定

第二十八条 因人民法院、仲裁委员会的法律文书或者人民政府的征收决定等，导致物权设立、变更、转让或者消灭的，自法律文书或者人民政府的征收决定等生效时发生效力。

第二十九条 因继承或者受遗赠取得物权的，自继承或者受遗赠开始时发生效力。

第三十条 因合法建造、拆除房屋等事实行为设立或者消灭物权的，自事实行为成就时发生效力。

第三十一条 依照本法第二十八条至第三十条规定享有不动产物权的，处分该物权时，依照法律规定需要办理登记的，未经登记，不发生物权效力。

第二章 物权的保护

第三十二条 物权受到侵害的，权利人可以通过和解、调解、仲裁、诉讼等途径解决。

第三十三条 因物权的归属、内容发生争议的，利害关系人可以请求确认权利。

第三十四条 无权占有不动产或者动产的，权利人可以请求返还原物。

第三十五条 妨害物权或者可能妨害物权的，权利人可以请求排除妨害或者消除危险。

第三十六条 造成不动产或者动产毁损的，权利人可以请求修理、重作、更换或者恢复原状。

第三十七条 侵害物权，造成权利人损害的，权利人可以请求损害赔偿，也可以请求承担其他民事责任。

第三十八条 本章规定的物权保护方式，可以单独适用，也可以根据权利被侵害的情形合并适用。

侵害物权，除承担民事责任外，违反行政管理规定的，依法承担行政责任；构成犯罪的，依法追究刑事责任。

第二编 所有权

第四章 一般规定

第三十九条 所有权人对自己的不动产或者动产，依法享有占有、使用、收益和处分的权利。

第四十条 所有权人有权在自己的不动产或者动产上设立用益物权和担保物权。用益物权人、担保物权人行使权利，不得损害所有权人的权益。

第四十一条 法律规定专属于国家所有的不动产和动产，任何单位和个人不能取得所有权。

第四十二条 为了公共利益的需要，依照法律规定的权限和程序可以征收集体所有的土地和单位、个人的房屋及其他不动产。

征收集体所有的土地，应当依法足额支付土地补偿费、安置补助费、地上附着物和青苗的补偿费等费用，安排被征地农民的社会保障费用，保障被征地农民的生活，维护被征地农民的合法权益。

征收单位、个人的房屋及其他不动产，应当依法给予拆迁补偿，维护被征收人的合法权益；征收个人住宅的，还应当保障被征收人的居住条件。

任何单位和个人不得贪污、挪用、私分、截留、拖欠征收补偿费等费用。

第四十三条 国家对耕地实行特殊保护，严格限制农用地转为建设用地，控制建设用地总量。不得违反法律规定的权限和程序征收集体所有的土地。

第四十四条 因抢险、救灾等紧急需要，依照法律规定的权限和程序可以征用单位、个人的不动产或者动产。被征用的不动产或者动产使用后，应当返还被征用人。单位、个人的不动产或者动产被征用或者征用后毁损、灭失的，应当给予补偿。

第五章 国家所有权和集体所有权、私人所有权

第四十五条 法律规定属于国家所有的财产，属于国家所有即全民所有。

国有财产由国务院代表国家行使所有权；法律另有规定的，依照其规定。

第四十六条 矿藏、水流、海域属于国家所有。

第四十七条 城市的土地，属于国家所有。法律规定属于国家所有的农村和城市郊区的土地，属于国家所有。

第四十八条 森林、山岭、草原、荒地、滩涂等自然资源，属于国家所有，但法律规定属于集体所有的除外。

第四十九条 法律规定属于国家所有的野生动植物资源，属于国家所有。

第五十条 无线电频谱资源属于国家所有。

第五十一条 法律规定属于国家所有的文物，属于国家所有。

第五十二条 国防资产属于国家所有。

铁路、公路、电力设施、电信设施和油气管道等基础设施，依照法律规定为国家所有的，属于国家所有。

第五十三条 国家机关对其直接支配的不动产和动产，享有占有、使用以及依照法律和国务院的有关规定处分的权利。

第五十四条 国家举办的事业单位对其直接支配的不动产和动产，享有占有、使用以及依照法律和国务院的有关规定收益、处分的权利。

第五十五条 国家出资的企业，由国务院、地方人民政府依照法律、行政法规规定分别代表国家履行出资人职责，享有出资人权益。

第五十六条 国家所有的财产受法律保护，禁止任何单位和个人侵占、哄抢、私分、截留、破坏。

第五十七条 履行国有财产管理、监督职责的机构及其工作人员，应当依法加强对国有财产的管理、监督，促进国有财产保值增值，防止国有财产损失；滥用职权，玩忽职守，造成国有财产损失的，应当依法承担法律责任。

违反国有财产管理规定，在企业改制、合并分立、关联交易等过程中，低价转让、合谋私分、擅自担保或者以其他方式造成国有财产损失的，应当依法承担法律责任。

第五十八条 集体所有的不动产和动产包括：

（一）法律规定属于集体所有的土地和森林、山岭、草原、荒地、滩涂；

（二）集体所有的建筑物、生产设施、农田水利设施；

（三）集体所有的教育、科学、文化、卫生、体育等设施；

（四）集体所有的其他不动产和动产。

第五十九条 农民集体所有的不动产和动产，属于本集体成员集体所有。

下列事项应当依照法定程序经本集体成员决定：

（一）土地承包方案以及将土地发包给本集体以外的单位或者个人承包；

（二）个别土地承包经营权人之间承包地的调整；

（三）土地补偿费等费用的使用、分配办法；

（四）集体出资的企业的所有权变动等事项；

（五）法律规定的其他事项。

第六十条 对于集体所有的土地和森林、山岭、草原、荒地、滩涂等，依照下列规定行使所有权：

（一）属于村农民集体所有的，由村集体经济组织或者村民委员会代表集体行使所有权；

（二）分别属于村内两个以上农民集体所有的，由村内各该集体经济组织或者村民小组代表集体行使所有权；

（三）属于乡镇农民集体所有的，由乡镇集体经济组织代表集体行使所有权。

第六十一条 城镇集体所有的不动产和动产，依照法律、行政法规的规定由本集体享有占有、使用、收益和处分的权利。

第六十二条 集体经济组织或者村民委员会、村民小组应当依照法律、行政法规以及章程、村规民约向本集体成员公布集体财产的状况。

第六十三条 集体所有的财产受法律保护，禁止任何单位和个人侵占、哄抢、私分、破坏。

集体经济组织、村民委员会或者其负责人作出的决定侵害集体成员合法权益的，受侵害的集体成员可以请求人民法院予以撤销。

第六十四条 私人对其合法的收入、房屋、生活用品、生产工具、原材料等不动产和动产享有所有权。

第六十五条 私人合法的储蓄、投资及其收益受法律保护。

国家依照法律规定保护私人的继承权及其他合法权益。

第六十六条 私人的合法财产受法律保护，禁止任何单位和个人侵占、哄抢、破坏。

第六十七条 国家、集体和私人依法可以出资设立有限责任公司、股份有限公司或者其他企业。国家、集体和私人所有的不动产或者动产，投到企业的，由出资人按照约定或者出资比例享有资产收益、重大决策以及选择经营管理者等权利并履行义务。

第六十八条 企业法人对其不动产和动产依照法律、行政法规以及章程享有占有、使用、收益和处分的权利。

企业法人以外的法人，对其不动产和动产的权利，适用有关法律、行政法规以及章程的规定。

第六十九条 社会团体依法所有的不动产和动产，受法律保护。

第六章 业主的建筑物区分所有权

第七十条 业主对建筑物内的住宅、经营性用房等专有部分享有所有权，对专有部分以外的共有部分享有共有和共同管理的权利。

第七十一条 业主对其建筑物专有部分享有占有、使用、收益和处分的权利。业主行使权利不得危及建筑物的安全，不得损害其他业主的合法权益。

第七十二条 业主对建筑物专有部分以外的共有部分，享有权利，承担

义务；不得以放弃权利不履行义务。

业主转让建筑物内的住宅、经营性用房，其对共有部分享有的共有和共同管理的权利一并转让。

第七十三条 建筑区划内的道路，属于业主共有，但属于城镇公共道路的除外。建筑区划内的绿地，属于业主共有，但属于城镇公共绿地或者明示属于个人的除外。建筑区划内的其他公共场所、公用设施和物业服务用房，属于业主共有。

第七十四条 建筑区划内，规划用于停放汽车的车位、车库应当首先满足业主的需要。

建筑区划内，规划用于停放汽车的车位、车库的归属，由当事人通过出售、附赠或者出租等方式约定。

占用业主共有的道路或者其他场地用于停放汽车的车位，属于业主共有。

第七十五条 业主可以设立业主大会，选举业主委员会。

地方人民政府有关部门应当对设立业主大会和选举业主委员会给予指导和协助。

第七十六条 下列事项由业主共同决定：

（一）制定和修改业主大会议事规则；

（二）制定和修改建筑物及其附属设施的管理规约；

（三）选举业主委员会或者更换业主委员会成员；

（四）选聘和解聘物业服务企业或者其他管理人；

（五）筹集和使用建筑物及其附属设施的维修资金；

（六）改建、重建建筑物及其附属设施；

（七）有关共有和共同管理权利的其他重大事项。

决定前款第五项和第六项规定的事项，应当经专有部分占建筑物总面积三分之二以上的业主且占总人数三分之二以上的业主同意。决定前款其他事项，应当经专有部分占建筑物总面积过半数的业主且占总人数过半数的业主同意。

第七十七条 业主不得违反法律、法规以及管理规约，将住宅改变为经营性用房。业主将住宅改变为经营性用房的，除遵守法律、法规以及管理规约外，应当经有利害关系的业主同意。

第七十八条 业主大会或者业主委员会的决定，对业主具有约束力。

业主大会或者业主委员会作出的决定侵害业主合法权益的，受侵害的业主可以请求人民法院予以撤销。

第七十九条 建筑物及其附属设施的维修资金，属于业主共有。经业主共同决定，可以用于电梯、水箱等共有部分的维修。维修资金的筹集、使用情况应当公布。

第八十条 建筑物及其附属设施的费用分摊、收益分配等事项，有约定的，按照约定；没有约定或者约定不明确的，按照业主专有部分占建筑物总面积的比例确定。

第八十一条 业主可以自行管理建筑物及其附属设施，也可以委托物业服务企业或者其他管理人管理。

对建设单位聘请的物业服务企业或者其他管理人，业主有权依法更换。

第八十二条 物业服务企业或者其他管理人根据业主的委托管理建筑区划内的建筑物及其附属设施，并接受业主的监督。

第八十三条 业主应当遵守法律、法规以及管理规约。

业主大会和业主委员会，对任意弃置垃圾、排放污染物或者噪声、违反规定饲养动物、违章搭建、侵占通道、拒付物业费等损害他人合法权益的行为，有权依照法律、法规以及管理规约，要求行为人停止侵害、消除危险、排除妨害、赔偿损失。业主对侵害自己合法权益的行为，可以依法向人民法院提起诉讼。

第七章 相邻关系

第八十四条 不动产的相邻权利人应当按照有利生产、方便生活、团结互助、公平合理的原则，正确处理相邻关系。

第八十五条 法律、法规对处理相邻关系有规定的，依照其规定；法律、法规没有规定的，可以按照当地习惯。

第八十六条 不动产权利人应当为相邻权利人用水、排水提供必要的便利。

对自然流水的利用，应当在不动产的相邻权利人之间合理分配。对自然流水的排放，应当尊重自然流向。

第八十七条 不动产权利人对相邻权利人因通行等必须利用其土地的，应当提供必要的便利。

第八十八条 不动产权利人因建造、修缮建筑物以及铺设电线、电缆、水管、暖气和燃气管线等必须利用相邻土地、建筑物的，该土地、建筑物的权利人应当提供必要的便利。

第八十九条 建造建筑物，不得违反国家有关工程建设标准，妨碍相邻

建筑物的通风、采光和日照。

第九十条 不动产权利人不得违反国家规定弃置固体废物，排放大气污染物、水污染物、噪声、光、电磁波辐射等有害物质。

第九十一条 不动产权利人挖掘土地、建造建筑物、铺设管线以及安装设备等，不得危及相邻不动产的安全。

第九十二条 不动产权利人因用水、排水、通行、铺设管线等利用相邻不动产的，应当尽量避免对相邻的不动产权利人造成损害；造成损害的，应当给予赔偿。

第八章 共 有

第九十三条 不动产或者动产可以由两个以上单位、个人共有。共有包括按份共有和共同共有。

第九十四条 按份共有人对共有的不动产或者动产按照其份额享有所有权。

第九十五条 共同共有人对共有的不动产或者动产共同享有所有权。

第九十六条 共有人按照约定管理共有的不动产或者动产；没有约定或者约定不明确的，各共有人都有管理的权利和义务。

第九十七条 处分共有的不动产或者动产以及对共有的不动产或者动产作重大修缮的，应当经占份额三分之二以上的按份共有人或者全体共同共有人同意，但共有人之间另有约定的除外。

第九十八条 对共有物的管理费用以及其他负担，有约定的，按照约定；没有约定或者约定不明确的，按份共有人按照其份额负担，共同共有人共同

负担。

第九十九条 共有人约定不得分割共有的不动产或者动产，以维持共有关系的，应当按照约定，但共有人有重大理由需要分割的，可以请求分割；没有约定或者约定不明确的，按份共有人可以随时请求分割，共同共有人在共有的基础丧失或者有重大理由需要分割时可以请求分割。因分割对其他共有人造成损害的，应当给予赔偿。

第一百条 共有人可以协商确定分割方式。达不成协议，共有的不动产或者动产可以分割并且不会因分割减损价值的，应当对实物予以分割；难以分割或者因分割会减损价值的，应当对折价或者拍卖、变卖取得的价款予以分割。

共有人分割所得的不动产或者动产有瑕疵的，其他共有人应当分担损失。

第一百零一条 按份共有人可以转让其享有的共有的不动产或者动产份额。其他共有人在同等条件下享有优先购买的权利。

第一百零二条 因共有的不动产或者动产产生的债权债务，在对外关系上，共有人享有连带债权、承担连带债务，但法律另有规定或者第三人知道共有人不具有连带债权债务关系的除外；在共有人内部关系上，除共有人另有约定外，按份共有人按照份额享有债权、承担债务，共同共有人共同享有债权、承担债务。偿还债务超过自己应当承担份额的按份共有人，有权向其他共有人追偿。

第一百零三条 共有人对共有的不动产或者动产没有约定为按份共有或者共同共有，或者约定不明确的，除共有人具有家庭关系等外，视为按份共有。

第一百零四条 按份共有人对共有的不动产或者动产享有的份额，没有约定或者约定不明确的，按照出资额确定；不能确定出资额的，视为等额享有。

第一百零五条 两个以上单位、个人共同享有用益物权、担保物权的，参照本章规定。

第九章 所有权取得的特别规定

第一百零六条 无处分权人将不动产或者动产转让给受让人的，所有权人有权追回；除法律另有规定外，符合下列情形的，受让人取得该不动产或者动产的所有权：

（一）受让人受让该不动产或者动产时是善意的；

（二）以合理的价格转让；

（三）转让的不动产或者动产依照法律规定应当登记的已经登记，不需要登记的已经交付给受让人。

受让人依照前款规定取得不动产或者动产的所有权的，原所有权人有权向无处分权人请求赔偿损失。

当事人善意取得其他物权的，参照前两款规定。

第一百零七条 所有权人或者其他权利人有权追回遗失物。该遗失物通过转让被他人占有的，权利人有权向无处分权人请求损害赔偿，或者自知道或者应当知道受让人之日起二年内向受让人请求返还原物，但受让人通过拍卖或者向具有经营资格的经营者购得该遗失物的，权利人请求返还原物时应当支付受让人所付的费用。权利人向受让人支付所付费用后，有权向无处分

