

**Law of the People's Republic of China on the State-Owned Assets of Enterprises**

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

(No. 5)

The Law of the People's Republic of China on the State-Owned Assets of Enterprises, which was adopted at the 5th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on October 28, 2008, is hereby promulgated and shall come into force on May 1, 2009.

President of the People's Republic of China: Hu Jintao

October 28, 2008

Law of the People's Republic of China on the State-Owned Assets of Enterprises

(Adopted at the 5th session of the Standing Committee of the 11th National People's Congress on October 28, 2008)

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## Chapter I General Provisions

Article 1 This law is formulated for the purposes of safeguarding the basic economic system of China, consolidating and developing the state-owned economy, strengthening the protection of state-owned assets, giving play to the leading role of the state-owned economy in the national economy, and promoting the development of the socialist market economy.

Article 2 The term “state-owned assets of enterprises” (hereinafter referred to as the “state-owned assets”) as mentioned in this Law refers to the rights and interests formed by the various forms of capital contribution of the state in enterprises.

Article 3 The state-owned assets shall be owned by the state, i.e. owned by the whole people. The State Council shall, on behalf of the state, exercise the ownership of state-owned assets.

Article 4 The State Council and the local people’s governments shall, in accordance with laws and administrative regulations, perform respectively the contributor’s rights and obligation for state-invested enterprises and enjoy the contributor’s rights and interests on behalf of the state. The State Council shall, on behalf of the state, perform the contributor’s rights and obligation for the large-sized state-invested enterprises that have bearings on the national economic lifeline and state security determined by the State Council and the state-invested enterprises in such fields as important infrastructures and natural resources. The local people’s governments shall, on behalf of the state, perform the contributor’s rights and obligations for other state-invested enterprises.

Article 5 The term “state-invested enterprise” as mentioned in this Law refers to a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling.

Article 6 The State Council and the local people’s governments shall, according to law, perform the contributor’s functions, based on the principles of separation of government bodies and enterprises,

separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

Article 7 The state shall take measures to promote concentration of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the force and influence of the state-owned economy.

Article 8 The state shall establish and improve the state-owned assets administration and supervision system meeting the requirements of the development of the socialist market economy, establish and improve the evaluation and accountability system of value maintenance and increment of state-owned assets, and ensure the performance of responsibilities for the value maintenance and increment of state-owned assets.

Article 9 The state shall establish and improve the basic management system of state-owned assets. The specific measures shall be formulated according to the provisions of the State Council.

Article 10 State-owned assets shall be protected by law, and no entities and individuals shall infringe upon them.

## Chapter II Bodies Performing the Contributor's Functions

Article 11 The state-owned assets supervision and administration body under the State Council and the state-owned assets supervision and administration bodies established by the local people's governments according to the provisions of the State Council shall perform the contributor's functions for state-invested enterprises on behalf of and upon the authorization of the corresponding people's government.

The State Council and the local people's governments may, when necessary, authorize other departments or bodies to perform the contributor's functions for state-invested enterprises on behalf of the corresponding people's government

The bodies and departments that perform the contributor's functions on behalf of the corresponding people's government shall be together referred to as the "bodies performing the contributor's functions" hereinafter.

Article 12 A body performing the contributor's functions on behalf of the corresponding people's government shall enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to the state-invested enterprises according to law.

A body performing the contributor's functions shall formulate or participate in the formulation of the bylaws of state-invested enterprises according to the provisions of laws and administrative regulations.

For the major matters on the performance of the contributor's functions that are subject to the approval of the corresponding people's government as prescribed by laws, administrative regulations and the corresponding people's government, a body performing the contributor's functions shall report such matters to the corresponding people's government for approval.

Article 13 When attending the shareholders' meeting or general assembly of shareholders convoked by a company in which the state has a stake, whether controlling or non-controlling, the shareholder representative(s) appointed by a body performing the contributor's functions shall put forward proposals, present opinions and exercise the voting right under the instructions of the appointing body, and report the performance of his duties and results thereof to the appointing body in good time.

Article 14 Bodies performing the contributor's functions shall perform the contributor's functions according to laws, administrative regulations and enterprise bylaws, safeguard the contributor's rights and interests, and prevent the loss of state-owned assets.

Bodies performing the contributor's functions shall protect the rights legally enjoyed by the

enterprises as the market participants, and shall not intervene in the business activities of enterprises except to legally perform the contributor's functions.

Article 15 A body performing the contributor's functions shall be responsible to the corresponding people's government, report its performance of the contributor's functions to the corresponding people's government, accept the supervision and assessment by the corresponding people's government, and be responsible for the value maintenance and increment of state-owned assets. A body performing the contributor's functions shall, according to the relevant state provisions, report regularly the summary analyses concerning the total volume, structure and changes of, return on, etc. of the state-owned assets to the corresponding people's government.

### Chapter III State-invested Enterprises

Article 16 The state-invested enterprises shall enjoy the rights to possess, use, profit from and dispose of their movables, immovables and other property according to laws, administrative regulations and enterprise bylaws.

The operation autonomy as well as other lawful rights and interests legally enjoyed by the state-invested enterprises shall be protected by law.

Article 17 The state-invested enterprises engaged in business activities shall observe laws and administrative regulations, strengthen business management, enhance economic benefits, accept the administration and supervision legally implemented by the people's governments and their relevant departments and bodies, accept the supervision of the general public, assume social responsibilities, and be responsible to the contributors.

The state-invested enterprises shall establish and improve the legal person governance structure according to law, as well as the internal supervisory management and risk control systems.

Article 18 The state-invested enterprises shall establish and improve the finance and accounting system, maintain account books and conduct accounting according to the provisions of laws,

administrative regulations and the public finance department of the State Council, and provide the contributor with true and complete financial and accounting information according to laws, administrative regulations and enterprise bylaws.

The state-invested enterprises shall distribute profits to the contributor according to laws, administrative regulations and enterprise bylaws.

Article 19 A wholly state-owned company or a company in which the state has a stake, whether controlling or non-controlling, shall set up a board of supervisors in accordance with the Company Law of the People's Republic of China. For a wholly state-owned enterprise, its board of supervisors shall be composed of the supervisors appointed by the body performing the contributor's functions according to the provisions of the State Council.

The board of supervisors of a state-invested enterprise shall, according to laws, administrative regulations and enterprise bylaws, supervise the performance of duties of the directors and senior managers, and supervise and inspect the financial status of the enterprise.

Article 20 A state-invested enterprise shall apply the democratic management through the assembly of employee representatives or other channels according to law.

Article 21 A state-invested enterprise shall legally enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to an enterprise in which it invests.

For the enterprise in which it invests, the state-invested enterprise shall, according to laws and administrative regulations, safeguard its rights and interests as a contributor by formulating or participating in the formulation of the bylaws of the enterprise in which it invests and establishing the internal enterprise supervisory management and risk control systems with definite rights and responsibilities and effective check and balance.

#### Chapter IV Selection and Evaluation of State-invested Enterprise Managers

Article 22 A body performing the contributor's functions shall, according to laws, administrative regulations and enterprise bylaws, appoint or remove, or suggest the appointment or removal of the following personnel of a state-invested enterprise:

1. Appointing and removing the president, vice-presidents, person in charge of finance and other senior managers of a wholly state-owned enterprise;
  2. Appointing and removing the chairman and vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and supervisors of a wholly state-owned company; and
  3. Proposing the director and supervisor candidates to the shareholders' meeting or general assembly of shareholders of a company in which the state has a stake, whether controlling or non-controlling.
- The directors and supervisors of a state-invested enterprise who shall be employee representatives shall be elected democratically by employees according to the relevant laws and administrative regulations.

Article 23 Any of the directors, supervisors and senior managers appointed or proposed for appointment by a body performing the contributor's functions shall meet the following requirements:

1. Having good moral characters;
2. Having the expertise and working capability as required by the position;
3. Being in a health condition enabling him to normally perform his duties; and
4. Meeting other requirements of laws and administrative regulations.

Where any director, supervisor or senior manager, during his term of office, does not satisfy any of the aforesaid requirements any more or becomes prohibited from being a director, supervisor or senior manager of a company as prescribed by the Company Law of the People's Republic of China, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 24 A body performing the contributor's functions shall, according to the prescribed conditions and procedures, assess the candidates for directors, supervisors and senior managers to be appointed or proposed for appointment. If such candidates pass the assessment, it shall appoint or

propose the appointment of them according to the prescribed authority and procedures.

Article 25 Without the approval of the body performing the contributor's functions, no director or senior manager of a wholly state-owned enterprise or wholly state-owned company shall hold a position concurrently in any other enterprise. Without the approval of the shareholders' meeting or the general assembly of shareholders, no director or senior manager of a company in which the state has a stake, whether controlling or non-controlling, shall hold a position concurrently in any other enterprise operating the similar business.

Without the approval of the body performing the contributor's functions, the chairman of the board of directors of a wholly state-owned company shall not be the president concurrently. Without the approval of the shareholders' meeting or the general assembly of shareholders, the chairman of the board of directors of a company in which the state has a controlling stake shall not be the president concurrently.

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

Article 26 The directors, supervisors and senior managers of a state-invested enterprise shall comply with laws, administrative regulations and enterprise bylaws, and bear the obligations of fidelity and diligence to the enterprise; shall not take bribes or acquire other illegal gains or improper benefits by taking advantage of their positions; shall not encroach on or embezzle the enterprise property; shall not decide major enterprise matters ultra vires or in violation of procedures; and shall not otherwise damage the rights and interests of the state-owned assets contributor.