权人追偿。

第一百零八条 善意受让人取得动产后，该动产上的原有权利消灭，但善意受让人在受让时知道或者应当知道该权利的除外。

第一百零九条 拾得遗失物，应当返还权利人。拾得人应当及时通知权利人领取，或者送交公安等有关部门。

第一百一十条 有关部门收到遗失物，知道权利人的，应当及时通知其领取；不知道的，应当及时发布招领公告。

第一百一十一条 拾得人在遗失物送交有关部门前，有关部门在遗失物被领取前，应当妥善保管遗失物。因故意或者重大过失致使遗失物毁损、灭失的，应当承担民事责任。

第一百一十二条 权利人领取遗失物时，应当向拾得人或者有关部门支付保管遗失物等支出的必要费用。

权利人悬赏寻找遗失物的，领取遗失物时应当按照承诺履行义务。

拾得人侵占遗失物的，无权请求保管遗失物等支出的费用，也无权请求权利人按照承诺履行义务。

第一百一十三条 遗失物自发布招领公告之日起六个月内无人认领的，归国家所有。

第一百一十四条 拾得漂流物、发现埋藏物或者隐藏物的，参照拾得遗失物的有关规定。文物保护法等法律另有规定的，依照其规定。

第一百一十五条 主物转让的，从物随主物转让，但当事人另有约定的除外。

第一百一十六条 天然孳息，由所有权人取得；既有所有权人又有用益

物权人的，由用益物权人取得。当事人另有约定的，按照约定。

法定孳息，当事人有约定的，按照约定取得；没有约定或者约定不明确的，按照交易习惯取得。

第三编　用益物权

第十章　一般规定

第一百一十七条　用益物权人对他人所有的不动产或者动产，依法享有占有、使用和收益的权利。

第一百一十八条　国家所有或者国家所有由集体使用以及法律规定属于集体所有的自然资源，单位、个人依法可以占有、使用和收益。

第一百一十九条　国家实行自然资源有偿使用制度，但法律另有规定的除外。

第一百二十条　用益物权人行使权利，应当遵守法律有关保护和合理开发利用资源的规定。所有权人不得干涉用益物权人行使权利。

第一百二十一条　因不动产或者动产被征收、征用致使用益物权消灭或者影响用益物权行使的，用益物权人有权依照本法第四十二条、第四十四条的规定获得相应补偿。

第一百二十二条　依法取得的海域使用权受法律保护。

第一百二十三条　依法取得的探矿权、采矿权、取水权和使用水域、滩涂从事养殖、捕捞的权利受法律保护。

第十一章　土地承包经营权

第一百二十四条 农村集体经济组织实行家庭承包经营为基础、统分结合的双层经营体制。

农民集体所有和国家所有由农民集体使用的耕地、林地、草地以及其他用于农业的土地，依法实行土地承包经营制度。

第一百二十五条 土地承包经营权人依法对其承包经营的耕地、林地、草地等享有占有、使用和收益的权利，有权从事种植业、林业、畜牧业等农业生产。

第一百二十六条 耕地的承包期为三十年。草地的承包期为三十年至五十年。林地的承包期为三十年至七十年；特殊林木的林地承包期，经国务院林业行政主管部门批准可以延长。

前款规定的承包期届满，由土地承包经营权人按照国家有关规定继续承包。

第一百二十七条 土地承包经营权自土地承包经营权合同生效时设立。

县级以上地方人民政府应当向土地承包经营权人发放土地承包经营权证、林权证、草原使用权证，并登记造册，确认土地承包经营权。

第一百二十八条 土地承包经营权人依照农村土地承包法的规定，有权将土地承包经营权采取转包、互换、转让等方式流转。流转的期限不得超过承包期的剩余期限。未经依法批准，不得将承包地用于非农建设。

第一百二十九条 土地承包经营权人将土地承包经营权互换、转让，当事人要求登记的，应当向县级以上地方人民政府申请土地承包经营权变更登记；未经登记，不得对抗善意第三人。

第一百三十条 承包期内发包人不得调整承包地。

因自然灾害严重毁损承包地等特殊情形，需要适当调整承包的耕地和草地的，应当依照农村土地承包法等法律规定办理。

第一百三十一条 承包期内发包人不得收回承包地。农村土地承包法等法律另有规定的，依照其规定。

第一百三十二条 承包地被征收的，土地承包经营权人有权依照本法第四十二条第二款的规定获得相应补偿。

第一百三十三条 通过招标、拍卖、公开协商等方式承包荒地等农村土地，依照农村土地承包法等法律和国务院的有关规定，其土地承包经营权可以转让、入股、抵押或者以其他方式流转。

第一百三十四条 国家所有的农用地实行承包经营的，参照本法的有关规定。

第十二章 建设用地使用权

第一百三十五条 建设用地使用权人依法对国家所有的土地享有占有、使用和收益的权利，有权利用该土地建造建筑物、构筑物及其附属设施。

第一百三十六条 建设用地使用权可以在土地的地表、地上或者地下分别设立。新设立的建设用地使用权，不得损害已设立的用益物权。

第一百三十七条 设立建设用地使用权，可以采取出让或者划拨等方式。

工业、商业、旅游、娱乐和商品住宅等经营性用地以及同一土地有两个以上意向用地者的，应当采取招标、拍卖等公开竞价的方式出让。

严格限制以划拨方式设立建设用地使用权。采取划拨方式的，应当遵守法律、行政法规关于土地用途的规定。

第一百三十八条 采取招标、拍卖、协议等出让方式设立建设用地使用权的，当事人应当采取书面形式订立建设用地使用权出让合同。

建设用地使用权出让合同一般包括下列条款：

（一）当事人的名称和住所；

（二）土地界址、面积等；

（三）建筑物、构筑物及其附属设施占用的空间；

（四）土地用途；

（五）使用期限；

（六）出让金等费用及其支付方式；

（七）解决争议的方法。

第一百三十九条 设立建设用地使用权的，应当向登记机构申请建设用地使用权登记。建设用地使用权自登记时设立。登记机构应当向建设用地使用权人发放建设用地使用权证书。

第一百四十条 建设用地使用权人应当合理利用土地，不得改变土地用途；需要改变土地用途的，应当依法经有关行政主管部门批准。

第一百四十一条 建设用地使用权人应当依照法律规定以及合同约定支付出让金等费用。

第一百四十二条 建设用地使用权人建造的建筑物、构筑物及其附属设施的所有权属于建设用地使用权人，但有相反证据证明的除外。

第一百四十三条 建设用地使用权人有权将建设用地使用权转让、互换、出资、赠与或者抵押，但法律另有规定的除外。

第一百四十四条 建设用地使用权转让、互换、出资、赠与或者抵押的，

当事人应当采取书面形式订立相应的合同。使用期限由当事人约定，但不得超过建设用地使用权的剩余期限。

第一百四十五条 建设用地使用权转让、互换、出资或者赠与的，应当向登记机构申请变更登记。

第一百四十六条 建设用地使用权转让、互换、出资或者赠与的，附着于该土地上的建筑物、构筑物及其附属设施一并处分。

第一百四十七条 建筑物、构筑物及其附属设施转让、互换、出资或者赠与的，该建筑物、构筑物及其附属设施占用范围内的建设用地使用权一并处分。

第一百四十八条 建设用地使用权期间届满前，因公共利益需要提前收回该土地的，应当依照本法第四十二条的规定对该土地上的房屋及其他不动产给予补偿，并退还相应的出让金。

第一百四十九条 住宅建设用地使用权期间届满的，自动续期。

非住宅建设用地使用权期间届满后的续期，依照法律规定办理。该土地上的房屋及其他不动产的归属，有约定的，按照约定；没有约定或者约定不明确的，依照法律、行政法规的规定办理。

第一百五十条 建设用地使用权消灭的，出让人应当及时办理注销登记。登记机构应当收回建设用地使用权证书。

第一百五十一条 集体所有的土地作为建设用地的，应当依照土地管理法等法律规定办理。

第十三章 宅基地使用权

第一百五十二条 宅基地使用权人依法对集体所有的土地享有占有和使用的权利，有权依法利用该土地建造住宅及其附属设施。

第一百五十三条 宅基地使用权的取得、行使和转让，适用土地管理法等法律和国家有关规定。

第一百五十四条 宅基地因自然灾害等原因灭失的，宅基地使用权消灭。对失去宅基地的村民，应当重新分配宅基地。

第一百五十五条 已经登记的宅基地使用权转让或者消灭的，应当及时办理变更登记或者注销登记。

第十四章 地役权

第一百五十六条 地役权人有权按照合同约定，利用他人的不动产，以提高自己的不动产的效益。

前款所称他人的不动产为供役地，自己的不动产为需役地。

第一百五十七条 设立地役权，当事人应当采取书面形式订立地役权合同。

地役权合同一般包括下列条款：

（一）当事人的姓名或者名称和住所；

（二）供役地和需役地的位置；

（三）利用目的和方法；

（四）利用期限；

（五）费用及其支付方式；

（六）解决争议的方法。

第一百五十八条 地役权自地役权合同生效时设立。当事人要求登记的，可以向登记机构申请地役权登记；未经登记，不得对抗善意第三人。

第一百五十九条 供役地权利人应当按照合同约定，允许地役权人利用其土地，不得妨害地役权人行使权利。

第一百六十条 地役权人应当按照合同约定的利用目的和方法利用供役地，尽量减少对供役地权利人物权的限制。

第一百六十一条 地役权的期限由当事人约定，但不得超过土地承包经营权、建设用地使用权等用益物权的剩余期限。

第一百六十二条 土地所有权人享有地役权或者负担地役权的，设立土地承包经营权、宅基地使用权时，该土地承包经营权人、宅基地使用权人继续享有或者负担已设立的地役权。

第一百六十三条 土地上已设立土地承包经营权、建设用地使用权、宅基地使用权等权利的，未经用益物权人同意，土地所有权人不得设立地役权。

第一百六十四条 地役权不得单独转让。土地承包经营权、建设用地使用权等转让的，地役权一并转让，但合同另有约定的除外。

第一百六十五条 地役权不得单独抵押。土地承包经营权、建设用地使用权等抵押的，在实现抵押权时，地役权一并转让。

第一百六十六条 需役地以及需役地上的土地承包经营权、建设用地使用权部分转让时，转让部分涉及地役权的，受让人同时享有地役权。

第一百六十七条 供役地以及供役地上的土地承包经营权、建设用地使用权部分转让时，转让部分涉及地役权的，地役权对受让人具有约束力。

第一百六十八条 地役权人有下列情形之一的，供役地权利人有权解除

地役权合同，地役权消灭：

（一）违反法律规定或者合同约定，滥用地役权；

（二）有偿利用供役地，约定的付款期间届满后在合理期限内经两次催告未支付费用。

第一百六十九条 已经登记的地役权变更、转让或者消灭的，应当及时办理变更登记或者注销登记。

第四编 担保物权

第十五章 一般规定

第一百七十条 担保物权人在债务人不履行到期债务或者发生当事人约定的实现担保物权的情形，依法享有就担保财产优先受偿的权利，但法律另有规定的除外。

第一百七十一条 债权人在借贷、买卖等民事活动中，为保障实现其债权，需要担保的，可以依照本法和其他法律的规定设立担保物权。

第三人为债务人向债权人提供担保的，可以要求债务人提供反担保。反担保适用本法和其他法律的规定。

第一百七十二条 设立担保物权，应当依照本法和其他法律的规定订立担保合同。担保合同是主债权债务合同的从合同。主债权债务合同无效，担保合同无效，但法律另有规定的除外。

担保合同被确认无效后，债务人、担保人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

第一百七十三条 担保物权的担保范围包括主债权及其利息、违约金、

损害赔偿金、保管担保财产和实现担保物权的费用。当事人另有约定的，按照约定。

第一百七十四条 担保期间，担保财产毁损、灭失或者被征收等，担保物权人可以就获得的保险金、赔偿金或者补偿金等优先受偿。被担保债权的履行期未届满的，也可以提存该保险金、赔偿金或者补偿金等。

第一百七十五条 第三人提供担保，未经其书面同意，债权人允许债务人转移全部或者部分债务的，担保人不再承担相应的担保责任。

第一百七十六条 被担保的债权既有物的担保又有人的担保的，债务人不履行到期债务或者发生当事人约定的实现担保物权的情形，债权人应当按照约定实现债权；没有约定或者约定不明确，债务人自己提供物的担保的，债权人应当先就该物的担保实现债权；第三人提供物的担保的，债权人可以就物的担保实现债权，也可以要求保证人承担保证责任。提供担保的第三人承担担保责任后，有权向债务人追偿。

第一百七十七条 有下列情形之一的，担保物权消灭：

（一）主债权消灭；

（二）担保物权实现；

（三）债权人放弃担保物权；

（四）法律规定担保物权消灭的其他情形。

第一百七十八条 担保法与本法的规定不一致的，适用本法。

第十六章 抵押权

第一节 一般抵押权

第一百七十九条 为担保债务的履行，债务人或者第三人不转移财产的占有，将该财产抵押给债权人的，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就该财产优先受偿。

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押财产。

第一百八十条 债务人或者第三人有权处分的下列财产可以抵押：

（一）建筑物和其他土地附着物；

（二）建设用地使用权；

（三）以招标、拍卖、公开协商等方式取得的荒地等土地承包经营权；

（四）生产设备、原材料、半成品、产品；

（五）正在建造的建筑物、船舶、航空器；

（六）交通运输工具；

（七）法律、行政法规未禁止抵押的其他财产。

抵押人可以将前款所列财产一并抵押。

第一百八十一条 经当事人书面协议，企业、个体工商户、农业生产经营者可以将现有的以及将有的生产设备、原材料、半成品、产品抵押，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就实现抵押权时的动产优先受偿。

第一百八十二条 以建筑物抵押的，该建筑物占用范围内的建设用地使用权一并抵押。以建设用地使用权抵押的，该土地上的建筑物一并抵押。

抵押人未依照前款规定一并抵押的，未抵押的财产视为一并抵押。

第一百八十三条 乡镇、村企业的建设用地使用权不得单独抵押。以乡

镇、村企业的厂房等建筑物抵押的，其占用范围内的建设用地使用权一并抵押。

第一百八十四条 下列财产不得抵押：

（一）土地所有权；

（二）耕地、宅基地、自留地、自留山等集体所有的土地使用权，但法律规定可以抵押的除外；

（三）学校、幼儿园、医院等以公益为目的的事业单位、社会团体的教育设施、医疗卫生设施和其他社会公益设施；

（四）所有权、使用权不明或者有争议的财产；

（五）依法被查封、扣押、监管的财产；

（六）法律、行政法规规定不得抵押的其他财产。

第一百八十五条 设立抵押权，当事人应当采取书面形式订立抵押合同。抵押合同一般包括下列条款：

（一）被担保债权的种类和数额；

（二）债务人履行债务的期限；

（三）抵押财产的名称、数量、质量、状况、所在地、所有权归属或者使用权归属；

（四）担保的范围。

第一百八十六条 抵押权人在债务履行期届满前，不得与抵押人约定债务人不履行到期债务时抵押财产归债权人所有。

第一百八十七条 以本法第一百八十条第一款第一项至第三项规定的财产或者第五项规定的正在建造的建筑物抵押的，应当办理抵押登记。抵押权

自登记时设立。

第一百八十八条 以本法第一百八十条第一款第四项、第六项规定的财产或者第五项规定的正在建造的船舶、航空器抵押的，抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。

第一百八十九条 企业、个体工商户、农业生产经营者以本法第一百八十一条规定的动产抵押的，应当向抵押人住所地的工商行政管理部门办理登记。抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。

依照本法第一百八十一条规定抵押的，不得对抗正常经营活动中已支付合理价款并取得抵押财产的买受人。

第一百九十条 订立抵押合同前抵押财产已出租的，原租赁关系不受该抵押权的影响。抵押权设立后抵押财产出租的，该租赁关系不得对抗已登记的抵押权。

第一百九十一条 抵押期间，抵押人经抵押权人同意转让抵押财产的，应当将转让所得的价款向抵押权人提前清偿债务或者提存。转让的价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

抵押期间，抵押人未经抵押权人同意，不得转让抵押财产，但受让人代为清偿债务消灭抵押权的除外。

第一百九十二条 抵押权不得与债权分离而单独转让或者作为其他债权的担保。债权转让的，担保该债权的抵押权一并转让，但法律另有规定或者当事人另有约定的除外。

第一百九十三条 抵押人的行为足以使抵押财产价值减少的，抵押权人有权要求抵押人停止其行为。抵押财产价值减少的，抵押权人有权要求恢复

抵押财产的价值，或者提供与减少的价值相应的担保。抵押人不恢复抵押财产的价值也不提供担保的，抵押权人有权要求债务人提前清偿债务。

第一百九十四条 抵押权人可以放弃抵押权或者抵押权的顺位。抵押权人与抵押人可以协议变更抵押权顺位以及被担保的债权数额等内容，但抵押权的变更，未经其他抵押权人书面同意，不得对其他抵押权人产生不利影响。

债务人以自己的财产设定抵押，抵押权人放弃该抵押权、抵押权顺位或者变更抵押权的，其他担保人在抵押权人丧失优先受偿权益的范围内免除担保责任，但其他担保人承诺仍然提供担保的除外。

第一百九十五条 债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，抵押权人可以与抵押人协议以抵押财产折价或者以拍卖、变卖该抵押财产所得的价款优先受偿。协议损害其他债权人利益的，其他债权人可以在知道或者应当知道撤销事由之日起一年内请求人民法院撤销该协议。

抵押权人与抵押人未就抵押权实现方式达成协议的，抵押权人可以请求人民法院拍卖、变卖抵押财产。

抵押财产折价或者变卖的，应当参照市场价格。

第一百九十六条 依照本法第一百八十一条规定设定抵押的，抵押财产自下列情形之一发生时确定：

（一）债务履行期届满，债权未实现；

（二）抵押人被宣告破产或者被撤销；

（三）当事人约定的实现抵押权的情形；

（四）严重影响债权实现的其他情形。

第一百九十七条 债务人不履行到期债务或者发生当事人约定的实现抵

押权的情形，致使抵押财产被人民法院依法扣押的，自扣押之日起抵押权人有权收取该抵押财产的天然孳息或者法定孳息，但抵押权人未通知应当清偿法定孳息的义务人的除外。

前款规定的孳息应当先充抵收取孳息的费用。

第一百九十八条 抵押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。

第一百九十九条 同一财产向两个以上债权人抵押的，拍卖、变卖抵押财产所得的价款依照下列规定清偿：

（一）抵押权已登记的，按照登记的先后顺序清偿；顺序相同的，按照债权比例清偿；

（二）抵押权已登记的先于未登记的受偿；

（三）抵押权未登记的，按照债权比例清偿。

第二百条 建设用地使用权抵押后，该土地上新增的建筑物不属于抵押财产。该建设用地使用权实现抵押权时，应当将该土地上新增的建筑物与建设用地使用权一并处分，但新增建筑物所得的价款，抵押权人无权优先受偿。

第二百零一条 依照本法第一百八十条第一款第三项规定的土地承包经营权抵押的，或者依照本法第一百八十三条规定以乡镇、村企业的厂房等建筑物占用范围内的建设用地使用权一并抵押的，实现抵押权后，未经法定程序，不得改变土地所有权的性质和土地用途。

第二百零二条 抵押权人应当在主债权诉讼时效期间行使抵押权；未行使的，人民法院不予保护。

第二节 最高额抵押权

第二百零三条 为担保债务的履行，债务人或者第三人对一定期间内将要连续发生的债权提供担保财产的，债务人不履行到期债务或者发生当事人约定的实现抵押权的情形，抵押权人有权在最高债权额限度内就该担保财产优先受偿。

最高额抵押权设立前已经存在的债权，经当事人同意，可以转入最高额抵押担保的债权范围。

第二百零四条 最高额抵押担保的债权确定前，部分债权转让的，最高额抵押权不得转让，但当事人另有约定的除外。

第二百零五条 最高额抵押担保的债权确定前，抵押权人与抵押人可以通过协议变更债权确定的期间、债权范围以及最高债权额，但变更的内容不得对其他抵押权人产生不利影响。

第二百零六条 有下列情形之一的，抵押权人的债权确定：

（一）约定的债权确定期间届满；

（二）没有约定债权确定期间或者约定不明确，抵押权人或者抵押人自最高额抵押权设立之日起满二年后请求确定债权；

（三）新的债权不可能发生；

（四）抵押财产被查封、扣押；

（五）债务人、抵押人被宣告破产或者被撤销；

（六）法律规定债权确定的其他情形。

第二百零七条 最高额抵押权除适用本节规定外，适用本章第一节一般抵押权的规定。

第十七章 质 权

第一节　动产质权

第二百零八条　为担保债务的履行，债务人或者第三人将其动产出质给债权人占有的，债务人不履行到期债务或者发生当事人约定的实现质权的情形，债权人有权就该动产优先受偿。

前款规定的债务人或者第三人为出质人，债权人为质权人，交付的动产为质押财产。

第二百零九条　法律、行政法规禁止转让的动产不得出质。

第二百一十条　设立质权，当事人应当采取书面形式订立质权合同。

质权合同一般包括下列条款：

（一）被担保债权的种类和数额；

（二）债务人履行债务的期限；

（三）质押财产的名称、数量、质量、状况；

（四）担保的范围；

（五）质押财产交付的时间。

第二百一十一条　质权人在债务履行期届满前，不得与出质人约定债务人不履行到期债务时质押财产归债权人所有。

第二百一十二条　质权自出质人交付质押财产时设立。

第二百一十三条　质权人有权收取质押财产的孳息，但合同另有约定的除外。

前款规定的孳息应当先充抵收取孳息的费用。

第二百一十四条　质权人在质权存续期间，未经出质人同意，擅自使用、处分质押财产，给出质人造成损害的，应当承担赔偿责任。

第二百一十五条 质权人负有妥善保管质押财产的义务；因保管不善致使质押财产毁损、灭失的，应当承担赔偿责任。

质权人的行为可能使质押财产毁损、灭失的，出质人可以要求质权人将质押财产提存，或者要求提前清偿债务并返还质押财产。

第二百一十六条 因不能归责于质权人的事由可能使质押财产毁损或者价值明显减少，足以危害质权人权利的，质权人有权要求出质人提供相应的担保；出质人不提供的，质权人可以拍卖、变卖质押财产，并与出质人通过协议将拍卖、变卖所得的价款提前清偿债务或者提存。

第二百一十七条 质权人在质权存续期间，未经出质人同意转质，造成质押财产毁损、灭失的，应当向出质人承担赔偿责任。

第二百一十八条 质权人可以放弃质权。债务人以自己的财产出质，质权人放弃该质权的，其他担保人在质权人丧失优先受偿权益的范围内免除担保责任，但其他担保人承诺仍然提供担保的除外。

第二百一十九条 债务人履行债务或者出质人提前清偿所担保的债权的，质权人应当返还质押财产。

债务人不履行到期债务或者发生当事人约定的实现质权的情形，质权人可以与出质人协议以质押财产折价，也可以就拍卖、变卖质押财产所得的价款优先受偿。

质押财产折价或者变卖的，应当参照市场价格。

第二百二十条 出质人可以请求质权人在债务履行期届满后及时行使质权；质权人不行使的，出质人可以请求人民法院拍卖、变卖质押财产。

出质人请求质权人及时行使质权，因质权人怠于行使权利造成损害的，

由质权人承担赔偿责任。

第二百二十一条 质押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

第二百二十二条 出质人与质权人可以协议设立最高额质权。

最高额质权除适用本节有关规定外，参照本法第十六章第二节最高额抵押权的规定。

第二节 权利质权

第二百二十三条 债务人或者第三人有权处分的下列权利可以出质：

（一）汇票、支票、本票；

（二）债券、存款单；

（三）仓单、提单；

（四）可以转让的基金份额、股权；

（五）可以转让的注册商标专用权、专利权、著作权等知识产权中的财产权；

（六）应收账款；

（七）法律、行政法规规定可以出质的其他财产权利。

第二百二十四条 以汇票、支票、本票、债券、存款单、仓单、提单出质的，当事人应当订立书面合同。质权自权利凭证交付质权人时设立；没有权利凭证的，质权自有关部门办理出质登记时设立。

第二百二十五条 汇票、支票、本票、债券、存款单、仓单、提单的兑现日期或者提货日期先于主债权到期的，质权人可以兑现或者提货，并与出

质人协议将兑现的价款或者提取的货物提前清偿债务或者提存。

第二百二十六条 以基金份额、股权出质的，当事人应当订立书面合同。以基金份额、证券登记结算机构登记的股权出质的，质权自证券登记结算机构办理出质登记时设立；以其他股权出质的，质权自工商行政管理部门办理出质登记时设立。

基金份额、股权出质后，不得转让，但经出质人与质权人协商同意的除外。出质人转让基金份额、股权所得的价款，应当向质权人提前清偿债务或者提存。

第二百二十七条 以注册商标专用权、专利权、著作权等知识产权中的财产权出质的，当事人应当订立书面合同。质权自有关主管部门办理出质登记时设立。

知识产权中的财产权出质后，出质人不得转让或者许可他人使用，但经出质人与质权人协商同意的除外。出质人转让或者许可他人使用出质的知识产权中的财产权所得的价款，应当向质权人提前清偿债务或者提存。

第二百二十八条 以应收账款出质的，当事人应当订立书面合同。质权自信贷征信机构办理出质登记时设立。

应收账款出质后，不得转让，但经出质人与质权人协商同意的除外。出质人转让应收账款所得的价款，应当向质权人提前清偿债务或者提存。

第二百二十九条 权利质权除适用本节规定外，适用本章第一节动产质权的规定。

第十八章 留置权

第二百三十条 债务人不履行到期债务，债权人可以留置已经合法占有的债务人的动产，并有权就该动产优先受偿。

前款规定的债权人为留置权人，占有的动产为留置财产。

第二百三十一条 债权人留置的动产，应当与债权属于同一法律关系，但企业之间留置的除外。

第二百三十二条 法律规定或者当事人约定不得留置的动产，不得留置。

第二百三十三条 留置财产为可分物的，留置财产的价值应当相当于债务的金额。

第二百三十四条 留置权人负有妥善保管留置财产的义务；因保管不善致使留置财产毁损、灭失的，应当承担赔偿责任。

第二百三十五条 留置权人有权收取留置财产的孳息。

前款规定的孳息应当先充抵收取孳息的费用。

第二百三十六条 留置权人与债务人应当约定留置财产后的债务履行期间；没有约定或者约定不明确的，留置权人应当给债务人两个月以上履行债务的期间，但鲜活易腐等不易保管的动产除外。债务人逾期未履行的，留置权人可以与债务人协议以留置财产折价，也可以就拍卖、变卖留置财产所得的价款优先受偿。

留置财产折价或者变卖的，应当参照市场价格。

第二百三十七条 债务人可以请求留置权人在债务履行期届满后行使留置权；留置权人不行使的，债务人可以请求人民法院拍卖、变卖留置财产。

第二百三十八条 留置财产折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债务人清偿。

第二百三十九条 同一动产上已设立抵押权或者质权，该动产又被留置的，留置权人优先受偿。

第二百四十条 留置权人对留置财产丧失占有或者留置权人接受债务人另行提供担保的，留置权消灭。

第五编 占 有

第十九章 占 有

第二百四十一条 基于合同关系等产生的占有，有关不动产或者动产的使用、收益、违约责任等，按照合同约定；合同没有约定或者约定不明确的，依照有关法律规定。

第二百四十二条 占有人因使用占有的不动产或者动产，致使该不动产或者动产受到损害的，恶意占有人应当承担赔偿责任。

第二百四十三条 不动产或者动产被占有人占有的，权利人可以请求返还原物及其孳息，但应当支付善意占有人因维护该不动产或者动产支出的必要费用。

第二百四十四条 占有的不动产或者动产毁损、灭失，该不动产或者动产的权利人请求赔偿的，占有人应当将因毁损、灭失取得的保险金、赔偿金或者补偿金等返还给权利人；权利人的损害未得到足够弥补的，恶意占有人还应当赔偿损失。

第二百四十五条 占有的不动产或者动产被侵占的，占有人有权请求返还原物；对妨害占有的行为，占有人有权请求排除妨害或者消除危险；因侵占或者妨害造成损害的，占有人有权请求损害赔偿。

占有人返还原物的请求权，自侵占发生之日起一年内未行使的，该请求权消灭。

附　则

第二百四十六条　法律、行政法规对不动产统一登记的范围、登记机构和登记办法作出规定前，地方性法规可以依照本法有关规定作出规定。

第二百四十七条　本法自 2007 年 10 月 1 日起施行。

ATTACHMENT 63

Public
File 83

General Principles of the Civil Law of the People's Republic of China

(Adopted at the Fourth Session of the Sixth National People's Congress, promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986, and effective as of January 1, 1987)

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CHAPTER I Basic Principles

Article 1. This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2. The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3. Parties to a civil activity shall have equal status.

Article 4. In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5. The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6. Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7. civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

Article 8. The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

CHAPTER II Citizen (Natural Person)

Section 1 Capacity for Civil Rights and Capacity for Civil Conduct

Article 9. A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10. All citizens are equal as regards their capacity for civil rights.

Article 11. A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labor shall be regarded as a person with full capacity for civil conduct.

Article 12. A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13. A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14. The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15. The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

Section II Guardianship

Article 16. The parents of a minor shall be his guardians.

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

(1) paternal or maternal grandparent;

(2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighborhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighborhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this article is available to be the guardian, the units of the minor's parents, the neighborhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17. A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

(1) spouse;
(2) parent;

(3) adult child;

(4) any other near relative;

(5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighborhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighborhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighborhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18. A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardians's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19. A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

Section III Declarations of Missing Persons and Death

Article 20. If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21. A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

Article 22. In the event that a person who has been declared missing reappears or his whereabouts are ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23. Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

(1) if the citizen's whereabouts have been unknown for four years or
(2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24. In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25. A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items no longer exist. Section IV Individual Businesses and Lease-holding Farm Households

Article 26. "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27. "Lease-holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28. The legitimate rights and interests of individual businesses and lease-holding farm households shall be protected by law.

Article 29. The debts of an individual business or a lease-holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family. Section V Individual Partnership

Article 30. "Individual partnership" refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31. Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32. The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33. An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and

registered.

Article 34. The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35. A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

CHAPTER III Legal Persons

Section I General Stipulations

Article 36. A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.

A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37. A legal person shall have the following qualifications:

(1) establishment in accordance with the law;
(2) possession of the necessary property or funds;

(3) possession of its own name, organization and premises; and

(4) ability to independently bear civil liability.

Article 38. In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.

Article 39. A legal person's domicile shall be the place where its main administrative office is located.

Article 40. When a legal person terminates, it shall go into liquidation in accordance with the law

and discontinue all other activities.

Section II Enterprise as Legal Person

Article 41. An enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the state; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority.

A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42. An enterprise as legal person shall conduct operations within the range approved and registered.

Article 43. An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44. If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it.

When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45. An enterprise as legal person shall terminate for any of the following reasons:

(1) if it is dissolved by law;
(2) if it is disbanded;

(3) if it is declared bankrupt in accordance with the law; or

(4) for other reasons.

Article 46. When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47. When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48. An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49. Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

(1) conducting illegal operations beyond the range approved and registered by the registration authority;
(2) concealing facts from the registration and tax authorities and practicing fraud;

(3) secretly withdrawing funds or hiding property to evade repayment of debts;

(4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;

(5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;

(6) Engaging in other activities prohibited by law, damaging the interests of the state or the public interest.

Section III Official Organ, Institution and Social Organization as Legal Person
Article 50. An independently funded official organ shall be qualified as a legal person on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

Section IV Economic Association

Article 51. If a new economic entity is formed by enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52. If the enterprises or an enterprise and an institution that engage in economic

association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53. If the contract for economic association of enterprises of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

CHAPTER IV Civil Juristic Acts and Agency

Section I Civil Juristic Acts

Article 54. A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55. A civil juristic act shall meet the following requirements:

(1) the actor has relevant capacity for civil conduct;
(2) the intention expressed is genuine; and

(3) the act does not violate the law or the public interest.

Article 56. A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57. A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58. Civil acts in the following categories shall be null and void:

(1) those performed by a person without capacity for civil conduct;
(2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;

(3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;

(4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;

(5) those that violate the law or the public interest;

(6) economic contracts that violate the state's mandatory plans; and

(7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59. A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

(1) those performed by an actor who seriously misunderstood the contents of the acts;
(2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60. If part of a civil act is null and void, it shall not affect the validity of other parts.

Article 61. After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party.

Article 62. A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met. Section II Agency

Article 63. Citizens and legal persons may perform civil juristic acts through agents.

An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency.

Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64. Agency shall include entrusted agency, statutory agency and appointed agency.

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65. A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal.

If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66. The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. if a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given.

An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal.

If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable.

If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67. If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68. If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69. An entrusted agency shall end under any of the following circumstances:

(1) when the period of agency expires or when the tasks entrusted are completed;
(2) when the principal rescinds the entrustment or the agent declines the entrustment;

(3) when the agent dies;

(4) when the principal loses his capacity for civil conduct; or

(5) when the principal or the agent ceases to be a legal person.

Article 70. A statutory or appointed agency shall end under any of the following circumstances:

(1) When the principal gains or recovers capacity for civil conduct;
(2) When the principal or the agent dies;

(3) When the agent loses capacity for civil conduct;

(4) When the people's court or the unit that appointed the agent rescinds the appointment; or

(5) When the guardian relationship between the principal and the agent ends for other reasons.

CHAPTER V Civil Rights

Section I Property Ownership and Related Property Rights

Article 71. "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72. Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

Article 73. State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74. Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

(1) Land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;
(2) Property of collective economic organizations;

(3) Collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific,

cultural, health, sports and other facilities; and

(4) Other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villager' committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants of the township (town).

Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 75. A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects d'art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property.

A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 76. Citizens shall have the right of inheritance under the law.

Article 77. The lawful property of social organziations, including religious organizations, shall be protected by law.

Article 78. Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property.

Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal.

Article 79. If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80. State-owned land may be used according to law by units under ownership by the whole

people; it may also be lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land.

The right of citizens and collectives to contract for management of land under collective ownership or of state-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81. State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by unit under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are lawfully owned by collective may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82. Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Article 83. In the spirit of helping production, making things convenient for people's lives, enhancing unity and mutual assistance, and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damage to his neighbor, shall stop the infringement, eliminate the obstruction and compensate for the damage.

Section II Creditors' Rights

Article 84. A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The

party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions. Article 85. A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86. When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87. When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88. The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) if quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.
(2) if the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) if the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) if the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements.