Article 27 The state shall establish the assessment system of business management performance of the managers of state-invested enterprises. A body performing the contributor's functions shall conduct annual and office term assessments of the enterprise managers appointed by it, and decide the rewards and punishments to the enterprise managers according to the assessment results. A body performing the contributor's functions shall, pursuant to the relevant state provisions, determine the standards of remuneration for the managers of state-invested enterprise appointed by it.



Article 28 The principal persons in charge of a wholly state-owned enterprise, a wholly state-owned company or a company in which the state has a controlling stake shall accept the office term economic accountability audit conducted according to law.

Article 29 For the enterprise managers as provided for in subparagraphs 1 and 2 of paragraph 1 of Article 22 of this Law, if they shall be appointed or removed by the corresponding people's government as provided for by the State Council and the local people's governments, such provisions shall prevail. A body performing the contributor's functions shall assess, reward or punish the aforesaid enterprise managers, and decide the standards of remuneration for them, in accordance with the provisions of this Chapter.

## Chapter V Major Matters concerning the Rights and Interests of the State-owned Assets Contributor

### Section 1 Common Provisions

Article 30 The state-invested enterprises shall comply with laws, administrative regulations and enterprise bylaws in such major matters as merger, splitting, restructuring, listing, increase or reduction of registered capital, issuance of bonds, major investment, provision of large-sum security for others, transfer of major property, large-sum donation, distribution of profits, dissolution, and petition for bankruptcy, without prejudice to the rights and interests of the contributor and creditors.

Article 31 The merger, splitting, increase or reduction of registered capital, issuance of bonds, distribution of profits, dissolution and petition for bankruptcy of a wholly state-owned enterprise or a wholly state-owned company shall be decided by the body performing the contributor's functions.

Article 32 The matters listed in Article 30 of this Law of a wholly state-owned enterprise or a wholly state-owned company, other than those that shall be decided by the body performing the contributor's functions according to Article 31 of this Law and the relevant laws, administrative regulations and enterprise bylaws, shall be decided by the persons in charge of the wholly

state-owned enterprise through collective discussion or decided by the board of directors of the wholly state-owned company.

Article 33 The matters listed in Article 30 of this Law of a company in which the state has a stake, whether controlling or non-controlling, shall be decided by the shareholders' meeting, general assembly of shareholders or the board of directors of the company according to laws, administrative regulations and company bylaws. If the matters are decided by the shareholders' meeting or general assembly of shareholders, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

Article 34 For the merger, splitting, dissolution or petition for bankruptcy of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake or any other major matter which shall be reported by the body performing the contributor's functions to the corresponding people's government for approval as prescribed by laws, administrative regulations and the corresponding people's government, the body performing the contributor's functions shall, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, report such a matter to the corresponding people's government for approval.

The "important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake" as mentioned in this Law shall be determined in accordance with the provisions of the State Council.

Article 35 If a relevant law or administrative regulation provides that such matters as issuance of bonds and investment of state-invested enterprises shall be reported to the people's governments or the relevant departments or bodies of the people's governments for examination and approval, verification and approval or archival purposes, such provisions shall prevail.

Article 36 A state-invested enterprise making investment shall comply with the national industrial

policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

Article 37 In such major matters as merger, splitting, restructuring, dissolution and petition for bankruptcy of a state-invested enterprise, the opinions of the trade union of the enterprise shall be heeded, and the opinions and suggestions of the employees shall be heeded through the assembly of employee representatives or other channels.

Article 38 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall perform the contributor's functions in the major matters of an enterprise in which it invests under the provisions of this Chapter by analogy. The specific measures shall be stipulated by the State Council.

## Section 2 Enterprise Restructuring

Article 39 The term "enterprise restructuring" as mentioned this Law refers to:

1. Restructuring a wholly state-owned enterprise into a wholly state-owned company;
2. Restructuring a wholly state-owned enterprise or wholly state-owned company into a company in which the state has or does not have a controlling stake; and
3. Restructuring a company in which the state has a controlling stake into a company in which the state does not have a controlling stake.

Article 40 The enterprise restructuring shall be decided by the body performing the contributor's functions or the shareholders' meeting or general assembly of shareholders of a company under legal proceedings.

For the restructuring of an important wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, the body performing the contributor's functions shall report the restructuring scheme to the corresponding people's government for approval, before making a decision or giving instructions to the shareholder representative(s) appointed by it to attend

the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake.

Article 41 A restructuring scheme shall be worked out for the enterprise restructuring, which shall indicate the enterprise organizational form after the restructuring, plan on the disposition of enterprise assets, debts and claims, plan on equity changes, operating procedures for restructuring, selection and engagement of such intermediaries as assets appraisal and financial audit, etc. If the enterprise restructuring involves the resettlement of enterprise employees, an employee resettlement plan shall be also formulated and adopted at the assembly of employee representatives or the employees' assembly upon deliberation.

Article 42 In the enterprise restructuring, the assets and capital verification, financial auditing and assets appraisal shall be conducted according to the relevant provisions to accurately define and verify assets and objectively and fairly determine the value of assets.

If the enterprise restructuring involves the conversion of such non-monetary property of the enterprise as property in kind, intellectual property rights and land use rights into the contribution of state-owned capital or into the state-owned shares, the converted property shall be appraised according to the relevant provisions, and the amount of the state-owned capital contribution or the amount of state-owned shares shall be determined on the basis of the price confirmed by appraisal. No property shall be converted into shares at a low price, and any other acts prejudicial to the contributor's rights and interests shall be banned.

### Section 3 Transactions with an Affiliated Party

Article 43 An affiliated party of a state-invested enterprise shall not seek any improper benefits and damage the interests of the state-invested enterprise by taking advantage of any transaction with the state-invested enterprise.

The term "affiliated party" as mentioned in this Law refers to a director, supervisor or senior manager of an enterprise or a close relative thereof, or an enterprise owned or actually controlled by

such a person.

Article 44 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall not gratuitously provide an affiliated party with capital, commodities, services or other assets, and shall not conduct a transaction with an affiliated party at an unfair price.

Article 45 Without the approval of the body performing the contributor's functions, a wholly state-owned enterprise or wholly state-owned company shall not commit any of the following acts:

1. Entering into an agreement on property transfer or loan with an affiliated party;
2. Providing a security for an affiliated party; or
3. Making joint investment with an affiliated party to form an enterprise, or making investment in an enterprise owned or actually controlled by a director, supervisor or senior manager or a close relative thereof.

Article 46 A transaction between a company in which the state has a stake, whether controlling or non-controlling, and an affiliated party shall be decided by the shareholders' meeting, general assembly of shareholders or board of directors of the company according to the Company Law of the People's Republic of China, relevant administrative regulations and company bylaws. If the transaction is decided by the shareholders' meeting or general assembly of shareholders of the company, the shareholder representative(s) appointed by the body performing the contributor's functions shall exercise his rights according to Article 13 of this Law.

When the board of directors of the company makes a resolution on a transaction with an affiliated party, the director involved in the transaction shall neither exercise his voting right nor exercise the voting right on behalf of any other director.

#### Section 4 Assets Appraisal

Article 47 For the merger, splitting, restructuring, transfer of major property, investment of

non-monetary property or liquidation of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake, or any other matter in which the assets appraisal shall be conducted according to a law or administrative regulation or the enterprise bylaws, the appraisal of the relevant assets shall be conducted according to the relevant provisions.

Article 48 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake shall entrust a legally established and qualified assets appraisal agency with the assets appraisal; and if any matter that shall be reported to the body performing the contributor's functions for decision is involved, the information on entrusting the assets appraisal agency shall be reported to the body performing the contributor's functions.

Article 49 A wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake and its directors, supervisors and senior managers shall faithfully provide the relevant information and materials for the assets appraisal agency, and shall not collude with the assets appraisal agency in the appraisal.

Article 50 The assets appraisal agency and its staff entrusted with the appraisal of the relevant assets shall comply with laws, administrative regulations and appraisal practice guidelines to appraise the assets independently, objectively and fairly. The assets appraisal agency shall be responsible for the appraisal report produced by it.

## Section 5 Transfer of State-owned Assets

Article 51 The term "transfer of state-owned assets" as mentioned in this Law refers to the legal transfer of the rights and interests formed by the state's contribution to an enterprise to any other entity or individual, other than the gratuitous transfer of state-owned assets according to the state provisions.

Article 52 The transfer of state-owned assets shall be favorable to the strategic adjustment of the

layout and structure of the state-owned economy, the loss of state-owned assets shall be prevented, and the legal rights and interests of all the parties to the transaction shall not be damaged.

Article 53 The transfer of state-owned assets shall be decided by the body performing the contributor's functions. If a body performing the contributor's functions decides to transfer the whole state-owned assets or transfer the partial state-owned assets which will cause the state to lose the controlling position over the enterprise, it shall report such a decision to the corresponding people's government for approval.

Article 54 The transfer of state-owned assets shall follow the principles of valuable consideration, openness, fairness and equity.

Except the state-owned assets that may be directly transferred by agreement in accordance with the state provisions, the transfer of state-owned assets shall be openly conducted at a legally established property right exchange. The transferor shall faithfully disclose the relevant information to invite a transferee; if the invitation leads to two or more prospective transferees, open bidding shall be adopted for the transfer.

The transfer of shares traded on an exchange shall be carried out according to the Securities Law of the People's Republic of China.

Article 55 For the transfer of state-owned assets, a minimum transfer price shall be reasonably determined on the basis of the price which is legally appraised and confirmed by the body performing the contributor's functions or approved by the corresponding people's government after being reported thereto by the body performing the contributor's functions.