Article 89. In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.
(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90. Legitimate loan relationships shall be protected by law.

Article 91. If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92. If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93. If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

Section III Intellectual Property Rights

Article 94. Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law.

Article 95. The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96. The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97. Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological research shall have the right to apply for and receive certificates of honor, bonuses or other awards.

Section IV Personal Rights

Article 98. Citizens shall enjoy the rights of life and health.

Article 99. Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited.

Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100. Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profit without his consent shall be prohibited.

Article 101. Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102. Citizens and legal persons shall enjoy the right of honor. It shall prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103. Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104. Marriage, the family, old people, mothers and children shall be protected by law.

The lawful rights and interests of the handicapped shall be protected by law.

Article 105. Women shall enjoy equal civil rights with men.

CHAPTER VI Civil Liability

Section I General Stipulations

Article 106. Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107. Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108. Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by instalments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109. If a person suffers damages from preventing or stopping encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110. Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

Section II Civil Liability for Breach of Contract

Article 111. If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112. The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it shall pay the other

party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

Article 113. If both parties breach the contract, each party shall bear its respective civil liability.

Article 114. If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115. A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116. If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

Section III Civil Liability for Infringement of Rights

Article 117. Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price.

Anyone who damages the property of the state, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well.

Article 118. If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119. Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120. If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses.

The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor.

Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil liability.

Article 122. If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123. If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124. Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125. Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damage to others shall bear civil liability.

Article 126. If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damage to others, its owner or manager shall bear civil liability, unless he can prove himself not at fault.

Article 127. If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128. A person who causes harm in exercising justifiable defense shall not bear civil liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129. If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130. If two or more persons jointly infringe upon another person's rights and cause him

damage, they shall bear joint liability. Article 131. If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced.

Article 132. If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances.

Article 133. If a person without or with limited capacity for civil conduct causes damage to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit.

Section IV Methods of Bearing Civil Liability

Article 134. The main methods of bearing civil liability shall be:

(1) cessation of infringements;
(2) removal of obstacles;

(3) elimination of dangers;

(4) return of property;

(5) restoration of original condition;

(6) repair, reworking or replacement;

(7) compensation for losses;

(8) payment of breach of contract damages;

(9) elimination of ill effects and rehabilitation of reputation; and

(10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently.

When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

CHAPTER VII Limitation of Action

Article 135. Except as otherwise stipulated by law, the limitation of action regarding applications to people's court for protection of civil rights shall be two years.

Article 136. The limitation of action shall be one year in cases concerning the following:

(1) Claims for compensation for bodily injuries;
(2) Sales of substandard goods without proper notice to that effect;

(3) Delays in paying rent or refusal to pay rent; or

(4) Loss of or damage to property left in the care of another person.

Article 137. A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may extend the limitation of action.

Article 138. If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139. A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140. A limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141. If the law has other stipulations concerning limitation of action, those stipulations shall apply.

CHAPTER VIII Application of Law in Civil Relations with Foreigners

Article 142. The application of law in civil relations with foreigners shall be determined by the provisions in this chapter.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Article 143. If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144. The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145. The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146. The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.

An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147. The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148. Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149. In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150. The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

CHAPTER IX Supplementary Provisions

Article 151. The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing

Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152. If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically quality as a legal person without having to re-register as such.

Article 153. For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154. Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours.

When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day.

If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day.

The last day shall end at 24: 00 hours. If business hours are applicable, the last day shall end at closing time.

Article 155. In this Law, the terms "not less than," "not more than," "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure.

Article 156. This Law shall come into force on January 1, 1987.

中华人民共和国民法通则

（一九八六年四月十二日第六届全国人民代表大会第四次会议通过）

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第一章　基本原则

第一条　为了保障公民、法人的合法的民事权益，正确调整民事关系，适应社会主义现代化建设事业发展的需要，根据宪法和我国实际情况，总结民事活动的实践经验，制定本法。

第二条　中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。

第三条　当事人在民事活动中的地位平等。

第四条　民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

第五条　公民、法人的合法的民事权益受法律保护，任何组织和个人不得侵犯。

第六条　民事活动必须遵守法律，法律没有规定的，应当遵守国家政策。

第七条　民事活动应当尊重社会公德，不得损害社会公共利益，破坏国家经济计划，扰乱社会经济秩序。

第八条　在中华人民共和国领域内的民事活动，适用中华人民共和国法律，法律另有规定的除外。

本法关于公民的规定，适用于在中华人民共和国领域内的外国人、无国籍人，法律另有规定的除外。

第二章　公民（自然人）

第一节　民事权利能力和民事行为能力

第九条　公民从出生时起到死亡时止，具有民事权利能力，依法享有民事权利，承担民事义务。

第十条　公民的民事权利能力一律平等。

第十一条　十八周岁以上的公民是成年人，具有完全民事行为能力，可以独立进行民事活动，是完全民事行为能力人。

十六周岁以上不满十八周岁的公民，以自己的劳动收入为主要生活来源的，视为完全民事行为能力人。

第十二条　十周岁以上的未成年人是限制民事行为能力人，可以进行与他的年龄、智力相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

不满十周岁的未成年人是无民事行为能力人，由他的法定代理人代理民事活动。

第十三条　不能辨认自己行为的精神病人是无民事行为能力人，由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人，可以进行与他的精神健康状况相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

第十四条　无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。

第十五条　公民以他的户籍所在地的居住地为住所，经常居住地与住所不一致的，经常居住地视为住所。

第二节　监　　护

第十六条　未成年人的父母是未成年人的监护人。

未成年人的父母已经死亡或者没有监护能力的，由下列人员中有监护能力的人担任监护人：

（一）祖父母、外祖父母；

（二）兄、姐；

（三）关系密切的其他亲属、朋友愿意承担监护责任，经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款、第二款规定的监护人的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十七条　无民事行为能力或者限制民事行为能力的精神病人，由下列人员担任监护人：

（一）配偶；

（二）父母；

（三）成年子女；

（四）其他近亲属；

（五）关系密切的其他亲属、朋友愿意承担监护责任，经精神病人的所在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款规定的监护人的，由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十八条　监护人应当履行监护职责，保护被监护人的人身、财产及其他合法权益，除为被监护人的利益外，不得处理被监护人的财产。

监护人依法履行监护的权利，受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的，应当承担责任；给被监护人造成财产损失的，应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请，撤销监护人的资格。

第十九条　精神病人的利害关系人，可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的，根据他健康恢复的状况，经本人或者利害关系人申请，人民法院可以宣告他为限制民事行为能力人或者完全民事行为能力人。

第三节　宣告失踪和宣告死亡

第二十条　公民下落不明满二年的，利害关系人可以向人民法院申请宣告他为失踪人。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十一条　失踪人的财产由他的配偶、父母、成年子女或者关系密切的其他亲属、朋友代管。代管有争议的，没有以上规定的人或者以上规定的人无能力代管的，由人民法院指定的人代管。

失踪人所欠税款、债务和应付的其他费用，由代管人从失踪人的财产中支付。

第二十二条　被宣告失踪的人重新出现或者确知他的下落，经本人或者利害关系人申请，人民法院应当撤销对他的失踪宣告。

第二十三条　公民有下列情形之一的，利害关系人可以向人民法院申请宣告他死亡：

（一）下落不明满四年的；

（二）因意外事故下落不明，从事故发生之日起满二年的。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十四条　被宣告死亡的人重新出现或者确知他没有死亡，经本人或者利害关系人申请，人民法院应当撤销对他的死亡宣告。

有民事行为能力人在被宣告死亡期间实施的民事法律行为有效。

第二十五条　被撤销死亡宣告的人有权请求返还财产。依照继承法取得他的财产的公民或者组织，应当返还原物；原物不存在的，给予适当补偿。

第四节　个体工商户，农村承包经营户

第二十六条　公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

第二十七条　农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

第二十八条　个体工商户，农村承包经营户的合法权益，受法律保护。

第二十九条　个体工商户，农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

第五节　个 人 合 伙

第三十条　个人合伙是指两个以上公民按照协议，各自提供资金、实物、技术等，合伙经营、共同劳动。

第三十一条　合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项，订立书面协议。

第三十二条　合伙人投入的财产，由合伙人统一管理和使用。

合伙经营积累的财产，归合伙人共有。

第三十三条　个人合伙可以起字号，依法经核准登记，在核准登记的经营范围内从事经营。

第三十四条　个人合伙的经营活动，由合伙人共同决定，合伙人有执行或监督的权利。

合伙人可以推举负责人。合伙负责人和其他人员的经营活动，由全体合伙人承担民事责任。

第三十五条　合伙的债务，由合伙人按照出资比例或者协议的约定，以各自的财产承担清偿责任。

合伙人对合伙的债务承担连带责任，法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人，有权向其他合伙人追偿。

第三章　法　　人

第一节　一般规定

第三十六条 法人是具有民事权利能力和民事行为能力，依法独立享有民事权利和承担民事义务的组织。

法人的民事权利能力和民事行为能力，从法人成立时产生，到法人终止时消灭。

第三十七条　法人应当具备下列条件：

（一）依法成立；

（二） 有必要的财产或者经费；

（三） 有自己的名称、组织机构和场所；

（四） 能够独立承担民事责任。

第三十八条 依照法律或者法人组织章程规定，代表法人行使职权的负责人，是法人的法定代表人。

第三十九条 法人以它的主要办事机构所在地为住所。

第四十条 法人终止，应当依法进行清算，停止清算范围外的活动。

第二节 企 业 法 人

第四十一条 全民所有制企业、集体所有制企业有符合国家规定的资金数额，有组织章程、组织机构和场所，能够独立承担民事责任，经主管机关核准登记，取得法人资格。

在中华人民共和国领域内设立的中外合资经营企业，中外合作经营企业和外资企业，具备法人条件的，依法经工商行政管理机关核准登记，取得中国法人资格。

第四十二条 企业法人应当在核准登记的经营范围内从事经营。

第四十三条 企业法人对它的法定代表人和其他工作人员的经营活动，承担民事责任。

第四十四条　企业法人分立、合并上或有其他重要事项变更，应当向登记机关办理登记并公告。

企业法人分立、合并，它的权利和义务由变更后的法人享有和承担。

第四十五条　企业法人由于下列原因之一终止：

（一）　依法被撤销；

（二）　解散；

（三）　依法宣告破产；

（四）　其他原因。

第四十六条　企业法人终止，应当向登记机关办理注销登记并公告。

第四十七条　企业法人解散，应当成立清算组织，进行清算。企业法人被撤销、被宣告破产的，应当由主管机关或者人民法院组织有关机关和有关人员成立清算组织，进行清算。

第四十八条　全民所有制企业法人以国家授予它经营管理的财产承担民事责任。集体所有制企业法人以企业所有的财产承担民事责任。中外合资经营企业法人、中外合作经营企业法人和外资企业法人以企业所有的财产承担民事责任，法律另有规定的除外。

第四十九条　企业法人有下列情形之一的，除法人承担责任外，对法定代表人可以给予行政处分、罚款，构成犯罪的，依法追究刑事责任：

（一）　超出登记机关核准登记的经营范围从事非法经营的；

（二） 向登记机关、税务机关隐瞒真实情况、弄虚作假的；

（三） 抽逃资金、隐匿财产逃避债务的；

（四） 解散、被撤销、被宣告破产后，擅自处理财产的；

（五） 变更、终止时不及时申请办理登记和公告，使利害关系人遭受重大损失的；

（六） 从事法律禁止的其他活动，损害国家利益或者社会公共利益的。

第三节 机关、事业单位和社会团体法人

第五十条 有独立经费的机关从成立之日起，具有法人资格。

具备法人条件的事业单位、社会团体，依法不需要办理法人登记的，从成立之日起，具有法人资格；依法需要办理法人登记的，经核准登记，取得法人资格。

第四节 联 营

第五十一条 企业之间或者企业、事业单位之间联营，组成新的经济实体，独立承担民事责任，具备法人条件的，经主管机关核准登记，取得法人资格。

第五十二条　企业之间或者企业、事业单位之间联营，共同经营、不具备法人条件的，由联营各方按照出资比例或者协议的约定，以各自所有的或者经营管理的财产承担民事责任。依照法律的规定或者协议的约定负连带责任的，承担连带责任。

第五十三条　企业之间或者企业、事业单位之间联营，按照合同的约定各自独立经营的，它的权利和义务由合同约定，各自承担民事责任。

第四章　民事法律行为和代理

第一节　民事法律行为

第五十四条　民事法律行为是公民或者法人设立、变更、终止民事权利和民事义务的合法行为。

第五十五条　民事法律行为应当具备下列条件：

（一）　行为人具有相应的民事行为能力；

（二）　意思表示真实；

（三）　不违反法律或者社会公共利益。

第五十六条　民事法律行为可以采用书面形式、口头形式或者其他形式。法律规定用特定形式的，应当依照法律规定。

第五十七条　民事法律行为从成立时起具有法律约束力。行为人非依法律规定或者取得对方同意，不得擅自变更或者解除。

第五十八条　下列民事行为无效：

（一）无民事行为能力人实施的；

（二）限制民事行为能力人依法不能独立实施的；

（三）一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下所为的；

（四）恶意串通，损害国家、集体或者第三人利益的；

（五）违反法律或者社会公共利益的；

（六）经济合同违反国家指令性计划的；

（七）以合法形式掩盖非法目的的；

无效的民事行为，从行为开始起就没有法律约束力。

第五十九条　下列民事行为，一方有权请求人民法院或者仲裁机关予以变更或者撤销：

（一）行为人对行为内容有重大误解的；

（二）显失公平的。

被撤销的民事行为从行为开始起无效。

第六十条　民事行为部分无效，不影响其他部分的效力的，其他部分仍然有效。

第六十一条　民事行为被确认为无效或者被撤销后，当事人因该行为取得的财产，应当返还给受损失的一方。有过错的一方应当赔偿对方因此所受的损失，双方都有过错的，应当各自承担相应的责任。

双方恶意串通，实施民事行为损害国家的、集体的或者第三人的利益的，应当追缴双方取得的财产，收归国家、集体所有或者返还第三人。

第六十二条　民事法律行为可以附条件，附条件的民事法律行为在符合所附条件时生效。

第二节　代　　理

第六十三条　公民、法人可以通过代理人实施民事法律行为。

代理人在代理权限内，以被代理人的名义实施民事法律行为。被代理人对代理人的代理行为，承担民事责任。

依照法律规定或者按照双方当事人约定，应当由本人实施的民事法律行为，不得代理。

第六十四条　代理包括委托代理、法定代理和指定代理。

委托代理人按照被代理人的委托行使代理权，法定代理人依照法律的规定行使代理权，指定代理人按照人民法院或者指定单位的指定行使代理权。

第六十五条　民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。

书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或盖章。

委托书授权不明的，被代理人应当向第三人承担民事责任，代理人负连带责任。

第六十六条　没有代理权、超越代理权或者代理权终止后的行为，只有经过被代理人的追认，被代理人才承担民事责任。未经追认的行为，由行为人承担民事责任。本人知道他人以本人名义实施民事行为而不作否认表示的，视为同意。

代理人不履行职责而给被代理人造成损害的，应当承担民事责任。

代理人和第三人串通、损害被代理人的利益的，由代理人和第三人负连带责任。

第三人知道行为人没有代理权、超越代理权或者代理权已终止还与行为人实施民事行为给他人造成损害的，由第三人和行为人负连带责任。

第六十七条　代理人知道被委托代理的事项违法仍然进行代理活动的，或者被代理人知道代理人的代理行为违法不表示反对的，由被代理人和代理人负连带责任。

第六十八条　委托代理人为被代理人的利益需要转托他人代理的，应当事先取得被代理人的同意。事先没有取得被代理人同意的，应当在事后及时告诉被代理人，如果被代理人不同意，由代理人对自己所转托的人的行为负民事责任，但在紧急情况下，为了保护被代理人的利益而转托他人代理的除外。

第六十九条　有下列情形之一的，委托代理终止：

（一）　代理期间届满或者代理事务完成；

（二）　被代理人取消委托或者代理人辞去委托；

（三）　代理人死亡；

（四）　代理人丧失民事行为能力；

（五）　作为被代理人或者代理人的法人终止。

第七十条　有下列情形之一的，法定代理或者指定代理终止：

（一）　被代理人取得或者恢复民事行为能力；

（二）　被代理人或者代理人死亡；

（三）　代理人丧失民事行为能力；

（四）　指定代理的人民法院或者指定单位取消指定；

（五）　由其他原因引起的被代理人和代理人之间的监护关系消灭。

第五章　民事权利

第一节　财产所有权和与财产所有权有关的财产权

第七十一条　财产所有权是指所有人依法对自己的财产享有占有、使用、收益和处分的权利。

第七十二条　财产所有权的取得，不得违反法律规定。按照合同或者其他合法方式取得财产的，财产所有权从财产交付时起转移，法律另有规定或者当事人另有约定的除外。

第七十三条　国家财产属于全民所有。

国家财产神圣不可侵犯，禁止任何组织或者个人侵占、哄抢、私分、截留、破坏。

第七十四条　劳动群众集体组织的财产属于劳动群众集体所有，包括：

（一）　法律规定为集体所有的土地和森林、山岭、草原、荒地、滩涂等；

（二）　集体经济组织的财产；

（三）　集体所有的建筑物、水库、农田水利设施和教育、科学、文化、卫生、体育等设施；

（四）　集体所有的其他财产。

集体所有的土地依照法律属于村农民集体所有，由村农业生产合作社等农业集体经济组织或者村民委员会经营、管理。已经属于乡（镇）农民集体经济组织所有的，可以属于乡（镇）农民集体所有。

集体所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、破坏或者非法查封、扣押、冻结、没收。

第七十五条　公民的个人财产，包括公民的合法收入、房屋、储蓄、生活用品、文物、图书资料、林木、牲畜和法律允许公民所有的生产资料以及其他合法财产。

公民的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破坏或者非法查封、扣押、冻结、没收。

第七十六条　公民依法享有财产继承权。

第七十七条　社会团体包括宗教团体的合法财产受法律保护。

第七十八条　财产可以由两个以上的公民、法人共有。

共有分为按份共有和共同共有。按份共有人按照各自的份额，对共有财产分享权利，分担义务。共同共有人对共有财产享有权利，承担义务。

按份共有财产的每个共有人有权要求将自己的份额分出或者转让。但在出售时，其他共有人在同等条件下，有优先购买的权利。

第七十九条　所有人不明的埋藏物、隐藏物，归国家所有。接收单位应当对上缴的单位或者个人，给予表扬或者物质奖励。

拾得遗失物、漂流物或者失散的饲养动物，应当归还失主，因此而支出的费用由失主偿还。

第八十条　国家所有的土地，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

公民、集体依法对集体所有的或者国家所有由集体使用的土地的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

土地不得买卖、出租、抵押或者以其他形式非法转让。

第八十一条　国家所有的森林、山岭、草原、荒地、滩涂、水面等自然资源，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

国家所有的矿藏，可以依法由全民所有制单位和集体所有制单位开采，也可以依法由公民采挖。国家保护合法的采矿权。

公民、集体依法对集体所有的或者国家所有由集体使用森林、山岭、草原、荒地、滩涂、水面的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

国家所有的矿藏、水流，国家所有的和法律规定属于集体所有的林地、山岭、草原，荒地、滩涂不得买卖、出租、抵押或者以其他形式非法转让。

第八十二条　全民所有制企业对国家授予它经营管理的财产依法享有经营权，受法律保护。

第八十三条　不动产的相邻各方，应当按照有利生产、方便生活、团结互助、公平合理的精神，正确处理截水、排水、通行、通风、采光等方面的相邻关系。给相邻方造成妨碍或者损失的，应当停止侵害，排除妨碍，赔偿损失。

第二节 债 权

第八十四条 债是按照合同的约定或者依照法律的规定，在当事人之间产生的特定的权利和义务关系。享有权利的人是债权人，负有义务的人是债务人。

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

第八十五条 合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。

第八十六条 债权人为二人以上的，按照确定的份额分享权利。债务人为二人以上的，按照确定的份额分担义务。

第八十七条 债权人或者债务人一方人数为二人以上的，依照法律的规定或者当事人的约定，享有连带权利的每个债权人，都有权要求债务人履行义务；负有连带义务的每个债务人，都负有清偿全部债务的义务，履行了义务的人，有权要求其他负有连带义务的人偿付他应当承担的份额。

第八十八条 合同的当事人应当按照合同的约定，全部履行自己的义务。

合同中有关质量、期限、地点或者价款约定不明确，按照合同有关条款内容不能确定，当事人又不能通过协商达成协议的，适用下列规定：

（一） 质量要求不明确的，按照国家质量标准履行，没有国家质量标准的，按照通常标准履行。

（二） 履行期限不明确的，债务人可以随时向债权人履行义务，债权人也可以随时要求债务人履行义务，但应当给对方必要的准备时间。

（三） 履行地点不明确，给付货币的，在接受给付一方的所在地履行，其他标的在履行义务一方的所在地履行。

（四） 价格约定不明确，按照国家规定的价格履行；没有国家规定价格的，参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的，完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的，当事人都有使用的权利。

第八十九条 依照法律的规定或者按照当事人的约定，可以采用下列方式担保债务的履行：

（一） 保证人向债权人保证债务人履行债务，债务人不履行债务的，按照约定由保证人履行或者承担连带责任；保证人履行债务后，有权向债务人追偿。

（二） 债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的，债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

（三） 当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行债务的，无权要求返还定金；接受定金的一方不履行债务的，应当双倍返还定金。

（四） 按照合同约定一方占有对方的财产，对方不按照合同给付应付款项超过约定期限的，占有人有权留置该财产，依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

第九十条 合法的借贷关系受法律保护。

第九十一条 合同一方将合同的权利、义务全部或者部分转让给第三人的，应当取得合同另一方的同意，并不得牟利。依照法律规定应当由国家批准的合同，需经原批准机关批准。但是，法律另有规定或者原合同另有约定的除外。

第九十二条 没有合法根据，取得不当利益，造成他人损失的，应当将取得的不当利益返还受损失的人。

第九十三条 没有法定的或者约定的义务，为避免他人利益受损失进行管理或者服务的，有权要求受益人偿付由此而支付的必要费用。

第三节 知 识 产 权

第九十四条 公民、法人享有著作权（版权），依法有署名、发表、出版、获得报酬等权利。

第九十五条 公民、法人依法取得的专利权受法律保护。

第九十六条 法人、个体工商户、个人合伙依法取得商标专用权受法律保护。

第九十七条　公民对自己的发现享有发现权。发现人有权申请领取发现证书、奖金或者其他奖励。

公民对自己的发明或者其他科技成果，有权申请领取荣誉证书、奖金或者其他奖励。

第四节　人　身　权

第九十八条　公民享有生命健康权。

第九十九条　公民享有姓名权、有权决定、使用和依照规定改变自己的姓名，禁止他人干涉、盗用、假冒。

法人、个体工商户、个人合伙享有名称权。企业法人、个体工商户、个人合伙有权使用、依法转让自己的名称。

第一百条　公民享有肖像权，未经本人同意，不得以营利为目的使用公民的肖像。

第一百零一条　公民、法人享有名誉权，公民的人格尊严受法律保护，禁止用侮辱、诽谤等方式损害公民、法人的名誉。

第一百零二条　公民、法人享有荣誉权，禁止非法剥夺公民、法人的荣誉称号。

第一百零三条　公民享有婚姻自主权，禁止买卖、包办婚姻和其他干涉婚姻自由的行为。

第一百零四条　婚姻、家庭、老人、母亲和儿童受法律保护。

残疾人的合法权益受法律保护。

第一百零五条　妇女享有同男子平等的民事权利。

第六章　民事责任

第一节　一般规定

第一百零六条　公民、法人违反合同或者不履行其他义务的，应当承担民事责任。

公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的应当承担民事责任。

没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

第一百零七条　因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

第一百零八条　债务应当清偿。暂时无力偿还的，经债权人同意或者人民法院裁决，可以由债务人分期偿还。有能力偿还拒不偿还的，由人民法院判决强制偿还。

第一百零九条　因防止、制止国家的、集体的财产或者他人的财产、人身遭受侵害而使自己受到损害的，由侵害人承担赔偿责任，受益人也可以给予适当的补偿。

第一百一十条　对承担民事责任的公民、法人需要追究行政责任的，应当追究行政责任；构成犯罪的，对公民、法人的法定代表人应当依法追究刑事责任。

第二节　违反合同的民事责任

第一百一十一条　当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

第一百一十二条　当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。

当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

第一百一十三条　当事人双方都违反合同的，应当分别承担各自应负的民事责任。

第一百一十四条　当事人一方因另一方违反合同受到损失的，应当及时采取措施防止损失的扩大；没有及时采取措施致使损失扩大的，无权就扩大的损失要求赔偿。

第一百一十五条　合同的变更或者解除，不影响当事人要求赔偿损失的权利。

第一百一十六条　当事人一方由于上级机关的原因，不能履行合同义务的，应当按照合同约定向另一方赔偿损失或者采取其补救措施，再由上级机关对它因此受到的损失负责处理。

第三节　侵权的民事责任

第一百一十七条　侵占国家的、集体的财产或者他人财产的，应当返还财产，不能返还财产的，应当折价赔偿。

损坏国家的、集体的财产或者他人财产的，应当恢复原状或者折价赔偿。

受害人因此遭受其他重大损失的，侵害人并应当赔偿损失。

第一百一十八条　公民、法人的著作权（版权），专利权、商标专用权、发现权、发明权和其他科技成果权受到剽窃、篡改、假冒等侵害的，有权要求停止侵害，消除影响，赔偿损失。

第一百一十九条　侵害公民身体造成伤害的，应当赔偿医疗费、因误工减少的收入、残废者生活补助费等费用；造成死亡的，并应当支付丧葬费、死者生前扶养的人必要的生活费等费用。

第一百二十条　公民的姓名权、肖像权、名誉权、荣誉权受到侵害的，有权要求停止侵害，恢复名誉，消除影响，赔礼道歉，并可以要求赔偿损失。

法人的名称权、名誉权、荣誉权受到侵害的，适用前款规定。

第一百二十一条　国家机关或者国家机关工作人员在执行职务，侵犯公民、法人的合法权益造成损害的，应当承担民事责任。

第一百二十二条　因产品质量不合格造成他人财产、人身损害的，产品制造者、销售者应当依法承担民事责任。运输者仓储者对此负有责任的，产品制造者、销售者有权要求赔偿损失。

第一百二十三条　从事高空、高压、易燃、易爆、剧毒、放射性、高速运输工具等对周围环境有高度危险的作业造成他人损害的，应当承担民事责任；如果能够证明损害是由受害人故意造成的，不承担民事责任。

第一百二十四条　违反国家保护环境防止污染的规定，污染环境造成他人损害
的，应当依法承担民事责任。

第一百二十五条　在公共场所、道旁或者通道上挖坑、修缮安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担民事责任。

第一百二十六条　建筑物或者其他设施以及建筑物上的搁置物、悬挂物发生倒塌、脱落、坠落造成他人损害的，它的所有人或者管理人应当承担民事责任，但能够证明自己没有过错的除外。

第一百二十七条　饲养的动物造成他人损害的，动物饲养人或者管理人应当承担民事责任；由于受害人的过错造成损害的，动物饲养人或者管理人不承担民事责任；由于第三人的过错造成损害的，第三人应当承担民事责任。

第一百二十八条　因正当防卫造成损害的，不承担民事责任。正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的民事责任。

第一百二十九条　因紧急避险造成损害的，由引起险情发生的人承担民事责任。如果危险是由自然原因引起的，紧急避险人不承担民事责任或者承担适当的民事责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

第一百三十条　二人以上共同侵权造成他人损害的，应当承担连带责任。

第一百三十一条　受害人对于损害的发生也有过错的，可以减轻侵害人的民事责任。

第一百三十二条　当事人对造成损害都没有过错的，可以根据实际情况，由当事人分担民事责任。

第一百三十三条　无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担民事责任。监护人尽了监护责任的，可以适当减轻他的民事责任。

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用。不足部分，由监护人适当赔偿，但单位担任监护人的除外。

第四节　承担民事责任的方式

第一百三十四条　承担民事责任的方式主要有：

（一）　停止侵害；

（二）　排除妨碍；

（三）　消除危险；

（四）　返还财产；

（五）　恢复原状；

（六）　修理、重作、更换；

（七）　赔偿损失；

（八）　支付违约金；

（九）　消除影响、恢复名誉；

（十）　赔礼道歉。

以上承担民事责任的方式，可以单独适用，也可以合并适用。

人民法院审理民事案件，除适用上述规定外，还可以予以训诫、责令具结悔过，收缴进行非法活动的财物和非法所得，并可以依照法律规定处以罚款、拘留。

第七章　诉讼时效

第一百三十五条　向人民法院请求保护民事权利的诉讼时效期间为二年，法律另有规定的除外。

第一百三十六条　下列的诉讼时效期间为一年：

（一）　身体受到伤害要求赔偿的；

（二）　出售质量不合格的商品未声明的；

（三）　延付或者拒付租金的；

（四）　寄存财物被丢失或者损毁的。

第一百三十七条　诉讼时效期间从知道或者应当知道权利被侵害时起计算。但是，从权利被侵害之日起超过二十年的，人民法院不予保护。有特殊情况的，人民法院可以延长诉讼时效期间。

第一百三十八条　超过诉讼时效期间，当事人自愿履行的，不受诉讼时效限制。

第一百三十九条　在诉讼时效期间的最后六个月内，因不可抗力或者其他障碍不能行使请求权的，诉讼时效中止。从中止时效的原因消除之日起，诉讼时效期间继续计算。

第一百四十条　诉讼时效因提起诉讼、当事人一方提出要求或者同意履行义务而中断。从中断时起，诉讼时效期间重新计算。

第一百四十一条　法律对诉讼时效另有规定的，依照法律规定。

第八章　涉外民事关系的法律适用

第一百四十二条　涉外民事关系的法律适用，依照本章的规定确定。

中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

第一百四十三条　中华人民共和国公民定居国外的，他的民事行为能力可以适用定居国法律。

第一百四十四条　不动产的所有权，适用不动产所在地法律。

第一百四十五条　涉外合同的当事人可以选择处理合同争议所适用的法律，法律另有规定的除外。

涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

第一百四十六条　侵权行为的损害赔偿，适用侵权行为地法律。当事人双方国籍相同或者在同一国家有住所的，也可以适用当事人本国法律或者住所地法律。

中华人民共和国法律不认为在中华人民共和国领域外发生的行为是侵权行为的，不作为侵权行为处理。

第一百四十七条　中华人民共和国公民和外国人结婚适用婚姻缔结地法律，离婚适用受理案件的法院所在地法律。

第一百四十八条　扶养适用与被扶养人有最密切联系的国家的法律。

第一百四十九条　遗产的法定继承，动产适用被继承人死亡时住所地法律，不动产适用不动产所在地法律。

第一百五十条　依照本章规定适用外国法律或者国际惯例的，不得违背中华人民共和国的社会公共利益。

第九章　附　　则

第一百五十一条　民族自治地方的人民代表大会可以根据本法规定的原则，结合当地民族的特点，制定变通的或者补充的单行条例或者规定。自治区人民代表大会制定的，依照法律规定报全国人民代表大会常务委员会批准或者备案；自治州，自治县人民代表大会制定的，报省，自治区人民代表大会常务委员会批准。

第一百五十二条　本法生效以前，经省、自治区、直辖市以上主管机关批准开办的全民所有制企业，已经向工商行政管理机关登记的，可以不再办理法人登记，即具有法人资格。

第一百五十三条　本法所称的“不可抗力”，是指不能预见、不能避免并不能克服的客观情况。

第一百五十四条　民法所称的期间按照公历年、月、日、小时计算。

规定按照小时计算期间的，从规定时开始计算。规定按照日、月、年计算期间的，开始的当天不算入，从下一天开始计算。

期间的最后一天是星期日或者其他法定休假日的，以休假日的次日为期间的最后一天。

期间的最后一天的截止时间为二十四点。有业务时间的，到停止业务活动的时间截止。

第一百五十五条　民法所称的“以上”、“以下”、“以内”、“届满”，包括本数；所称的“不满”、“以外”，不包括本数。

第一百五十六条　本法自一九八七年一月一日起施行。

ATTACHMENT 62

Negotiable Instruments Law of the People's Republic of China (2004 Revision)

(Adopted at the 13th Meeting of the Standing Committee of the Eighth National People's Congress on May 10, 1995;Revised at the 11th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on August 28, 2004)

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CHAPTER ONE GENERAL PROVISIONS

Article 1 The law has been drawn up with a view to standardizing the behavior in the transaction of negotiable instruments, protecting the legitimate rights and interests of parties concerned in the negotiable transaction activities, safeguarding the social and economic order and promoting the development of the socialist market economy.

Article 2 The law applies to all transaction activities in negotiable instruments within the territory of the People's Republic of China.

Article 3 Activities of transacting negotiable instruments shall abide by law, administrative regulations and decrees and shall not in any way impinge upon the public interests.

Article 4 In drafting negotiable instruments, a drawer shall put his/her signature or seal to the instruments according to the legal conditions and bear the liabilities for the negotiable instruments in compliance with the items recorded on them.
In exercising the rights arising out of the negotiable instruments, a holder shall put his/her signature or seal to the negotiable instruments according to the legal procedures and present the instruments.
Other debtors who have put their signatures or seals on the negotiable instruments shall be obliged to perform the obligations arising out of the negotiable instruments.
The term "rights arising out of the negotiable instruments" used in this law refers to the rights of the holder to claim payment according to the amount specified in the negotiable instruments, including the right of claim and the right of recourse.
The term "obligations arising out of the negotiable instruments" used in this law refers to the obligations of the debtor to pay the amount specified in the negotiable instruments to the holder.