Article 56 During the transfer of the state-owned assets which may be transferred to the directors, supervisors and senior managers of the enterprise and their close relatives or the enterprises owned or actually controlled by these persons as prescribed by the laws and administrative regulations or the state-owned assets supervision and administration body under the State Council, the aforesaid persons or enterprises, if participating in the transfer, shall equally compete for the transferred assets

with other participants; the transferor shall truthfully disclose the relevant information according to the relevant state provisions; and the relevant directors, supervisors and senior managers shall not take part in the various work on the formulation and organization of implementation of the transfer plan.

Article 57 If the state-owned assets are transferred to any overseas investor, the relevant state provisions shall be observed, and the national security and public interest shall not be compromised.

#### Chapter VI State-owned Capital Operating Budget

Article 58 The state shall establish and improve the state-owned capital operating budget system to carry out budget administration of the state-owned capital income obtained and expenditures therefrom.

Article 59 For the following state-owned capital income obtained by the state and the expenditures from the following income, a state-owned capital operating budget shall be formulated:

1. The profits distributed to the state by the state-invested enterprises;
2. Income from the transfer of state-owned assets;
3. Liquidation income from the state-invested enterprises; and
4. Other state-owned capital income.

Article 60 The state-owned capital operating budget shall be compiled annually and separately, brought into the budget of the corresponding people's government, and submitted to the corresponding people's congress for approval.

The expenditures in the state-owned capital operating budget shall be arranged according to the scale of income in the budget of the year, and no deficit shall be listed.

Article 61 The public finance departments of the State Council and the relevant local people's governments shall be responsible for compiling the draft state-owned capital operating budgets, and



the bodies performing the contributor's functions shall propose to the public finance departments the draft state-owned capital operating budgets for which they perform the contributor's functions.

Article 62 The specific measures and implementing procedures for the administration of state-owned capital operating budgets shall be stipulated by the State Council and filed with the Standing Committee of the National People's Congress for archival purposes.

#### Chapter VII State-owned Assets Supervision

Article 63 The standing committee of the people's congress at every level shall legally exercise the powers of supervision, through hearing and deliberating the specialized work reports on the performance of the contributor's functions by the corresponding people's government and on the supervision and administration of state-owned assets, organizing the law enforcement inspection on the implementation of this Law, etc.

Article 64 The State Council and the local people's governments shall conduct supervision over the performance of functions by the bodies empowered by them to perform the contributor's functions.

Article 65 The audit organs of the State Council and the local people's governments shall, according to the Audit Law of the People's Republic of China, conduct audit supervision over the implementation of the state-owned capital operating budgets and the state-invested enterprises falling within the subjects of the audit supervision.

Article 66 The State Council and the local people's governments shall make available to the public the status of state-owned assets and the information on the state-owned assets supervision and administration, and accept the supervision of the general public, according to law.

Entities and individuals shall have the right to report and file accusations of acts causing losses of state-owned assets.

Article 67 A body performing the contributor's functions may, when necessary, entrust an accounting firm to audit the annual financial report of a wholly state-owned enterprise or wholly state-owned company, or through a resolution of the shareholders' meeting or general assembly of shareholders of a company in which the state has a controlling stake, cause the company to engage an accounting firm to audit the annual financial report of the company, so as to protect the rights and interests of the contributor.

#### Chapter VIII Legal Liabilities

Article 68 Where a body performing the contributor's functions commits any of the following acts, the directly liable person in charge and other directly liable persons of the body shall be subject to sanctions according to law:

1. Appointing or proposing the appointment of managers of a state-invested enterprise in violation of the statutory qualifications for office;
2. Encroaching upon, illegally withholding or embezzling the funds of a state-invested enterprise or the state-owned capital income to be turned in;
3. Making a decision on a major matter of a state-invested enterprise in violation of the legal authority or procedures, which has caused losses of state-owned assets; or
4. Other wise failing to perform the contributor's functions according to law, which has caused losses of the state-owned assets.

Article 69 Where any staff member of a body performing the contributor's functions neglects his duties, abuses his powers or engages in malpractice for personal gains, which does not constitute a crime, he shall be subject to a sanction according to law.

Article 70 Where any shareholder representative appointed by a body performing the contributor's functions fails to perform his functions according to the instructions of the appointing body, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is

a state functionary, he shall be subject to a sanction according to law.

Article 71 Where any director, supervisor or senior manager of a state-invested enterprise commits any of the following acts, which has caused losses of state-owned assets, he shall be liable for compensation according to law; if he is a state functionary, he shall be subject to a sanction according to law:

1. Taking bribes or obtaining other illegal income or improper benefits by taking advantage of his position;
2. Encroaching on or embezzling enterprise assets;
3. During the enterprise restructuring, property transfer, etc., transferring the enterprise property or converting the enterprise property into shares at a low price, in violation of laws, administrative regulations and the rule of fair trade;
4. Transacting with the enterprise in violation of the provisions of this Law;
5. Unfaithfully providing an assets appraisal agency or accounting firm with the relevant information or materials, or colluding with an assets appraisal agency or accounting firm in issuing a false assets appraisal report or audit report;
6. Making a decision on a major matter of the enterprise in violation of the procedures for decision-making as prescribed by laws, administrative regulations and enterprise bylaws; or
7. Otherwise performing his duties in violation of laws, administrative regulations and enterprise bylaws.

The income obtained from any of the acts listed in the preceding paragraph by a director, supervisor or senior manager of a state-invested enterprise shall be recovered according to law or be owned by the state-invested enterprise.

Where a director, supervisor or senior manager appointed or proposed for appointment by a body performing the contributor's functions commits any of the acts listed in paragraph 1 of this Article, which has caused gross losses of state-owned assets, the body performing the contributor's functions shall remove him or propose the removal of him according to law.

Article 72 During such transactions as one involving an affiliated party and the transfer of

state-owned assets, if the parties maliciously collude to damage the rights and interests of state-owned assets, such transactions shall be void.

Article 73 Where any director, supervisor or senior manager of a wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake is removed from office for a violation of this Law which has caused gross losses of state-owned assets, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake within 5 years from the day of removal; if the violation has caused especially gross losses of state-owned assets or he has been subject to a criminal punishment for corruption, bribery, encroachment upon property, embezzlement of property or undermining of the socialist market economic order, he shall not serve as a director, supervisor or senior manager of any wholly state-owned enterprise, wholly state-owned company or company in which the state has a controlling stake for life.

Article 74 Where an assets appraisal agency or an accounting firm which is entrusted with the assets appraisal or financial auditing of a state-invested enterprise produces a false assets appraisal report or audit report in violation of laws, administrative regulations and practice guidelines, it shall be subject to legal liabilities according to laws and administrative regulations.

Article 75 Whoever violates this Law shall be subject to the criminal liability if the violation constitutes a crime.

#### Chapter IX Supplementary Provisions

Article 76 If any law or administrative regulation provides otherwise for the administration and supervision of state-owned assets of financial enterprises, such provisions shall prevail.

Article 77 This Law shall come into force on May 1, 2009.

中华人民共和国企业国有资产法

中华人民共和国主席令

(第五号)

(相关资料: 法律 1 篇 部门规章 23 篇 其他规范性文件 1 篇 地方法规 64 篇 裁判文书 1 篇 条文释义 相关论文 9 篇 条文释义 1 篇 英文译本)

《中华人民共和国企业国有资产法》已由中华人民共和国第十一届全国人民代表大会常务委员会第五次会议于 2008 年 10 月 28 日通过, 现予公布, 自 2009 年 5 月 1 日起施行。

中华人民共和国主席 胡锦涛

2008 年 10 月 28 日

中华人民共和国企业国有资产法

(2008 年 10 月 28 日第十一届全国人民代表大会常务委员会第五次会议通过)

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## 第一章 总 则

第一条 为了维护国家基本经济制度，巩固和发展国有经济，加强对国有资产的保护，发挥国有经济在国民经济中的主导作用，促进社会主义市场经济发展，制定本法。

第二条 本法所称企业国有资产（以下称国有资产），是指国家对企业各种形式的出资所形成的权益。

第三条 国有资产属于国家所有即全民所有。国务院代表国家行使国有资产所有权。

第四条 国务院和地方人民政府依照法律、行政法规的规定，分别代表国家对国家出资企业履行出资人职责，享有出资人权益。

国务院确定的关系国民经济命脉和国家安全的大型国家出资企业，重要基础设施和重要自然资源等领域的国家出资企业，由国务院代表国家履行出资人职责。其他的国家出资企业，由地方人民政府代表国家履行出资人职责。

第五条 本法所称国家出资企业，是指国家出资的国有独资企业、国有独资公司，以及国有资本控股公司、国有资本参股公司。

第六条 国务院和地方人民政府应当按照政企分开、社会公共管理职能与国有资产出资人职能分开、不干预企业依法自主经营的原则，依法履行出资人职责。

第七条 国家采取措施，推动国有资本向关系国民经济命脉和国家安全的重要行业和关键领域集中，优化国有经济布局 and 结构，推进国有企业的改革和发展，提高国有经济的整体素质，增强国有经济的控制力、影响力。

第八条 国家建立健全与社会主义市场经济发展要求相适应的国有资产管理与监督体制，建立健全国有资产保值增值考核和责任追究制度，落实国有资产保值增值责任。

第九条 国家建立健全国有资产基础管理制度。具体办法按照国务院的规定制定。

第十条 国有资产受法律保护，任何单位和个人不得侵害。

## 第二章 履行出资人职责的机构

第十一条 国务院国有资产监督管理机构和地方人民政府按照国务院的规定设立的国有资产监督管理机构，根据本级人民政府的授权，代表本级人民政府对国家出资企业履行出资人职责。