Article 5 Parties to a negotiable instrument may entrust their agents to put their signatures or seals to the instruments and clearly indicate the agency relationship.
If a negotiable instrument bears the signature or seal in the name of an agent without the power of attorney, the obligations arising out of the negotiable instrument shall be performed by the person or persons who have put the signatures or seals to the negotiable instrument. If an agent has gone beyond the terms of his/her reference, he/she shall perform the obligations arising out of the negotiable instrument on the part that exceeds his/her term of reference.

Article 6 If a negotiable instrument bears the signature or seal of a person who is incapable of civil acts or by a person whose civil acts have been restricted, the signature or the seal is invalid, but that shall not affect the validity of other signatures and seals on the same instrument.

Article 7 The signature and seal on a negotiable instrument mean the signature or seal or signature plus seal.
The signature and seal of a legal person and other unit using negotiable instruments shall be the seal of the legal person or unit plus the signature or seal of the legal representative or its authorized agent.
The signature on a negotiable instrument shall be the true name of the person who signs it.

Article 8 The amount of a negotiable instrument shall be written in both Chinese characters and in numerals and the two shall tally. The negotiable instruments shall be invalid if the words and figures do not tally.

Article 9 The items recorded in a negotiable instrument shall conform to the provisions of this law. The amount, date and name of the receiver shall not be altered. If they are altered, the negotiable instrument shall become invalid.
Other matters recorded in a negotiable instrument may be altered by the recorder and the alteration shall be certified by a signature or seal put on it by the original recorder.

Article 10 The draft, acquisition and transfer of a negotiable instrument shall follow the principle of authenticity and creditability and be treated as a real act of trading or debt payment.
A negotiable instrument shall be acquired against a corresponding price, that is, the price acknowledged by both parties to a negotiable instrument.

Article 11 If a negotiable instrument is obtained free of charge according to law due to taxation, inheritance and donation, it is not restricted by the corresponding price rule. But the rights to the instrument enjoyed shall not be superior than those enjoyed by the prior holder.
The prior holder refers to a debtor who puts his/her signature or seal to the negotiable instruments before they are acquired by the present signer or holder.

Article 12 In the case of obtaining a negotiable instrument by deception, theft or coercion or obtaining a negotiable instrument which has been knowingly obtained by deception, theft or coercion out of ulterior motives, the holder shall not enjoy the rights arising out of the negotiable instruments.
A holder who has obtained the negotiable instruments not conformable to the provisions of this law due to major errors shall not enjoy the rights arising from the negotiable instruments either,

Article 13 Negotiable instruments debtors shall not protest against the holder by using the ground of protesting against the drawer or the prior holder, except when the holder has obtained the negotiable instruments with the clear knowledge of the ground for protest.
Negotiable instruments debtors may protest against the holders who have direct debtor-creditor relationship but refuse to perform their agreed obligations.
The term "protest" used in this law refers to the act of the negotiable instruments debtors to refuse to perform obligations to the creditors according to the provisions of this law.

Article 14 Matters recorded on the negotiable instruments shall be true to the facts. Forging or alteration is not allowed.

Those who forge or alter the signatures or seals or other items recorded on the negotiable instruments shall bear the legal responsibility.
The forged or altered signatures or seals do not affect the validity of the true signatures or seals on the same negotiable instruments.
If any item recorded on the negotiable instruments has been altered, the person who signs the instrument before the alteration shall be responsible for the matters originally recorded. The person who signs the instruments after the alteration shall be responsible for the matters recorded after the alterations. If it is impossible to tell whether the signatures or seals are made before or after the alteration, they are regarded as being made before the alterations.

Article 15 In the case of loss of a negotiable instrument, the person who loses it may timely notify the payer of the negotiable instrument to refuse payment on the lost instrument, except in the cases in which the payer is not recorded or it is impossible to determine the payee and the agency payer.
The payer shall suspend payment after receiving the notice for suspending payment due to lost instrument.
Owner of the lost negotiable instrument shall, within three days of issuing the notice for suspending payment due to lost instrument, or immediately after the negotiable instrument is lost, apply for public summons with the people's court or indict with the people's court.

Article 16 The exercising of the rights arising from the negotiable instruments on instrument debtors or the right for the protection of the negotiable instrument shall be conducted at the business sites and during the business hours of the parties to the negotiable instruments and, if the parties to the negotiable instruments have no business sites, it shall be conducted in their residences.

Article 17 The rights to the negotiable instruments shall be deceased if they are not exercised within the following time limits:
1. In two years from the time of the maturity of the negotiable instruments for the right of the holder to the drawer and acceptor, that is, in two years for bills and notes payable at sight;
2. In six months after date of draft for the right of the holder to the drawer;
3. In six months after the date of non-acceptance or dishonour for the right of recourse of the holder to the prior holder;
4. In three months after the date of liquidation or the date of indictment for the right of re-recourse.
The date of draft and the due date shall be fixed by parties to the negotiable instruments according to law.

Article 18 Holders who have lost the right to the negotiable instruments due to the expiry of the validity period for the exercise of the rights to the negotiable instruments or due to the inadequacy of the recordings on the negotiable instruments still enjoy the civil rights and may request the drawers or acceptors to return the interests in the equal amount specified in the negotiable instruments unpaid.

CHAPTER TWO DRAFTS

SECTION ONE DRAWING OF DRAFTS

Article 19 A draft is a bill signed by the drawer, requiring the entrusted payer to make unconditional payment in the fixed amount at the sight of the bill or at a fixed date to the payee or the holder.
Drafts include bank drafts and commercial drafts.

Article 20 The drawing of a draft refers to the act of a drawer to sign and deliver the draft to the payee.

Article 21 The drawer of a draft shall have real authorized payment relations with the payees and have reliable sources of fund to pay the draft amount.
It is forbidden to sign drafts without corresponding prices for the purpose of acquiring funds from banks or other parties to the negotiable instrument by deception.

Article 22 A draft shall bear the following items:
1. Chinese characters denoting "draft";
2. Commission on unconditional payment;
3. The amount of money fixed;
4. Name of the payer;
5. Name of the payee;
6. Date of draft;
7. Signature of the drawer.
A draft in lack of one of the items listed above is invalid.

Article 23 The date of payment, place of payment and place of draft recorded on the draft shall be clear and definite.
If a draft does not bear the date of payment, it is a draft payable at sight.
If a draft does not bear the place of payment, the place of payment shall be the business site or the residence of the payer or the place where the payer often lives.
If a draft does not bear the place of draft, the place of draft shall be taken as the business site or residence of the drawer or the place where the drawer often lives.

Article 24 Items other than those provided for by this law may be recorded on a draft, but such items do not have the draft effect.

Article 25 The date of payment may be recorded in one of the following forms:
1. Payable at sight;
2. Dated payment;
3. Payable at a fixed date after draft;
4. Payable at a fixed date after sight.
The date of payment provided for in the preceding paragraph is the due date of the draft.

Article 26 After signing the draft, the drawer shall bear the responsibility of ensuring the acceptance and payment of the draft. If a drawer has failed to get the draft accepted or paid, the drawer shall undertake to pay the amount and expenses provided for in Article 70 and Article 71 of this law.

SECTION TWO ENDORSEMENT

Article 27 The holder of a draft may transfer the rights arising out of the draft or authorize others to exercise some of the rights.
If the drawer writes the Chinese characters meaning "Not Transferable" on a draft, the draft shall not be transferred.
In exercising the rights provided for in the first paragraph, the holder shall endorse it and deliver the draft.
"Endorsement" refers to a record of items concerned on the backside of a draft or on the allonge to the draft with a signature or seal put to the record.

Article 28 If the draft instrument has not enough space to satisfy the needs of writing, an allonge may be attached.
The first person who writes on the allonge shall put his/her signature or seal to the sticking line of the allonge.

Article 29 An endorsement shall be signed by the endorser, with the date of endorsement.
An endorsement without date shall be regarded as an endorsement before the due date.

Article 30 If a draft is endorsed over to another person entirely or in part, the draft shall bear the name of the endorser.

Article 31 In endorsing over a draft to others, the endorsement shall be in uninterrupted series. The holder shall prove the rights arising out of the draft by the uninterrupted series of endorsement. If a draft is not endorsed over to another person, the holder shall put to the proof the right on the draft according to law.

The term "uninterrupted series" used in the preceding paragraph refers to the sequential consistency in the signatures or seals by the endorser and the endorsee in the transfer of negotiable instruments.

Article 32 In endorsing a draft to others, the subsequent endorser shall be responsible for the authenticity of the endorsement by the immediate prior endorser.
The subsequent endorser refers to the other debtors involved in the draft signed after the signer of the draft.

Article 33 An endorsement shall not have conditions attached, If an endorsement has conditions attached, the conditions do not have the effect on the draft.
The endorsement which transfers part or all the amount on the draft to two or more persons is invalid.

Article 34 If an endorser writes the words "Not Transferable" on a draft and the draft is transferred by the subsequent endorser, the original endorser shall not bear the liability of guarantee to the subsequent endorsee.

Article 35 If an endorsement has the word "Collection", the endorsee has the right to exercise the rights to the draft commissioned on behalf of the endorser. But the endorsee shall not endorse over a draft to others.
A draft may be mortgaged. In mortgaging a draft, the word "Hypothecation" shall be written in the form of endorsement. When the endorses has acquired the hypothecation according to law, the endorsee may exercise the rights to the draft.

Article 36 A draft shall not be endorsed over to others when it has been refused to pay or accepted or the time of payment as indicated is overdue. If such a draft is endorsed over to others, the endorser shall bear the liability of the draft.

Article 37 After an endorser has endorsed over a draft to others, the endorser shall be liable to ensure the draft in the hands of the subsequent holder are accepted or paid. If an endorser cannot get the draft accepted or paid, the endorser shall undertake to claim payment in the amount of the draft plus expenses from the holder as provided in Article 70 and Article 71 of this law.

SECTION THREE ACCEPTANCE

Article 38 Acceptance refers to a promise of a draft payer to pay the actual amount of draft when the draft is due.

Article 39 For a draft payable at a fixed date or at fixed date set after the date of draft, the holder shall make presentation for acceptance to the payer before the due date of draft.
Presentation for acceptance refers to the act of the holder to present the draft and demand for the pledge of the payer to pay.

Article 40 For a draft payable at a fixed date after sight, the holder shall make presentation for acceptance to the payer within one month starting from the date of draft.
If a holder has failed to make presentation for acceptance according to the prescribed time limit, that holder shall lose the right of recourse against the prior holder.
No presentation for acceptance is necessary for a draft payable at sight.

Article 41 A payer shall accept or refuse to accept a draft for which the presentation for acceptance has been made within three days after receiving the draft for which presentation for acceptance is made.
After receiving the draft for which presentation for acceptance is made, the payer shall sign an acknowledgment for receiving the draft. The acknowledgment shall specify the date of the presentation for acceptance and shall be signed.

Article 42 In accepting a draft, the payer shall write "Accepted" across the face of the draft and the date of acceptance and fix the seal. For a draft payable at a fixed date after sight, the date of payment shall be recorded in acceptance.
If no date of acceptance is recorded on a draft, the last day of the time limit prescribed in the first paragraph of the preceding article shall be taken as the date of acceptance.

Article 43 There shall be no conditions attached in accepting a draft. If there are conditions attached in acceptance, it shall be regarded as refusal of acceptance.

Article 44 After accepting a draft, the payer shall be liable to pay when due.

SECTION FOUR GUARANTEE

Article 45 A guarantor shall undertake the liabilities of guaranty for the debt involved in the draft. A guarantor shall be a person other than the debtor of the draft.

Article 46 A guarantor shall record the following items on the draft or allonge:
1. The word "Guarantee";
2. Name and residence of the guarantor;
3. The name of the guarantor;
4. Signature or seal of the guarantor.

Article 47 If a guarantor has failed to record item 3 of the preceding article on the draft or allonge, the acceptor shall be the guarantor of the accepted draft; the drawer shall be the guarantor for the draft not accepted.
If the guarantor has failed to record item 4 of the preceding article, the date of draft shall be the date of guaranty.

Article 48 A guarantor shall guarantee that there are no conditions attached. If conditions have been attached, they shall not effect the liability of guaranty for the draft.

Article 49 A guarantor shall undertake the liability of guaranty for the right to the draft enjoyed by the holder who has acquired the draft according to law, except cases when the debt guaranteed has become invalid due to inadequate recording in the draft.

Article 50 A guarantor shall undertake several liability together with the guaranteed for the draft under guarantee. If the draft is not paid when due, the holder has the right to demand the guarantor for payment and the guarantor shall pay the full amount.

Article 51 If there are two or more guarantors, the guarantors shall undertake several liability.

Article 52 After the draft debt is cleared, the guarantor may exercise the right of recourse of the holder against the guaranteed and the prior holder.

SECTION FIVE PAYMENT

Article 53 A holder of a draft shall make presentation for payment according to the following time limits:
1. Presentation for payment shall be made to the payer within one month starting from the date of draft for a draft payable at sight;
2. Presentation for payment shall be made to the acceptor within 10 days starting from the due date for a draft payable at a fixed date or at a fixed date after the date of draft or at a fixed date after sight.
When the holder has failed to make presentation for payment within the time limited prescribed in the preceding paragraph and some explanations are made, the acceptor or payer shall continue to undertake the liability of payment to the holder.
If the presentation for payment is made through banks entrusted with collection or through negotiable instruments exchange system, it shall be regarded as presentation for payment made by the holder.

Article 54 If a holder presents for payment according to the provisions of the preceding article, the payer shall pay in the full amount of the draft on the same day.

Article 55 If a holder has got the payment, the holder shall sign the draft and hand the draft to the payer. If a holder has entrusted a bank for the collection, the bank entrusted shall enter into the account of the holder the amount of the draft

collected and that shall be regarded as signed and accepted.

Article 56 The liabilities of a bank entrusted with collection by the holder are confined to transfer of the amount of the draft into the account of the holder according to the recordings on the draft.

Article 57 In making out payments, the payer or its entrusted payer shall examine the consistency of the endorsement and check the legal identification or valid documents of the person who makes presentation for payment.
If a payer or its entrusted payer makes the payment out of ulterior motives or out of major blunder, the payer or its entrusted payer shall bear the liabilities on their own.

Article 58 If a payer makes the payment before the due date for draft payable at a fixed date or at a fixed date after the date of draft or at a fixed date after sight, the payer shall bear the responsibilities arising therefrom on his own.

Article 59 If the draft amount is specified in foreign currency, the payment shall be made in Renminbi according to the market exchange rate quoted on the day of payment.
If the parties to a draft have agreements concerning the currencies for payment, the provisions of the agreement shall apply.

Article 60 After the payer has paid the draft amount in full, the liabilities of all debts shall be relieved.

SECTION SIX RIGHT OF RECOURSE

Article 61 Upon a refusal of payment to a draft, the holder may exercise the right of recourse against the endorser, drawer or other debtors of the draft.
The holder may also exercise the right of recourse before the due day of a draft in one of the following cases:
1. The acceptance of a draft is refused;
2. The acceptor or payer has died or fled or lived in hiding;
3. The acceptor or payer has been declared bankrupt according to law or whose business operations have been suspended due to violations of the law.

Article 62 In exercising the right of recourse, the holder shall provide the certificates relating to the refusal of acceptance or dishonour.
In refusing the presentation for acceptance or for payment by the holder, the acceptor or payer shall produce certificates of dishonour or the statement on the ground for protest. If the acceptor or payer has failed to produce the certificate of dishonour or the statement on the ground for protest, the acceptor or payer shall bear all the civil responsibilities arising therefrom.

Article 63 If no certificate of dishonour can be obtained due to the death, flee or hiding of the acceptor or payer or other reasons, other related certificates may be obtained according to law.

Article 64 If an acceptor or a payer has been declared bankrupt by the people's court according to law, the related judicial documents of the people's court have the effect of certifying the dishonour.
If an acceptor or a payer whose business operations have been suspended due to law violations, the related decisions on punishment by related administrative department in charge have the effect of certifying the dishonour.

Article 65 If a holder is unable to present certificates of dishonour, the statement on the ground for protest or provide other legal certificates within the prescribed time limit, the holder shall lose the right of recourse against the prior holder. But the acceptor or payer shall continue to undertake the liabilities to the holder.

Article 66 A holder shall, within three days starting from the date of receiving the certificates relating to refusal of acceptance or dishonour, notify in writing the prior holder of the dishonour. The prior holder shall, within three days of receiving the notice, notify in writing the still preceding prior holder of the dishonour. The holder may also issue written

notices to all the debtors of the draft all the same time.
The holder may continue to exercise the right of recourse even if notification is not made within the time limit prescribed in the preceding paragraph. If the holder has delayed the notification to the prior holder or drawer and caused losses thereby, the parties that have failed to make the notification within the prescribed time limit shall be liable to compensate for the losses, with the amount of compensation being the draft amount.
If the notice has been sent out according to the legal address or the addresses agreed upon within the prescribed time limit, the notification is regarded as having been issued.