国务院和地方人民政府根据需要，可以授权其他部门、机构代表本级人民政府对国家出资企业履行出资人职责。

代表本级人民政府履行出资人职责的机构、部门，以下统称履行出资人职责的机构。

第十二条 履行出资人职责的机构代表本级人民政府对国家出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

履行出资人职责的机构依照法律、行政法规的规定，制定或者参与制定国家出资企业的章程。

履行出资人职责的机构对法律、行政法规和本级人民政府规定须经本级人民政府批准的履行出资人职责的重大事项，应当报请本级人民政府批准。

第十三条 履行出资人职责的机构委派的股东代表参加国有资本控股公司、国有资本参股公司召开的股东会会议、股东大会会议，应当按照委派机构的指示提出提案、发表意见、行使表决权，并将其履行职责的情况和结果及时报告委派机构。

第十四条 履行出资人职责的机构应当依照法律、行政法规以及企业章程履行出资人职责，保障出资人权益，防止国有资产损失。

履行出资人职责的机构应当维护企业作为市场主体依法享有的权利，除依法履行出资人职责外，不得干预企业经营活动。



第十五条 履行出资人职责的机构对本级人民政府负责，向本级人民政府报告履行出资人职责的情况，接受本级人民政府的监督和考核，对国有资产的保值增值负责。

履行出资人职责的机构应当按照国家有关规定，定期向本级人民政府报告有关国有资产总量、结构、变动、收益等汇总分析的情况。

### 第三章 国家出资企业

第十六条 国家出资企业对其动产、不动产和其他财产依照法律、行政法规以及企业章程享有占有、使用、收益和处分的权利。

国家出资企业依法享有的经营自主权和其他合法权益受法律保护。

第十七条 国家出资企业从事经营活动，应当遵守法律、行政法规，加强经营管理，提高经济效益，接受人民政府及其有关部门、机构依法实施的管理和监督，接受社会公众的监督，承担社会责任，对出资人负责。

国家出资企业应当依法建立和完善法人治理结构，建立健全内部监督管理和风险控制制度。

第十八条 国家出资企业应当依照法律、行政法规和国务院财政部门的规定，建立健全财务、会计制度，设置会计账簿，进行会计核算，依照法律、行政法规以及企业章程的规定向出资人提供真实、完整的财务、会计信息。

国家出资企业应当依照法律、行政法规以及企业章程的规定，向出资人分配利润。

第十九条 国有独资公司、国有资本控股公司和国有资本参股公司依照《中华人民共和国公司法》的规定设立监事会。国有独资企业由履行出资人职责的机构按照国务院的规定委派监事组成监事会。

国家出资企业的监事会依照法律、行政法规以及企业章程的规定，对董事、高级管理人员执行职务的行为进行监督，对企业财务进行监督检查。

第二十条 国家出资企业依照法律规定，通过职工代表大会或者其他形式，实行民主管理。

第二十一条 国家出资企业对其所出资企业依法享有资产收益、参与重大决策和选择管理者等出资人权利。

国家出资企业对其所出资企业，应当依照法律、行政法规的规定，通过制定或者参与制定所出资企业的章程，建立权责明确、有效制衡的企业内部监督管理和风险控制制度，维护其出资人权益。

#### 第四章 国家出资企业管理者的选择与考核

第二十二条 履行出资人职责的机构依照法律、行政法规以及企业章程的规定，任免或者建议任免国家出资企业的下列人员：

- (一) 任免国有独资企业的经理、副经理、财务负责人和其他高级管理人员；
- (二) 任免国有独资公司的董事长、副董事长、董事、监事会主席和监事；
- (三) 向国有资本控股公司、国有资本参股公司的股东会、股东大会提出董事、监事人选。

国家出资企业中应当由职工代表出任的董事、监事，依照有关法律、行政法规的规定由职工民主选举产生。

第二十三条 履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员，应当具备下列条件：

- (一) 有良好的品行；
- (二) 有符合职位要求的专业知识和工作能力；

(三) 有能够正常履行职责的身体条件;

(四) 法律、行政法规规定的其他条件。

董事、监事、高级管理人员在任职期间出现不符合前款规定情形或者出现《中华人民共和国公司法》规定的不得担任公司董事、监事、高级管理人员情形的,履行出资人职责的机构应当依法予以免职或者提出免职建议。

第二十四条 履行出资人职责的机构对拟任命或者建议任命的董事、监事、高级管理人员的人选,应当按照规定的条件和程序进行考察,考察合格的,按照规定的权限和程序任命或者建议任命。

第二十五条 未经履行出资人职责的机构同意,国有独资企业、国有独资公司的董事、高级管理人员不得在其他企业兼职。未经股东会、股东大会同意,国有资本控股公司、国有资本参股公司的董事、高级管理人员不得在经营同类业务的其他企业兼职。

未经履行出资人职责的机构同意,国有独资公司的董事长不得兼任经理。未经股东会、股东大会同意,国有资本控股公司的董事长不得兼任经理。

董事、高级管理人员不得兼任监事。

第二十六条 国家出资企业的董事、监事、高级管理人员,应当遵守法律、行政法规以及企业章程,对企业负有忠实义务和勤勉义务,不得利用职权收受贿赂或者取得其他非法收入和不当利益,不得侵占、挪用企业资产,不得超越职权或者违反程序决定企业重大事项,不得有其他侵害国有资产出资人权益的行为。

第二十七条 国家建立国家出资企业管理者经营业绩考核制度,履行出资人职责的机构应当对其任命的企业管理者进行年度和任期考核,并依据考核结果决定对企业管理者的奖惩。

履行出资人职责的机构应当按照国家有关规定,确定其任命的国家出资企业管理者的薪酬标准。

第二十八条 国有独资企业、国有独资公司和国有资本控股公司的主要负责人，应当接受依法进行的任期经济责任审计。

第二十九条 本法第二十二条第一款第一项、第二项规定的企业管理者，国务院和地方人民政府规定由本级人民政府任免的，依照其规定。履行出资人职责的机构依照本章规定对上述企业管理者进行考核、奖惩并确定其薪酬标准。

## 第五章 关系国有资产出资人权益的重大事项

### 第一节 一般规定

第三十条 国家出资企业合并、分立、改制、上市，增加或者减少注册资本，发行债券，进行重大投资，为他人提供大额担保，转让重大财产，进行大额捐赠，分配利润，以及解散、申请破产等重大事项，应当遵守法律、行政法规以及企业章程的规定，不得损害出资人和债权人的权益。

第三十一条 国有独资企业、国有独资公司合并、分立，增加或者减少注册资本，发行债券，分配利润，以及解散、申请破产，由履行出资人职责的机构决定。

第三十二条 国有独资企业、国有独资公司有本法第三十条所列事项的，除依照本法第三十一条和有关法律、行政法规以及企业章程的规定，由履行出资人职责的机构决定的以外，国有独资企业由企业负责人集体讨论决定，国有独资公司由董事会决定。

第三十三条 国有资本控股公司、国有资本参股公司有本法第三十条所列事项的，依照法律、行政法规以及公司章程的规定，由公司股东会、股东大会或者董事会决定。由股东会、股东大会决定的，履行出资人职责的机构委派的股东代表应当依照本法第十三条的规定行使权利。

第三十四条 重要的国有独资企业、国有独资公司、国有资本控股公司的合并、分立、解散、申请破产以及法律、行政法规和本级人民政府规定应当由履行出资人职责的机构报经本级人民政府批准的重大事项，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当报请本级人民政府批准。

本法所称的重要的国有独资企业、国有独资公司和国有资本控股公司，按照国务院的规定确定。

第三十五条 国家出资企业发行债券、投资等事项，有关法律、行政法规规定应当报经人民政府或者人民政府有关部门、机构批准、核准或者备案的，依照其规定。

第三十六条 国家出资企业投资应当符合国家产业政策，并按照国家规定进行可行性研究；与他人交易应当公平、有偿，取得合理对价。

第三十七条 国家出资企业的合并、分立、改制、解散、申请破产等重大事项，应当听取企业工会的意见，并通过职工代表大会或者其他形式听取职工的意见和建议。

第三十八条 国有独资企业、国有独资公司、国有资本控股公司对其所出资企业的重大事项参照本章规定履行出资人职责。具体办法由国务院规定。

## 第二节 企业改制

第三十九条 本法所称企业改制是指：

- （一）国有独资企业改为国有独资公司；
- （二）国有独资企业、国有独资公司改为国有资本控股公司或者非国有资本控股公司；
- （三）国有资本控股公司改为非国有资本控股公司。

第四十条 企业改制应当依照法定程序，由履行出资人职责的机构决定或者由公司股东会、股东大会决定。

重要的国有独资企业、国有独资公司、国有资本控股公司的改制，履行出资人职责的机构在作出决定或者向其委派参加国有资本控股公司股东会会议、股东大会会议的股东代表作出指示前，应当将改制方案报请本级人民政府批准。

第四十一条 企业改制应当制定改制方案，载明改制后的企业组织形式、企业资产和债权债务处理方案、股权变动方案、改制的操作程序、资产评估和财务审计等中介机构的选聘等事项。

企业改制涉及重新安置企业职工的，还应当制定职工安置方案，并经职工代表大会或者职工大会审议通过。

第四十二条 企业改制应当按照规定进行清产核资、财务审计、资产评估，准确界定和核实资产，客观、公正地确定资产的价值。

企业改制涉及以企业的实物、知识产权、土地使用权等非货币财产折算为国有资本出资或者股份的，应当按照规定对折价财产进行评估，以评估确认价格作为确定国有资本出资额或者股份数额的依据。不得将财产低价折股或者有其他损害出资人权益的行为。

### 第三节 与关联方的交易

第四十三条 国家出资企业的关联方不得利用与国家出资企业之间的交易，谋取不当利益，损害国家出资企业利益。

本法所称关联方，是指本企业的董事、监事、高级管理人员及其近亲属，以及这些人员所有或者实际控制的企业。

第四十四条 国有独资企业、国有独资公司、国有资本控股公司不得无偿向关联方提供资金、商品、服务或者其他资产，不得以不公平的价格与关联方进行交易。

第四十五条 未经履行出资人职责的机构同意，国有独资企业、国有独资公司不得有下列行为：

（一）与关联方订立财产转让、借款的协议；

（二）为关联方提供担保；

(三)与关联方共同出资设立企业,或者向董事、监事、高级管理人员或者其近亲属所有或者实际控制的企业投资。

第四十六条 国有资本控股公司、国有资本参股公司与关联方的交易,依照《中华人民共和国公司法》和有关法律法规以及公司章程的规定,由公司股东会、股东大会或者董事会决定。由公司股东会、股东大会决定的,履行出资人职责的机构委派的股东代表,应当依照本法第十三条的规定行使权利。

公司董事会对公司与关联方的交易作出决议时,该交易涉及的董事不得行使表决权,也不得代理其他董事行使表决权。

#### 第四节 资产评估

第四十七条 国有独资企业、国有独资公司和国有资本控股公司合并、分立、改制,转让重大财产,以非货币财产对外投资,清算或者有法律、行政法规以及企业章程规定应当进行资产评估的其他情形的,应当按照规定对有关资产进行评估。

第四十八条 国有独资企业、国有独资公司和国有资本控股公司应当委托依法设立的符合条件的资产评估机构进行资产评估;涉及应当报经履行出资人职责的机构决定的事项的,应当将委托资产评估机构的情况向履行出资人职责的机构报告。

第四十九条 国有独资企业、国有独资公司、国有资本控股公司及其董事、监事、高级管理人员应当向资产评估机构如实提供有关情况和资料,不得与资产评估机构串通评估作价。

第五十条 资产评估机构及其工作人员受托评估有关资产,应当遵守法律、行政法规以及评估执业准则,独立、客观、公正地对受托评估的资产进行评估。资产评估机构应当对其出具的评估报告负责。

#### 第五节 国有资产转让

第五十一条 本法所称国有资产转让，是指依法将国家对企业的出资所形成的权益转移给其他单位或者个人的行为；按照国家规定无偿划转国有资产的除外。

第五十二条 国有资产转让应当有利于国有经济布局和结构的战略性调整，防止国有资产损失，不得损害交易各方的合法权益。

第五十三条 国有资产转让由履行出资人职责的机构决定。履行出资人职责的机构决定转让全部国有资产的，或者转让部分国有资产致使国家对该企业不再具有控股地位的，应当报请本级人民政府批准。

第五十四条 国有资产转让应当遵循等价有偿和公开、公平、公正的原则。

除按照国家规定可以直接协议转让的以外，国有资产转让应当在依法设立的产权交易场所公开进行。转让方应当如实披露有关信息，征集受让方；征集产生的受让方为两个以上的，转让应当采用公开竞价的交易方式。

转让上市交易的股份依照《中华人民共和国证券法》的规定进行。

第五十五条 国有资产转让应当以依法评估的、经履行出资人职责的机构认可或者由履行出资人职责的机构报经本级人民政府核准的价格为依据，合理确定最低转让价格。

第五十六条 法律、行政法规或者国务院国有资产监督管理机构规定可以向本企业的董事、监事、高级管理人员或者其近亲属，或者这些人员所有或者实际控制的企业转让的国有资产，在转让时，上述人员或者企业参与受让的，应当与其他受让参与者平等竞买；转让方应当按照国家有关规定，如实披露有关信息；相关的董事、监事和高级管理人员不得参与转让方案的制定和组织实施的各项工作。

第五十七条 国有资产向境外投资者转让的，应当遵守国家有关规定，不得危害国家安全和公共利益。

## 第六章 国有资本经营预算



第五十八条 国家建立健全国有资本经营预算制度，对取得的国有资本收入及其支出实行预算管理。

第五十九条 国家取得的下列国有资本收入，以及下列收入的支出，应当编制国有资本经营预算：

- （一）从国家出资企业分得的利润；
- （二）国有资产转让收入；
- （三）从国家出资企业取得的清算收入；
- （四）其他国有资本收入。

第六十条 国有资本经营预算按年度单独编制，纳入本级人民政府预算，报本级人民代表大会批准。

国有资本经营预算支出按照当年预算收入规模安排，不列赤字。

第六十一条 国务院和有关地方人民政府财政部门负责国有资本经营预算草案的编制工作，履行出资人职责的机构向财政部门提出由其履行出资人职责的国有资本经营预算建议草案。

第六十二条 国有资本经营预算管理的具体办法和实施步骤，由国务院规定，报全国人民代表大会常务委员会备案。

## 第七章 国有资产监督

第六十三条 各级人民代表大会常务委员会通过听取和审议本级人民政府履行出资人职责的情况和国有资产监督管理情况的专项工作报告，组织对本法实施情况的执法检查等，依法行使监督职权。

第六十四条 国务院和地方人民政府应当对其授权履行出资人职责的机构履行职责的情况进行监督。

第六十五条 国务院和地方人民政府审计机关依照《中华人民共和国审计法》的规定，对国有资本经营预算的执行情况和属于审计监督对象的国家出资企业进行审计监督。

第六十六条 国务院和地方人民政府应当依法向社会公布国有资产状况和国有资产监督管理工作情况，接受社会公众的监督。

任何单位和个人有权对造成国有资产损失的行为进行检举和控告。

第六十七条 履行出资人职责的机构根据需要，可以委托会计师事务所对国有独资企业、国有独资公司的年度财务会计报告进行审计，或者通过国有资本控股公司的股东会、股东大会决议，由国有资本控股公司聘请会计师事务所对公司的年度财务会计报告进行审计，维护出资人权益。

## 第八章 法律责任

第六十八条 履行出资人职责的机构有下列行为之一的，对其直接负责的主管人员和其他直接责任人员依法给予处分：

- （一）不按照法定的任职条件，任命或者建议任命国家出资企业管理者的；
- （二）侵占、截留、挪用国家出资企业的资金或者应当上缴的国有资本收入的；
- （三）违反法定的权限、程序，决定国家出资企业重大事项，造成国有资产损失的；
- （四）有其他不依法履行出资人职责的行为，造成国有资产损失的。

第六十九条 履行出资人职责的机构的工作人员玩忽职守、滥用职权、徇私舞弊，尚不构成犯罪的，依法给予处分。

第七十条 履行出资人职责的机构委派的股东代表未按照委派机构的指示履行职责，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分。

第七十一条 国家出资企业的董事、监事、高级管理人员有下列行为之一，造成国有资产损失的，依法承担赔偿责任；属于国家工作人员的，并依法给予处分：

- （一）利用职权收受贿赂或者取得其他非法收入和不当利益的；
- （二）侵占、挪用企业资产的；
- （三）在企业改制、财产转让等过程中，违反法律、行政法规和公平交易规则，将企业财产低价转让、低价折股的；
- （四）违反本法规定与本企业进行交易的；
- （五）不如实向资产评估机构、会计师事务所提供有关情况和资料，或者与资产评估机构、会计师事务所串通出具虚假资产评估报告、审计报告的；
- （六）违反法律、行政法规和企业章程规定的决策程序，决定企业重大事项的；
- （七）有其他违反法律、行政法规和企业章程执行职务行为的。

国家出资企业的董事、监事、高级管理人员因前款所列行为取得的收入，依法予以追缴或者归国家出资企业所有。

履行出资人职责的机构任命或者建议任命的董事、监事、高级管理人员有本条第一款所列行为之一，造成国有资产重大损失的，由履行出资人职责的机构依法予以免职或者提出免职建议。

第七十二条 在涉及关联方交易、国有资产转让等交易活动中，当事人恶意串通，损害国有资产权益的，该交易行为无效。

第七十三条 国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员违反本法规定，造成国有资产重大损失，被免职的，自免职之日起五年内不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员；造成国有资产特别重大损失，或者因贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序被判处刑罚的，终身不得担任国有独资企业、国有独资公司、国有资本控股公司的董事、监事、高级管理人员。

第七十四条 接受委托对国家出资企业进行资产评估、财务审计的资产评估机构、会计师事务所违反法律、行政法规的规定和执业准则，出具虚假的资产评估报告或者审计报告的，依照有关法律、行政法规的规定追究法律责任。

第七十五条 违反本法规定，构成犯罪的，依法追究刑事责任。

## 第九章 附 则

第七十六条 金融企业国有资产的管理与监督，法律、行政法规另有规定的，依照其规定。

第七十七条 本法自2009年5月1日起施行。

# The Constitutional Law of the People's Republic of China

## Chapter One General Principles

### Article 1 [Socialist State]

- (1) The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.
- (2) The socialist system is the basic system of the People's Republic of China. Sabotage of the socialist system by any organization or individual is prohibited.

### Article 2 [Sovereignty]

- (1) All power in the People's Republic of China belongs to the people.
- (2) The organs through which the people exercise state power are the National People's Congress and the local people's congresses at different levels.
- (3) The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.

### Article 3 [Democratic Centralism]

- (1) The state organs of the People's Republic of China apply the principle of democratic centralism.
- (2) The National People's Congress and the local people's congresses at different levels are instituted through democratic election. They are responsible to the people and subject to their supervision.
- (3) All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and under whose supervision they operate.
- (4) The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

### Article 4 [Nationalities, Minorities, Regions, Languages]

- (1) All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity, and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited. The state helps the areas inhabited by minority nationalities speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities.
- (2) Regional autonomy is practiced in areas where people of minority nationalities live in compact communities; in these areas organs of self-government are established for the exercise of the right of autonomy. All the national autonomous areas are inalienable parts of the People's Republic of China.