Article 67 The written notice served according to the provisions of the first paragraph of the preceding article shall contain the main recordings of the draft and clearly indicates that the draft has been dishonoured.

Article 68 The drawer, endorser, acceptor and guarantor shall bear several liabilities with regard to the holder.
A holder may exercise the right of recourse against one person or several persons or all the draft debtors in disregard of the sequential order of the debtors.
After a holder has exercised the right of recourse against one person or several persons involving in the draft, the holder may also exercise the right of recourse over others involved in the draft. The person against whom the right of recourse has been exercised will enjoy the same right as the holder after the debt has been cleared.

Article 69 In the case in which the holder is the drawer, the holder has no right of recourse to the prior holder. In the case in which the holder is the endorser, the holder has no right of recourse against the subsequent holders.

Article 70 In exercising the right of recourse, the holder may request the person subject to recourse to pay the following money and expenses:
1. The amount of the draft dishonoured;
2. The interests calculated according to the rate fixed by the People's Bank of China on the draft amount from the due date or the date of presentation for payment to the date of liquidation.
3. The expenses incurred in obtaining the related certificates of dishonour and the issuing of notification.
When the person subject to recourse is clearing his debt, the holder shall deliver the draft and related certificates of dishonour and produce the receipts for the interests and expenses received.

Article 71 After debt clearance according to the provisions of the preceding article, the person against whom the right of recourse has been exercised may exercise the right of re-recourse against other draft debtors and request other debtors to pay the following amount and expenses:
1. The complete amount cleared;
2. The interests on the amount cleared calculated according to the rate fixed by the People's Bank of China from the date of liquidation to the date of liquidation for re-recourse.
3. Expenses on issuing notifications.
When the person who exercises the right of re-recourse is getting paid, that person shall deliver the draft and related certificates of dishonour and produce the receipts for the interests and expenses received.

Article 72 The liabilities of the person against whom the right of recourse shall be relieved after the debt has been liquidated according to the provisions of the preceding two articles.

CHAPTER THREE PROMISSORY NOTES

Article 73 A promissory note is an instrument written and issued by a drawer, promising to pay unconditionally a fixed amount of money to a payee or holder at the sight of the instrument.
The term "promissory note" used in this law refers to the bank note.

Article 74 The drawer of a promissory note shall have a reliable source of funds for paying the amount of the promissory

note and ensure payment.

Article 75 A promissory note shall record the following items:
1. The characters indicating "Promissory Note";
2. Unconditional promise to pay;
3. Amount of money fixed;
4. Name of the payee;
5. Date of issue;
6. Signature of the drawer.
A promissory note is invalid if one of the above items is missing.

Article 76 The place of payment, the place of issue and other items recorded on the promissory note shall be clear and definite.
If the instrument does not bear the place of payment, the business site of the issuer shall be taken as the place of payment.
If the instrument does not bear the place of issue, the business site of the issuer shall be taken as the place of issue.

Article 77 When the holder of a promissory note presents the instrument, the drawer shall be liable to pay.

Article 78 The maximum time limit of payment shall not exceed two months starting from the date of draft.

Article 79 If a holder has failed to present the instrument according to the prescribed time limit, the holder shall lose the right of recourse against the prior holders other than the drawer.

Article 80 The provisions on related draft in Chapter Two of this law shall apply with regard to the acts of endorsement, guaranty and payment and the exercise of the right of recourse, except otherwise provided for in this chapter.
The provisions on related draft in Article 24 of this law shall apply with regard to the act of draft, except otherwise provided for in this chapter.

CHAPTER FOUR CHECKS

Article 81 A check is an instrument issued by a drawer, at the sight of which the check deposit bank or other financial institutions unconditionally pay the fixed amount to the payee or holder.

Article 82 In opening a check deposit account, an applicant shall use the true name and present the legal document that certifies his/her identification.
In opening a check deposit account and using checks, there must be a reliable creditability and a certain amount of money deposited in the bank.
In opening a check deposit account, an applicant shall leave samples of the signature or seal in the true name of the applicant.

Article 83 A check can be cashed or transferred into other accounts. For account transfer, a clear indication shall be made across the face of the check.
If checks are used especially for cashing, cash checks can be made separately. A cash check can only be used for cashing.
If checks are used especially for account transfer, transfer check can be made separately. Transfer checks can only be used in account transfer. Cashing is not allowed.

Article 84 A check must record the following items:
1. Characters denoting "Check";
2. Commission to pay unconditionally;

3. Amount fixed;
4. Name of the payee;
5. Date of draft;
6. Signature of the drawer.
A check shall be invalid if one of the above items is missing.

Article 85 The amount on a check may be filled in afterwards by the holder with the authorization of the drawer. The check with the amount not filled in shall not be used.

Article 86 If a check does not bear the name of the payee, it may be recorded afterwards with the authorization of the drawer.
If a check does not bear the place of payment, the business site of the payer shall be taken as the place of payment;
If a check does not bear the place of issue, the business site, residence of the drawer or the place where the drawer often lives shall be taken as the place of issue.
A drawer can record himself as the payee on a check.

Article 87 The amount of the check issued by the drawer shall not exceed the actual amount deposited by the payer at the time of payment.
If the amount of the check issued by the drawer has exceeded the actual amount deposited by the payer at the time of payment, the check is a dishonourable check, which is strictly forbidden.

Article 88 The drawer shall not issue checks with the signature or seal that does not tally that submitted for counter-checking.

Article 89 A drawer shall undertake the liabilities to ensure the payment to the holder according to the amount of the check issued.
If the deposit of the drawer at the place of payee is enough to pay the full amount of the check, the payer shall pay the full amount on the day.

Article 90 A check is payable at sight and not date of payment shall be recorded. The record on the date of payment is invalid.

Article 91 The holder of a check shall make presentation for payment within ten days starting from the date of draft. The time limit on the presentation for payment shall be provided for by the People's Bank of China.
In the case when the time limit on the presentation for payment expires, the payer may refuse to pay. In the case when the payer refuses to pay, the drawer shall still bear the responsibility on the instrument to the holder.

Article 92 If a payer has paid the amount of a check, the payer shall no longer bear the liability for payment to the drawer and shall not bear the liability for payment to the holder, except the cases when payment is made out of ulterior motives or due to major blunder.

Article 93 The provisions on related draft in Chapter Two of this law shall apply with regard to the acts of endorsement and payment and the exercise of the right of recourse with regard to a check, except otherwise provided for in this chapter.
The provisions on related draft in Article 24 of this law shall apply with regard to the act of draft except otherwise provided for in this chapter.

CHAPTER FIVE APPLICATION OF LAW ON FOREIGN-RELATED NEGOTIABLE INSTRUMENTS

Article 94 The application of law concerning foreign-related negotiable instruments shall follow the provisions of this chapter.
The term "foreign-related negotiable instruments" used in the preceding paragraph refers to instruments whose draft,

endorsement, acceptance, guaranty or payment occur both within and outside the territory of the People's Republic of China.

Article 95 In the case when the provisions of the international treaties to which the People's Republic of China is a signatory party or in which the People's Republic of China has joined differ from the provisions of this law, the provisions of the international treaties apply, except those articles on which the People's Republic of China has declared to have reservations.
For cases where there are no provisions in this law or in the international treaties to which the People's Republic of China is a signatory party or in which the People's Republic of China has joined, the common international practice shall apply.

Article 96 For the capability of civil acts of debtors of negotiable instruments, the domestic law shall apply. In the case when a debtor is regarded as being incapable of civil act by the domestic law or whose civil act is restricted but the debtor is regarded as having the capability of civil act by the law of the place of act, the law of the place of act shall apply.

Article 97 For recordings on the draft and promissory notes when drafting, the law of the place of draft shall apply.
For the recordings on the checks, the law of the place of issue shall apply. But the law of the place of payment may also apply if the parties concerned so agree.

Article 98 For acts of endorsement, acceptance, payment and guaranty for negotiable instruments, the law of the place of act shall apply.

Article 99 For the time limit for exercising the right of recourse concerning negotiable instruments, the law of the place of draft shall apply.

Article 100 For the time limit for presentation of negotiable instruments, the method of certificates of dishonour and the time limit for producing certificates of dishonour, the law of the place of payment shall apply.

Article 101 For the procedures for applying for protection of negotiable instruments by a holder who has lost negotiable instruments, the law of the place of payment shall apply.

CHAPTER SIX LEGAL RESPONSIBILITIES

Article 102 Criminal responsibility shall be affixed on one of the following acts of deception:
1. The act of forging or altering a negotiable instrument;
2. The act of deliberately using forged or altered negotiable instruments;
3. The act of issuing dishonourable checks or deliberately issue checks whose signature or seal does not tally with the signature or seal in the true name pre-submitted for counter-checking.
4. The act of issuing drafts or promissory notes without reliable sources of funds in order to obtain money by deception.
5. The act by the drawer of drafts or promissory notes to make false recordings at the time of draft in order to obtain property or money by deception.
6. The act of using negotiable instruments of others or deliberately use negotiable instruments overdue or voided in order to obtain property and money by deception; and
7. A payer has committed one of the aforesaid acts in vicious collaboration with the drawer or holder.

Article 103 Administrative punishment shall be meted out according to the relevant State provisions on one of the aforesaid acts if the case is not serious enough to constitute a crime.

Article 104 A staff member of financial institutions shall be punished for accepting, paying or providing guarantee for negotiable instruments in violation of the provisions of this law due to dereliction of duty in his operations. If serious losses incur and the case is serious enough to constitute a crime, criminal responsibilities shall be affixed.
In cases when losses have been incurred on the parties to negotiable instruments due to the aforesaid acts by staff

members of financial institutions, the financial institutions and persons directly responsible shall undertake the liabilities of compensation according to law.

Article 105 In cases when the payer deliberately detain negotiable instruments payable at sight or negotiable instruments due in order to delay payment, the payer shall be fined and the person or persons directly responsible shall be punished by the financial administrative departments.
If losses incur to the holder or holders due to deliberate detainment of instruments and delay of payment on the part of the payer, the payer shall undertake the liabilities of compensation.

Article 106 For acts other than those for which the liabilities of compensation shall be undertaken according to the provisions of this law that have caused losses to others, the person who has committed the acts shall undertake the civil responsibilities according to law.

CHAPTER SEVEN SUPPLEMENTARY PROVISIONS

Article 107 For the calculation of various time limits provided for by this law, the provisions on the time of calculation of the Civil Procedures Law shall apply.
For time limit calculated monthly, the calculation shall be made according to the corresponding date of the month due; in the absence of corresponding date, the last day of the month shall be taken as the due date.

Article 108 The forms of draft, promissory note and check shall be unified.
The forms of the negotiable instruments and the method for the control of printing shall be provided for by the People's Bank of China.

Article 109 The specific methods of the administration of negotiable instruments shall be formulated by the People's Bank of China according to this law and submitted to the State Council for approval.

Article 110 The law shall come into force as of January 1, 1996.

中华人民共和国票据法

第一章 总 则

第一条 为了规范票据行为，保障票据活动中当事人的合法权益，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 在中华人民共和国境内的票据活动，适用本法。

本法所称票据，是指汇票、本票和支票。

第三条 票据活动应当遵守法律、行政法规，不得损害社会公共利益。

第四条 票据出票人制作票据，应当按照法定条件在票据上签章，并按照所记载的事项承担票据责任。

持票人行使票据权利，应当按照法定程序在票据上签章，并出示票据。

其他票据债务人在票据上签章的，按照票据所记载的事项承担票据责任。

本法所称票据权利，是指持票人向票据债务人请求支付票据金额的权利，包括付款请求权和追索权。

本法所称票据责任，是指票据债务人向持票人支付票据金额的义务。

第五条 票据当事人可以委托其代理人在票据上签章，并应当在票据上表明其代理关系。

没有代理权而以代理人名义在票据上签章的，应当由签章人承担票据责任；代理人超越代理权限的，应当就其超越权限的部分承担票据责任。

第六条 无民事行为能力人或者限制民事行为能力人在票据上签章的，其签章无效，但是不影响其他签章的效力。

第七条 票据上的签章，为签名、盖章或者签名加盖章。

法人和其他使用票据的单位在票据上的签章，为该法人或者该单位的盖章加其法定代表人或者其授权的代理人的签章。

在票据上的签名，应当为该当事人的本名。

第八条 票据金额以中文大写和数码同时记载，二者必须一致，二者不一致的，票据无效。

第九条 票据上的记载事项必须符合本法的规定。

票据金额、日期、收款人名称不得更改，更改的票据无效。

对票据上的其他记载事项，原记载人可以更改，更改时应当由原记载人签章证明。

第十条 票据的签发、取得和转让，应当遵循诚实信用的原则，具有真实的交易关系和债权债务关系。

票据的取得，必须给付对价，即应当给付票据双方当事人认可的相对应的代价。

第十一条　因税收、继承、赠与可以依法无偿取得票据的，不受给付对价的限制。但是，所享有的票据权利不得优于其前手的权利。

前手是指在票据签章人或者持票人之前签章的其他票据债务人。

第十二条　以欺诈、偷盗或者胁迫等手段取得票据的，或者明知有前列情形，出于恶意取得票据的，不得享有票据权利。

持票人因重大过失取得不符合本法规定的票据的，也不得享有票据权利。

第十三条　票据债务人不得以自己与出票人或者与持票人的前手之间的抗辩事由，对抗持票人。但是，持票人明知存在抗辩事由而取得票据的除外。

票据债务人可以对不履行约定义务的与自己有直接债权债务关系的持票人，进行抗辩。

本法所称抗辩，是指票据债务人根据本法规定对票据债权人拒绝履行义务的行为。

第十四条　票据上的记载事项应当真实，不得伪造、变造。伪造、变造票据上的签章和其他记载事项的，应当承担法律责任。

票据上有伪造、变造的签章的，不影响票据上其他真实签章的效力。

票据上其他记载事项被变造的，在变造之前签章的人，对原记载事项负责；在变造之后签章的人，对变造之后的记载事项负责；不能辨别是在票据被变造之前或者之后签章的，视同在变造之前签章。

第十五条　票据丧失，失票人可以及时通知票据的付款人挂失止付，但是，未记载付款人或者无法确定付款人及其代理付款人的票据除外。

收到挂失止付通知的付款人，应当暂停支付。

失票人应当在通知挂失止付后三日内，也可以在票据丧失后，依法向人民法院申请公示催告，或者向人民法院提起诉讼。

第十六条　持票人对票据债务人行使票据权利，或者保全票据权利，应当在票据当事人的营业场所和营业时间内进行，票据当事人无营业场所的，应当在其住所进行。

第十七条　票据权利在下列期限内不行使而消灭：

（一）持票人对票据的出票人和承兑人的权利，自票据到期日起二年。见票即付的汇票、本票，自出票日起二年；

（二）持票人对支票出票人的权利，自出票日起六个月；

（三）持票人对前手的追索权，自被拒绝承兑或者被拒绝付款之日起六个月；

（四）持票人对前手的再追索权，自清偿日或者被提起诉讼之日起三个月。

票据的出票日、到期日由票据当事人依法确定。

第十八条　持票人因超过票据权利时效或者因票据记载事项欠缺而丧失票据权利的，仍享有民事权利，可以请求出票人或者承兑人返还其与未支付的票据金额相当的利益。

第二章　汇　票

第一节　出　票

第十九条　汇票是出票人签发的，委托付款人在见票时或者在指定日期无条件支付确定的金额给收款人或者持票人的票据。

汇票分为银行汇票和商业汇票。

第二十条　出票是指出票人签发票据并将其交付给收款人的票据行为。

第二十一条　汇票的出票人必须与付款人具有真实的委托付款关系，并且具有支付汇票金额的可靠资金来源。

不得签发无对价的汇票用以骗取银行或者其他票据当事人的资金。

第二十二条　汇票必须记载下列事项：

（一）表明“汇票”的字样；

（二）无条件支付的委托；

（三）确定的金额；

（四）付款人名称；

（五）收款人名称；

（六）出票日期；

（七）出票人签章。

汇票上未记载前款规定事项之一的，汇票无效。

第二十三条　汇票上记载付款日期、付款地、出票地等事项的，应当清楚、明确。

汇票上未记载付款日期的，为见票即付。

汇票上未记载付款地的，付款人的营业场所、住所或者经常居住地为付款地。

汇票上未记载出票地的，出票人的营业场所、住所或者经常居住地为出票地。

第二十四条　汇票上可以记载本法规定事项以外的其他出票事项，但是该记载事项不具有汇票上的效力。

第二十五条　付款日期可以按照下列形式之一记载：

（一）见票即付；

（二）定日付款；

（三）出票后定期付款；

（四）见票后定期付款。

前款规定的付款日期为汇票到期日。

第二十六条　出票人签发汇票后，即承担保证该汇票承兑和付款的责任。出票人在汇票得不到承兑或者付款时，应当向持票人清偿本法第七十条、第七十一条规定的金额和费用。

第二节　背　书

第二十七条　持票人可以将汇票权利转让给他人或者将一定的汇票权利授予他人行使。

出票人在汇票上记载“不得转让”字样的，汇票不得转让。

持票人行使第一款规定的权利时，应当背书并交付汇票。

背书是指在票据背面或者粘单上记载有关事项并签章的票据行为。

第二十八条　票据凭证不能满足背书人记载事项的需要，可以加附粘单，粘附于票据凭证上。

粘单上的第一记载人，应当在汇票和粘单的粘接处签章。

第二十九条　背书由背书人签章并记载背书日期。

背书未记载日期的，视为在汇票到期日前背书。

第三十条　汇票以背书转让或者以背书将一定的汇票权利授予他人行使时，必须记载被背书人名称。

第三十一条　以背书转让的汇票，背书应当连续。持票人以背书的连续，证明其汇票权利；非经背书转让，而以其他合法方式取得汇票的，依法举证，证明其汇票权利。

前款所称背书连续，是指在票据转让中，转让汇票的背书人与受让汇票的被背书人在汇票上的签章依次前后衔接。

第三十二条　以背书转让的汇票，后手应当对其直接前手背书的真实性负责。

后手是指在票据签章人之后签章的其他票据债务人。

第三十三条　背书不得附有条件。背书时附有条件的，所附条件不具有汇票上的效力。

将汇票金额的一部分转让的背书或者将汇票金额分别转让给二人以上的背书无效。

第三十四条　背书人在汇票上记载“不得转让”字样，其后手再背书转让的，原背书人对后手的被背书人不承担保证责任。

第三十五条　背书记载“委托收款”字样的，被背书人有权代背书人行使被委托的汇票权利。但是，被背书人不得再以背书转让汇票权利。

汇票可以设定质押；质押时应当以背书记载“质押”字样。被背书人依法实现其质权时，可以行使汇票权利。

第三十六条　汇票被拒绝承兑、被拒绝付款或者超过付款提示期限的，不得背书转让；背书转让的，背书人应当承担汇票责任。

第三十七条　背书人以背书转让汇票后，即承担保证其后手所持汇票承兑和付款的责任。背书人在汇票得不到承兑或者付款时，应当向持票人清偿本法第七十条、第七十一条规定的金额和费用。

第三节　承　兑

第三十八条　承兑是指汇票付款人承诺在汇票到期日支付汇票金额的票据行为。

第三十九条　定日付款或者出票后定期付款的汇票，持票人应当在汇票到期日前向付款人提示承兑。

提示承兑是指持票人向付款人出示汇票，并要求付款人承诺付款的行为。

第四十条　见票后定期付款的汇票，持票人应当自出票日起一个月内向付款人提示承兑。

汇票未按照规定期限提示承兑的，持票人丧失对其前手的追索权。

见票即付的汇票无需提示承兑。

第四十一条　付款人对向其提示承兑的汇票，应当自收到提示承兑的汇票之日起三日内承兑或者拒绝承兑。

付款人收到持票人提示承兑的汇票时，应当向持票人签发收到汇票的回单。回单上应当记明汇票提示承兑日期并签章。

第四十二条　付款人承兑汇票的，应当在汇票正面记载“承兑”字样和承兑日期并签章；见票后定期付款的汇票，应当在承兑时记载付款日期。

汇票上未记载承兑日期的，以前条第一款规定期限的最后一日为承兑日期。

第四十三条　付款人承兑汇票，不得附有条件；承兑附有条件的，视为拒绝承兑。

第四十四条　付款人承兑汇票后，应当承担到期付款的责任。

第四节　保　证

第四十五条　汇票的债务可以由保证人承担保证责任。

保证人由汇票债务人以外的他人担当。

第四十六条　保证人必须在汇票或者粘单上记载下列事项：

（一）表明“保证”的字样；

（二）保证人名称和住所；

（三）被保证人的名称；

（四）保证日期；

（五）保证人签章。

第四十七条　保证人在汇票或者粘单上未记载前条第（三）项的，已承兑的汇票，承兑人为被保证人；未承兑的汇票，出票人为被保证人。

保证人在汇票或者粘单上未记载前条第（四）项的，出票日期为保证日期。

第四十八条　保证不得附有条件；附有条件的，不影响对汇票的保证责任。

第四十九条　保证人对合法取得汇票的持票人所享有的汇票权利，承担保证责任。但是，被保证人的债务因汇票记载事项欠缺而无效的除外。

第五十条　被保证的汇票，保证人应当与被保证人对持票人承担连带责任。汇票到期后得不到付款的，持票人有权向保证人请求付款，保证人应当足额付款。

第五十一条　保证人为二人以上的，保证人之间承担连带责任。

第五十二条　保证人清偿汇票债务后，可以行使持票人对被保证人及其前手的追索权。

第五节　付　款

第五十三条　持票人应当按照下列期限提示付款：

（一）见票即付的汇票，自出票日起一个月内向付款人提示付款；

（二）定日付款、出票后定期付款或者见票后定期付款的汇票，自到期日起十日内向承兑人提示付款。

持票人未按照前款规定期限提示付款的，在作出说明后，承兑人或者付款人仍应当继续对持票人承担付款责任。

通过委托收款银行或者通过票据交换系统向付款人提示付款的，视同持票人提示付款。

第五十四条　持票人依照前条规定提示付款的，付款人必须在当日足额付款。

第五十五条　持票人获得付款的，应当在汇票上签收，并将汇票交给付款人。持票人委托银行收款的，受委托的银行将代收的汇票金额转账收入持票人账户，视同签收。

第五十六条　持票人委托的收款银行的责任，限于按照汇票上记载事项将汇票金额转入持票人账户。

付款人委托的付款银行的责任，限于按照汇票上记载事项从付款人账户支付汇票金额。

第五十七条　付款人及其代理付款人付款时，应当审查汇票背书的连续，并审查提示付款人的合法身份证明或者有效证件。

付款人及其代理付款人以恶意或者有重大过失付款的，应当自行承担责任。

第五十八条　对定日付款、出票后定期付款或者见票后定期付款的汇票，付款人在到期日前付款的，由付款人自行承担所产生的责任。

第五十九条　汇票金额为外币的，按照付款日的市场汇价，以人民币支付。

汇票当事人对汇票支付的货币种类另有约定的，从其约定。

第六十条　付款人依法足额付款后，全体汇票债务人的责任解除。

第六节　追索权

第六十一条　汇票到期被拒绝付款的，持票人可以对背书人、出票人以及汇票的其他债务人行使追索权。

汇票到期日前，有下列情形之一的，持票人也可以行使追索权：

（一）汇票被拒绝承兑的；

（二）承兑人或者付款人死亡、逃匿的；

（三）承兑人或者付款人被依法宣告破产的或者因违法被责令终止业务活动的。

第六十二条　持票人行使追索权时，应当提供被拒绝承兑或者被拒绝付款的有关证明。

持票人提示承兑或者提示付款被拒绝的，承兑人或者付款人必须出具拒绝证明，或者出具退票理由书。未出具拒绝证明或者退票理由书的，应当承担由此产生的民事责任。

第六十三条　持票人因承兑人或者付款人死亡、逃匿或者其他原因，不能取得拒绝证明的，可以依法取得其他有关证明。

第六十四条　承兑人或者付款人被人民法院依法宣告破产的，人民法院的有关司法文书具有拒绝证明的效力。

承兑人或者付款人因违法被责令终止业务活动的，有关行政主管部门的处罚决定具有拒绝证明的效力。

第六十五条　持票人不能出示拒绝证明、退票理由书或者未按照规定期限提供其他合法证明的，丧失对其前手的追索权。但是，承兑人或者付款人仍应当对持票人承担责任。

第六十六条　持票人应当自收到被拒绝承兑或者被拒绝付款的有关证明之日起三日内，将被拒绝事由书面通知其前手；其前手应当自收到通知之日起三日内书面通知其再前手。持票人也可以同时向各汇票债务人发出书面通知。

未按照前款规定期限通知的，持票人仍可以行使追索权。因延期通知给其前手或者出票人造成损失的，由没有按照规定期限通知的汇票当事人，承担对该损失的赔偿责任，但是所赔偿的金额以汇票金额为限。

在规定期限内将通知按照法定地址或者约定的地址邮寄的，视为已经发出通知。

第六十七条　依照前条第一款所作的书面通知，应当记明汇票的主要记载事项，并说明该汇票已被退票。

第六十八条　汇票的出票人、背书人、承兑人和保证人对持票人承担连带责任。

持票人可以不按照汇票债务人的先后顺序，对其中任何一人、数人或者全体行使追索权。

持票人对汇票债务人中的一人或者数人已经进行追索的，对其他汇票债务人仍可以行使追索权。被追索人清偿债务后，与持票人享有同一权利。

第六十九条　持票人为出票人的，对其前手无追索权。持票人为背书人的，对其后手无追索权。

第七十条　持票人行使追索权，可以请求被追索人支付下列金额和费用：

（一）被拒绝付款的汇票金额；

（二）汇票金额自到期日或者提示付款日起至清偿日止，按照中国人民银行规定的利率计算的利息；

（三）取得有关拒绝证明和发出通知书的费用。

被追索人清偿债务时，持票人应当交出汇票和有关拒绝证明，并出具所收到利息和费用的收据。

第七十一条　被追索人依照前条规定清偿后，可以向其他汇票债务人行使再追索权，请求其他汇票债务人支付下列金额和费用：

（一）已清偿的全部金额；

（二）前项金额自清偿日起至再追索清偿日止，按照中国人民银行规定的利率计算的利息；

（三）发出通知书的费用。

行使再追索权的被追索人获得清偿时，应当交出汇票和有关拒绝证明，并出具所收到利息和费用的收据。

第七十二条　被追索人依照前二条规定清偿债务后，其责任解除。

第三章　本　票

第七十三条　本票是出票人签发的，承诺自己在见票时无条件支付确定的金额给收款人或者持票人的票据。

本法所称本票，是指银行本票。

第七十四条　本票的出票人必须具有支付本票金额的可靠资金来源，并保证支付。

第七十五条　本票必须记载下列事项：

（一）表明“本票”的字样；

（二）无条件支付的承诺；

（三）确定的金额；

（四）收款人名称；

（五）出票日期；

（六）出票人签章。

本票上未记载前款规定事项之一的，本票无效。

第七十六条　本票上记载付款地、出票地等事项的，应当清楚、明确。

本票上未记载付款地的，出票人的营业场所为付款地。

本票上未记载出票地的，出票人的营业场所为出票地。

第七十七条　本票的出票人在持票人提示见票时，必须承担付款的责任。

第七十八条　本票自出票日起，付款期限最长不得超过二个月。

第七十九条　本票的持票人未按照规定期限提示见票的，丧失对出票人以外的前手的追索权。

第八十条　本票的背书、保证、付款行为和追索权的行使，除本章规定外，适用本法第二章有关汇票的规定。

本票的出票行为，除本章规定外，适用本法第二十四条关于汇票的规定。

第四章　支　票

第八十一条　支票是出票人签发的，委托办理支票存款业务的银行或者其他金融机构在见票时无条件支付确定的金额给收款人或者持票人的票据。

第八十二条　开立支票存款账户，申请人必须使用其本名，并提交证明其身份的合法证件。

开立支票存款账户和领用支票，应当有可靠的资信，并存入一定的资金。

开立支票存款账户，申请人应当预留其本名的签名式样和印鉴。

第八十三条　支票可以支取现金，也可以转账，用于转账时，应当在支票正面注明。

支票中专门用于支取现金的，可以另行制作现金支票，现金支票只能用于支取现金。

支票中专门用于转账的，可以另行制作转账支票，转账支票只能用于转账，不得支取现金。

第八十四条　支票必须记载下列事项：

（一）表明“支票”的字样；

（二）无条件支付的委托；

（三）确定的金额；

（四）付款人名称；

（五）出票日期；

（六）出票人签章。

支票上未记载前款规定事项之一的，支票无效。

第八十五条　支票上的金额可以由出票人授权补记，未补记前的支票，不得使用。

第八十六条　支票上未记载收款人名称的，经出票人授权，可以补记。

支票上未记载付款地的，付款人的营业场所为付款地。

支票上未记载出票地的，出票人的营业场所、住所或者经常居住地为出票地。出票人可以在支票上记载自己为收款人。

第八十七条　支票的出票人所签发的支票金额不得超过其付款时在付款人处实有的存款金额。

出票人签发的支票金额超过其付款时在付款人处实有的存款金额的，为空头支票。禁止签发空头支票。

第八十八条　支票的出票人不得签发与其预留本名的签名式样或者印鉴不符的支票。

第八十九条　出票人必须按照签发的支票金额承担保证向该持票人付款的责任。

出票人在付款人处的存款足以支付支票金额时，付款人应当在当日足额付款。

第九十条　支票限于见票即付，不得另行记载付款日期。另行记载付款日期的，该记载无效。

第九十一条　支票的持票人应当自出票日起十日内提示付款；异地使用的支票，其提示付款的期限由中国人民银行另行规定。

超过提示付款期限的，付款人可以不予付款；付款人不予付款的，出票人仍应当对持票人承担票据责任。

第九十二条　付款人依法支付支票金额的，对出票人不再承担受委托付款的责任，对持票人不再承担付款的责任。但是，付款人以恶意或者有重大过失付款的除外。

第九十三条　支票的背书、付款行为和追索权的行使，除本章规定外，适用本法第二章有关汇票的规定。

支票的出票行为，除本章规定外，适用本法第二十四条、第二十六条关于汇票的规定。第五章　涉外票据的法律适用

第九十四条　涉外票据的法律适用，依照本章的规定确定。

前款所称涉外票据，是指出票、背书、承兑、保证、付款等行为中，既有发生在中华人民共和国境内又有发生在中华人民共和国境外的票据。

第九十五条　中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用国际条约的规定。但是，中华人民共和国声明保留的条款除外。

本法和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

第九十六条　票据债务人的民事行为能力，适用其本国法律。

票据债务人的民事行为能力，依照其本国法律为无民事行为

能力或者为限制民事行为能力而依照行为地法律为完全民事行为能力的，适用行为地法律。

第九十七条　汇票、本票出票时的记载事项，适用出票地法律。

支票出票时的记载事项，适用出票地法律，经当事人协议，也可以适用付款地法律。

第九十八条　票据的背书、承兑、付款和保证行为，适用行为地法律。

第九十九条　票据追索权的行使期限，适用出票地法律。

第一百条　票据的提示期限、有关拒绝证明的方式、出具拒绝证明的期限，适用付款地法律。

第一百零一条　票据丧失时，失票人请求保全票据权利的程序，适用付款地法律。

第六章　法律责任

第一百零二条　有下列票据欺诈行为之一的，依法追究刑事责任：

（一）伪造、变造票据的；

（二）故意使用伪造、变造的票据的；

（三）签发空头支票或者故意签发与其预留的本名签名式样或者印鉴不符的支票，骗取财物的；

（四）签发无可靠资金来源的汇票、本票，骗取资金的；

（五）汇票、本票的出票人在出票时作虚假记载，骗取财物的；

（六）冒用他人的票据，或者故意使用过期或者作废的票据，骗取财物的；

（七）付款人同出票人、持票人恶意串通，实施前六项所列行为之一的。

第一百零三条　有前条所列行为之一，情节轻微，不构成犯罪的，依照国家有关规定给予行政处罚。

第一百零四条　金融机构工作人员在票据业务中玩忽职守，对违反本法规定的票据予以承兑、付款或者保证的，给予处分；造成重大损失，构成犯罪的，依法追究刑事责任。

由于金融机构工作人员因前款行为给当事人造成损失的，由该金融机构和直接责任人员依法承担赔偿责任。

第一百零五条　票据的付款人对见票即付或者到期的票据，故意压票，拖延支付的，由金融行政管理部门处以罚款，对直接责任人员给予处分。

票据的付款人故意压票，拖延支付，给持票人造成损失的，依法承担赔偿责任。

第一百零六条　依照本法规定承担赔偿责任以外的其他违反本法规定的行为，给他人造成损失的，应当依法承担民事责任。

第七章　附　则

第一百零七条　本法规定的各项期限的计算，适用民法通则关于计算期间的规定。

按月计算期限的，按到期月的对日计算；无对日的，月末日为到期日。

第一百零八条　汇票、本票、支票的格式应当统一。

票据凭证的格式和印制管理办法，由中国人民银行规定。

第一百零九条　票据管理的具体实施办法，由中国人民银行依照本法制定，报国务院批准后施行。

第一百一十条　本法自１９９６年１月１日起施行。