(3) The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs.

**Article 5 [Socialist Legal System, Rule of Law]**

- (1) The People's Republic of China practices ruling the country in accordance with the law and building a socialist country of law.
- (2) The state upholds the uniformity and dignity of the socialist legal system.
- (3) No law or administrative or local rules and regulations shall contravene the Constitution.
- (4) All state organs, the armed forces, all political parties and public organizations, and all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be looked into.
- (5) No organization or individual may enjoy the privilege of being above the Constitution and the law.

**Article 6 [Socialist Public Ownership]**

- (1) The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of "from each according to his ability, to each according to his work".
- (2) During the primary stage of socialism, the State adheres to the basic economic system with the public ownership remaining dominant and diverse sectors of the economy developing side by side, and to the distribution system with the distribution according to work remaining dominant and the coexistence of a variety of modes of distribution.

**Article 7 [State Economy]**

The State-owned economy, that is, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned economy.

**Article 8 [Agriculture]**

- (1) Rural collective economic organizations practice the double-tier management system that combines unified and separate operations on the basis of the household-based output-related contracted responsibility system. Various forms of the cooperative economy in rural areas such as producers', supply and marketing, credit and consumers' cooperatives belong to the sector of the socialist economy under collective ownership by the working people.
- (2) Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for private use, engage in household sideline production and raise privately owned livestock.
- (3) The various forms of co-operative economy in the cities and towns, such as those in the handicraft, industrial, building, transport, commercial, and service trades, all belong to the sector of socialist economy under collective ownership by the working people.
- (4) The state protects the lawful rights and interests of the urban and rural economic collectives and encourages, guides, and helps the growth of the collective economy.

**Article 9 [Resources]**

- (1) Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches, and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, grassland, unreclaimed land, and beaches that are owned by collectives in accordance with the law.
- (2) The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited.

#### **Article 10 [Land Ownership]**

- (1) Land in the cities is owned by the state.
- (2) Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives.
- (3) The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.
- (4) No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.
- (5) All organizations and individuals who use land must make rational use of the land.

#### **Article 11 [Private Sector of the Economy]**

- (1) Individual, private and other non-public economies that exist within the limits prescribed by law are major components of the socialist market economy.
- (2) The State protects the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors of the economy. The State encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with law, exercises supervision and control over the non-public sectors of the economy.

#### **Article 12 [Protection of Socialist Public Property]**

- (1) Socialist public property is sacred and inviolable.
- (2) The state protects socialist public property. Appropriation or damage of state or collective property by any organization or individual by whatever means is prohibited.

#### **Article 13 [Protection of Private Property]**

- (1) Citizens' lawful private property is inviolable.
- (2) The State, in accordance with law, protects the rights of citizens to private property and to its inheritance.
- (3) The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.

#### **Article 14 [Labor Productivity]**

- (1) The state continuously raises labor productivity, improves economic results and develops the productive forces by enhancing the enthusiasm of the working people, raising the level of their technical skill, disseminating advanced science and technology, improving

the systems of economic administration and enterprise, operation and management, instituting the socialist system of responsibility in various forms, and improving organization of work.

(2) The state practices strict economy and combats waste.

(3) The state properly apportions accumulation and consumption, pays attention to the interests of the collective and the individual as well as of the state and, on the basis of expanded production, gradually improves the material and cultural life of the people.

(4) The State establishes a sound social security system compatible with the level of economic development.

#### **Article 15 [Economic Planning]**

The state has put into practice a socialist market economy. The State strengthens formulating economic laws, improves macro adjustment and control and forbids according to law any units or individuals from interfering with the social economic order.

#### **Article 16 [State Enterprises]**

Stated-owned enterprises have decision-making power in operation and management within the limits prescribed by law. State-owned enterprises practice democratic management through congresses of workers and staff and in other ways in accordance with the law.

#### **Article 17 [Collective Economic Organizations]**

Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they abide by the relevant laws. Collective economic organizations practice democratic management, elect or remove their managerial personnel and decide on major issue concerning operation and management according to law.

#### **Article 18 [Foreign Enterprises]**

(1) The People's Republic of China permits foreign enterprises, other foreign economic organizations, and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China.

(2) All foreign enterprises and other foreign economic organizations in China, as well as joint ventures with Chinese and foreign investment located in China, shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China.

#### **Article 19 [Education]**

(1) The state develops socialist educational undertakings and works to raise the scientific and cultural level of the whole nation.

(2) The state runs schools of various types, makes primary education compulsory and universal, develops secondary, vocational and higher education, and promotes pre-school education.

(3) The state develops educational facilities of various types in order to wipe out illiteracy and provide political, cultural, scientific, technical, and professional education for workers, peasants, state functionaries and other working people. It encourages people to become educated through independent study.



(4) The state encourages the collective economic organizations, state enterprises and undertakings, and other social forces to set up educational institutions of various types in accordance with the law.

(5) The state promotes the nationwide use of Putonghua.

#### **Article 20 [Science]**

The state promotes the development of the natural and social sciences, disseminates scientific and technical knowledge, and commends and rewards achievements in scientific research as well as technological discoveries and inventions.

#### **Article 21 [Health]**

(1) The state develops medical and health services, promotes modern medicine and traditional Chinese medicine, encourages and supports the setting up of various medical and health facilities by the rural economic collectives, state enterprises and undertakings and neighborhood organizations, and promotes public health activities of a mass character, all to protect the people's health.

(2) The state develops physical culture and promotes mass sports activities to build up the people's physique.

#### **Article 22 [Culture]**

(1) The state promotes the development of literature and art, the press, broadcasting, and television undertakings, publishing and distribution services, libraries, museums, cultural centers and other cultural undertakings, that serve the people and socialism, and sponsors mass cultural activities.

(2) The state protects places of scenic and historical interest, valuable cultural monuments, and treasures and other important items of China's historical and cultural heritage.

#### **Article 23 [Intellectual Education]**

The state trains specialized personnel in all fields who serve socialism, increases the number of intellectuals, and creates conditions to give full scope to their role in collective modernization.

#### **Article 24 [Socialist Education]**

(1) The state strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education, and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas.

(2) The state advocates the civic virtues of love of the motherland, of the people, of labor, of science, and of socialism; it educates the people in patriotism, collectivism, internationalism, and communism and in dialectical and historical materialism; it combats capitalist, feudal, and other decadent ideas.

#### **Article 25 [Family Planning]**

The state promotes family planning so that population growth may fit the plan for economic and social development.

#### **Article 26 [Environment]**

(1) The state protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards.

(2) The state organizes and encourages afforestation and the protection of forests.

#### **Article 27 [Administration]**

(1) All state organs carry out the principle of simple and efficient administration, the system of responsibility for work, and the system of training functionaries and appraising their work in order constantly to improve quality of work and efficiency and combat bureaucratism.

(2) All state organs and functionaries must rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision and work hard to serve them.

#### **Article 28 [Public Order]**

The State maintains public order and suppresses treasonable and other criminal activities that endanger State security; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals.

#### **Article 29 [Armed Forces]**

(1) The armed forces of the People's Republic of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labor, participate in national reconstruction, and work hard to serve the people.

(2) The state strengthens the revolutionization, modernization and regularization of the armed forces in order to increase the national defence capability.

#### **Article 30 [Administrative Division]**

(1) The administrative division of the People's Republic of China is as follows:

1. The country is divided into provinces, autonomous regions, and municipalities directly under the Central Government;

2. Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities;

3. Counties and autonomous counties are divided into townships, nationality townships, and towns.

(2) Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities.

(3) All autonomous regions, autonomous prefectures, and autonomous counties are national autonomous areas.

#### **Article 31 [Special Administrative Regions]**

The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions.

#### **Article 32 [Rights of Foreigners]**

(1) The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law of

the People's Republic of China.

(2) The People's Republic of China may grant asylum to foreigners who request it for political reasons.

## **Chapter Two The Fundamental Rights and Duties of Citizens**

### **Article 33 [Citizenship, Equality]**

(1) All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

(2) All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

(3) The State respects and preserves human rights.

### **Article 34 [Electoral Rights and Equality]**

All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.

### **Article 35**

Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.

### **Article 36 [Religion]**

(1) Citizens of the People's Republic of China enjoy freedom of religious belief.

(2) No state organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

(3) The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.

(4) Religious bodies and religious affairs are not subject to any foreign domination.

### **Article 37 [Personal Freedom]**

(1) The personal freedom of citizens of the People's Republic of China is inviolable.

(2) No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

(3) Unlawful deprivation or restriction of citizens' personal freedom by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.

### **Article 38 [Personal Dignity]**

The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge, or frame-up directed against citizens by any means is prohibited.

**Article 39 [Home]**

The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's home is prohibited.

**Article 40 [Correspondence]**

The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence except in cases where, to meet the needs of state security or of investigation into criminal offenses, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.

**Article 41 [Freedom of Speech]**

(1) Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

(2) The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposure, or retaliate against the citizens making them.

(3) Citizens who have suffered losses through infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.

**Article 42 [Work]**

(1) Citizens of the People's Republic of China have the right as well as the duty to work.

(2) Using various channels, the state creates conditions for employment, strengthens labor protection, improves working conditions, and, on the basis of expanded production, increases remuneration for work and social benefits.

(3) Work is the glorious duty of every able-bodied citizen. All working people in State-owned enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The State promotes socialist labor emulation, and commends and rewards model and advanced workers. The State encourages citizens to take part in voluntary labor.

(4) The state provides necessary vocational training to citizens before they are employed.

**Article 43 [Leisure]**

(1) Working people in the People's Republic of China have the right to rest.

(2) The state expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.

**Article 44 [Retirement]**

The state prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of state. The livelihood of retired personnel is ensured by the state and society.

**Article 45 [Social Security]**

(1) Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill, or disabled. The state develops the social insurance, social relief, and medical and health services that are required to enable citizens to enjoy this right.

(2) The state and society ensure the livelihood of disabled members of the armed forces, provide pensions for the families of martyrs, and give preferential treatment to the families of military personnel.

(3) The state and society help make arrangements for the work, livelihood and education of the blind, deafmutes and other handicapped citizens.

**Article 46 [Education]**

(1) Citizens of the People's Republic of China have the duty as well as the right to receive education.

(2) The state promotes the all-round moral, intellectual, and physical development of children and young people.

**Article 47 [Research]**

Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation, and other cultural pursuits. The state encourages and assists creative endeavors conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art, and other cultural work.

**Article 48 [Gender Equality]**

(1) Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural, and social, including family life.

(2) The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike, and trains and selects cadres from among women.

**Article 49 [Marriage, Family, Parentage]**

(1) Marriage, the family, and mother and child are protected by the state.

(2) Both husband and wife have the duty to practice family planning.

(3) Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents.

(4) Violation of the freedom of marriage is prohibited. Maltreatment of old people, women, and children is prohibited.

**Article 50 [Nationals Abroad]**

The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.

**Article 51 [Interest of the State]**

The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens.

**Article 52 [Unity]**

It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

**Article 53 [Obedience to the Constitution]**

Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property, and observe labor discipline and public order and respect social ethics.

**Article 54 [Integrity of the Motherland]**

It is the duty of citizens of the People's Republic of China to safeguard the security, honor, and interests of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland.

**Article 55 [Defence]**

(1) It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression.

(2) It is the honorable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law.

**Article 56 [Taxation]**

It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law.

## **Chapter Three The Structure of the State**

### **Section I The National People's Congress**

**Article 57 [Highest Organ of State Power]**

The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

**Article 58 [Legislative Power]**

The National People's Congress and its Standing Committee exercise the legislative power of the state.

**Article 59 [Representation]**

(1) The National People's Congress is composed of deputies elected from the provinces, autonomous regions, municipalities directly under the Central Government, and the special administrative regions, and of deputies elected from the armed forces. All the minority nationalities are entitled to appropriate representation.

(2) Election of deputies to the National People's Congress is conducted by the Standing

Committee of the National People's Congress.

(3) The number of deputies to the National People's Congress and the manner of their election are prescribed by law.

**Article 60 [Election, Term]**

(1) The National People's Congress is elected for a term of five years.

(2) Two months before the expiration of the term of office of a National People's Congress, its Standing Committee must ensure that the election of deputies to the succeeding National People's Congress is completed. Should exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress and the term of office of the current National People's Congress may be extended. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances.

**Article 61 [Sessions, Presidium]**

(1) The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies to the National People's Congress so propose.

(2) When the National People's Congress meets, it elects a presidium to conduct its session.

**Article 62 [Functions and Powers]**

The National People's Congress exercises the following functions and powers:

1. to amend the Constitution;
2. to supervise the enforcement of the Constitution;
3. to enact and amend basic statutes concerning criminal offenses, civil affairs, the state organs, and other matters;
4. to elect the President and the Vice President of the People's Republic of China;
5. to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and to decide on the choice of the Vice Premiers, State Councillors, Ministers in charge of ministries or commissions, and the Auditor General and the Secretary General of the State Council upon nomination by the Premier;
6. to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all the others on the Central Military Commission;
7. to elect the President of the Supreme People's Court;
8. to elect the Procurator General of the Supreme People's Procuratorate;
9. to examine and approve the plan for national economic and social development and the report on its implementation;
10. to examine and approve the state budget and the report on its implementation;
11. to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;
12. to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;
13. to decide on the establishment of special administrative regions and the systems to be instituted there;

14. to decide on questions of war and peace; and
15. to exercise such other functions and powers as the highest organ of state power should exercise.

**Article 63 [Power to Recall or Remove Officials]**

The National People's Congress has the power to recall or remove from office the following persons:

1. the President and the Vice President of the People's Republic of China;
2. the Premier, Vice Premiers, State Councillors, Ministers in charge of ministries or commissions, and the Auditor General and the Secretary General of the State Council;
3. the Chairman of the Central Military Commission and others on the Commission;
4. the President of the Supreme People's Court; and
5. the Procurator General of the Supreme People's Procuratorate.

**Article 64 [Amendments to the Constitution]**

(1) Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a majority vote of more than two-thirds of all the deputies to the Congress.

(2) Statutes and resolutions are adopted by a majority vote of more than one half of all the deputies to the National People's Congress.

**Article 65 [Standing Committee]**

(1) The Standing Committee of the National People's Congress is composed of the following:

the Chairman;  
the Vice Chairmen;  
the Secretary General; and  
members.

(2) Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress.

(3) The National People's Congress elects, and has the power to recall, all those on its Standing Committee.

(4) No one on the Standing Committee of the National People's Congress shall hold any post in any of the administrative, judicial or procuratorial organs of the state.

**Article 66 [Election, Term, Chairmen]**

(1) The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

(2) The Chairman and Vice Chairmen of the Standing Committee shall serve no more than two consecutive terms.

**Article 67 [Functions and Powers]**

The Standing Committee of the National People's Congress exercises the following functions and powers:

1. to interpret the Constitution and supervise its enforcement;



2. to enact and amend statutes with the exception of those which should be enacted by the National People's Congress;
3. to enact, when the National People's Congress is not in session, partial supplements and amendments to statutes enacted by the National People's Congress provided that they do not contravene the basic principles of these statutes;
4. to interpret statutes;
5. to examine and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development and to the state budget that prove necessary in the course of their implementation;
6. to supervise the work of the State Council, the Central Military Commission, the Supreme People's Court, and the Supreme People's Procuratorate;
7. to annul those administrative rules and regulations, decisions, or orders of the State Council that contravene the Constitution or the statutes;
8. to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations;
9. to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions or the Auditor General and the Secretary General of the State Council upon nomination by the Premier of the State Council;
10. to decide, upon nomination by the Chairman of the Central Military Commission, on the choice of others on the Commission, when the National People's Congress is not in session;
11. to appoint and remove Vice Presidents and judges of the Supreme People's Court, members of its Judicial Committee, and the President of the Military Court at the suggestion of the President of the Supreme People's Court;
12. to appoint and remove Deputy Procurators General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee, and the Chief Procurator of the Military Procuratorate at the suggestion of the Procurator General of the Supreme People's Procuratorate, and to approve the appointment and removal of the chief procurators of the people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government;
13. to decide on the appointment and recall of plenipotentiary representatives abroad;
14. to decide on the ratification and abrogation of treaties and important agreements concluded with foreign states;
15. to institute systems of titles and ranks for military and diplomatic personnel and of other specific titles and ranks;
16. to institute state medals and titles of honor and decide on their conferment;
17. to decide on the granting of special pardons;
18. to decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defence against aggression;
19. to decide on general mobilization or partial mobilization;
20. to decide on entering the state of emergency throughout the country or in particular provinces, autonomous regions, or municipalities directly under the Central Government; and
21. to exercise such other functions and powers as the National People's Congress may assign to it.

**Article 68 [Presidency]**

(1) The Chairman of the Standing Committee of the National People's Congress presides over the work of the Standing Committee and convenes its meetings. The Vice Chairmen and the Secretary General assist in the work of the Chairman.

(2) Executive meetings with the participation of the Chairman, Vice Chairman and Secretary General handle the important day-to-day work of the Standing Committee of the National People's Congress.

**Article 69 [Report on the Work]**

The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on its work to the Congress.

**Article 70 [Committees]**

(1) The National People's Congress establishes a Nationalities Committee, a Law Committee, a Financial and Economic Committee, an Education, Science, Culture, and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee, and such other special committees as are necessary. These special committees work under the direction of the Standing Committee of the National People's Congress when the Congress is not in session.

(2) The special committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the National People's Congress and its Standing Committee.

**Article 71 [Ad Hoc Committees]**

(1) The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports.

(2) All organs of state, public organizations, and citizens concerned are obliged to supply the necessary information to those committees of inquiry when they conduct investigations.

**Article 72 [Legislative Initiative]**

Deputies to the National People's Congress and all those on its Standing Committee have the right, in accordance with procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee.

**Article 73 [Right to Question the State Council]**

Deputies to the National People's Congress during its sessions, and all those on its Standing Committee during its meetings, have the right to address questions, in accordance with procedures prescribed by law, to the State Council or the ministries and commissions under the State Council, which must answer the questions in a responsible manner.

**Article 74 [Immunity]**

No deputy to the National People's Congress may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the National People's Congress is not in session, without the consent of

its Standing Committee.

**Article 75 [Indemnity]**

Deputies to the National People's Congress may not be called to legal account for their speeches or votes at its meetings.

**Article 76 [Obedience to the Constitution]**

(1) Deputies to the National People's Congress must play an exemplary role in abiding by the Constitution and the law and keeping state secrets and, in production and other work and their public activities, assist in the enforcement of the Constitution and the law.

(2) Deputies to the National People's Congress should maintain close contact with the units which elected them and with the people, listen to and convey the opinions and demands of the people, and work hard to serve them.

**Article 77 [Direct/Imperative Mandate]**

Deputies to the National People's Congress are subject to the supervision of the units which elected them. The electoral units have the power, through procedures prescribed by law, to recall deputies whom they elected.

**Article 78 [Organizational Law]**

The organization and working procedures of the National People's Congress and its Standing Committee are prescribed by law.

**Section II The President**

**Article 79 [Election, Term]**

(1) The President and Vice President of the People's Republic of China are elected by the National People's Congress.

(2) Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice President of the People's Republic of China.

(3) The term of office of the President and Vice President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive terms.

**Article 80 [Functions and Powers]**

The President of the People's Republic of China, in pursuance of decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints and removes the Premier, Vice Premiers, State Councillors, Ministers in charge of ministries or commissions, and the Auditor General and the Secretary General of the State Council; confers state medals and titles of honor; issues orders of special pardons; proclaims entering of the state of emergency; proclaims a state of war; and issues mobilization orders.

**Article 81 [Diplomatic Representation]**

The President of the People's Republic of China, on behalf of the People's Republic of

China, engages in activities involving State affairs and receives foreign diplomatic representatives and, in pursuance of decisions of the Standing Committee of the National People's Congress, appoints and recalls plenipotentiary representatives abroad, and ratifies and abrogates treaties and important agreements concluded with foreign states.

**Article 82 [Vice President]**

- (1) The Vice President of the People's Republic of China assists in the work of the President.
- (2) The Vice President of the People's Republic of China may exercise such parts of the functions and powers of the President as may be deputed by the President.

**Article 83 [End of Office]**

The President and Vice President of the People's Republic of China exercise their functions and powers until the new President and Vice President elected by the succeeding National People's Congress assume office.

**Article 84 [Vacancy]**

- (1) In case the office of the President of the People's Republic of China falls vacant, the Vice President succeeds to the office of President.
- (2) In case the office of the Vice President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice President to fill the vacancy.
- (3) In the event that the offices of both the President and the Vice President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China.

**Section III The State Council**

**Article 85 [Governmental Powers]**

The State Council, that is, the Central People's Government, of the People's Republic of China is the executive body of the highest organ of state power; it is the highest organ of state administration.

**Article 86 [Composition]**

- (1) The State Council is composed of the following:
  - the Premier;
  - the Vice Premiers;
  - the State Councillors;
  - the Ministers in charge of ministries,
  - the Ministers in charge of commissions;
  - the Auditor General; and
  - the Secretary General.
- (2) The Premier has overall responsibility for the State Council. The ministers have overall responsibility for the ministries or commissions under their charge.

(39) The organization of the State Council is prescribed by law.

**Article 87 [Term]**

(1) The term of office of the State Council is the same as that of the National People's Congress.

(2) The Premier, Vice Premiers, and State Councillors shall serve no more than two consecutive terms.

**Article 88 [Premier]**

(1) The Premier directs the work of the State Council. The Vice Premiers and State Councillors assist in the work of the Premier.

(2) Executive meetings of the State Council are composed of the Premier, the Vice Premiers, the State Councillors, and the Secretary General of the State Council.

(3) The Premier convenes and presides over the executive meetings and plenary meetings of the State Council.

**Article 89 [Functions and Powers]**

The State Council exercises the following functions and powers:

1. to adopt administrative measures, enact administrative rules and regulations, and issue decisions and orders in accordance with the Constitution and the statutes;
2. to submit proposals to the National People's Congress or its Standing Committee;
3. to lay down the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions, and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions;
4. to exercise unified leadership over the work of local organs of state administration at different levels throughout the country, and to lay down the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions, and municipalities directly under the Central Government;
5. to draw up and implement the plan for national economic and social development and the state budget;
6. to direct and administer economic affairs and urban and rural development;
7. to direct and administer affairs of education, science, culture, public health, physical culture, and family planning;
8. to direct and administer civil affairs, public security, judicial administration, supervision, and other related matters;
9. to conduct foreign affairs and conclude treaties and agreements with foreign states;
10. to direct and administer the building of national defence;
11. to direct and administer affairs concerning the nationalities, and to safeguard the equal rights of minority nationalities and the right of autonomy of the national autonomous areas;
12. to protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;
13. to alter or annul inappropriate orders, directives, and regulations issued by the ministries or commissions;
14. to alter or annul inappropriate decisions and orders issued by local organs of state administration at different levels;

15. to approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;
16. in accordance with the provisions of law, to decide on entering the state of emergency in parts of provinces, autonomous regions, and municipalities directly under the Central Government;
17. to examine and decide on the size of administrative organs and, in accordance with the law, to appoint, remove, and train administrative officers, appraise their work and reward or punish them; and
18. to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign it.

#### **Article 90 [Ministers]**

- (1) The Ministers in charge of ministries or commissions of the State Council are responsible for the work of their respective departments and convene and preside over ministerial meetings or commission meetings that discuss and decide on major issues in the work of their respective departments.
- (2) The ministries and commissions issue orders, directives, and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions, and orders issued by the State Council.

#### **Article 91 [Auditing Body]**

- (1) The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels, and those of the state financial and monetary organizations and of enterprises and undertakings.
- (2) Under the direction of the Premier of the State Council, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual.

#### **Article 92 [Report on the Work]**

The State Council is responsible, and reports on its work, to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee.

### **Section IV The Central Military Commission**

#### **Article 93 [Function, Composition, Term]**

- (1) The Central Military Commission of the People's Republic of China directs the armed forces of the country.
- (2) The Central Military Commission is composed of the following:  
the Chairman;  
the Vice Chairmen; and  
members.
- (3) The Chairman of the Central Military Commission has overall responsibility for the

Commission.

(4) The term of office of the Central Military Commission is the same as that of the National People's Congress.

**Article 94 [Responsibility]**

The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee.

**Section V The Local People's Congresses and Governments**

**Article 95 [Local Governments]**

(1) People's congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns.

(2) The organization of local people's congresses and local people's governments at different levels is prescribed by law.

(3) Organs of self-government are established in autonomous regions, autonomous prefectures, and autonomous counties. The organization and working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections V and VI of Chapter Three of the Constitution.

**Article 96 [State Power, Standing Committees]**

(1) Local people's congresses at different levels are local organs of state power.

(2) Local people's congresses at and above the county level establish standing committees.

**Article 97 [Deputies]**

(1) Deputies to the people's congresses of provinces, municipalities directly under the Central Government, and cities divided into districts are elected by the people's congresses at the next lower level; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are elected directly by their constituencies.

(2) The number of deputies to local people's congresses at different levels and the manner of their election are prescribed by law.

**Article 98 [Term]**

The term of office of the local people's congresses at various levels is five years.

**Article 99 [Obedience to the Constitution]**

(1) Local people's congresses at different levels ensure the observance and implementation of the Constitution, the statutes and the administrative rules and regulations in their respective administrative areas. Within the limits of their authority as prescribed by law, they adopt and issue resolutions and examine and decide on plans for local economic and cultural development and for the development of public services.

(2) Local people's congresses at and above the county level examine and approve the plans for economic and social development and the budgets of their respective

administrative areas, and examine and approve reports on their implementation. They have the power to alter or annul inappropriate decisions of their own standing committees. (39) The people's congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the peculiarities of the nationalities concerned.

**Article 100 [Obedience to the Central Government]**

The people's congresses of provinces and municipalities directly under the Central Government, and their standing committees, may adopt local regulations, which must not contravene the Constitution, the statutes, and the administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.

**Article 101 [Power to Elect and Recall Officials]**

(1) At their respective levels, local people's congresses elect, and have the power to recall, governors and deputy governors, or mayors and deputy mayors, or heads and deputy heads of counties, districts, townships, and towns.

(2) Local people's congresses at and above the county level elect, and have the power to recall, presidents of people's courts and chief procurators of people's procuratorates at the corresponding level. The election or recall of chief procurators of people's procuratorates shall be reported to the chief procurators of the people's procuratorates at the next higher level for submission to the standing committees of the people's congresses at the corresponding level for approval.

**Article 102 [Direct/Imperative Mandate]**

(1) Deputies to the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts are subject to supervision by the units which elected them; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are subject to supervision by their constituencies.

(2) The electoral units and constituencies which elect deputies to local people's congresses at different levels have the power, according to procedures prescribed by law, to recall deputies whom they elected.

**Article 103 [Responsibility of Standing Committees]**

(1) The standing committee of a local people's congress at and above the county level is composed of a chairman, vice chairmen and members, and is responsible, and reports on its work, to the people's congress at the corresponding level.

(2) The local people's congress at and above the county level elects, and has the power to recall, anyone on the standing committee of the people's congress at the corresponding level.

(3) No one on the standing committee of a local people's congress at and above the county level shall hold any post in state administrative, judicial, and procuratorial organs.

**Article 104 [Functions and Powers]**

The standing committee of a Local people's congress at and above the county level discusses and decides on major issues in all fields of work in its administrative area;



supervises the work of the people's government, people's court and people's procuratorate at the corresponding level; annuls inappropriate decisions and orders of the people's government at the corresponding level; annuls inappropriate resolutions of the people's congress at the next lower level; decides on the appointment and removal of functionaries of state organs within the limits of its authority as prescribed by law; and, when the people's congress at the corresponding level is not in session, recalls individual deputies to the people's congress at the next higher level and elects individual deputies to fill vacancies in that people's congress.

#### **Article 105 [Executive Bodies]**

(1) Local people's governments at different levels are the executive bodies of local organs of state power as well as the local organs of state administration at the corresponding level.  
(2) Local people's governments at different levels practice the system of overall responsibility by governors, mayors, county heads, district heads, township heads, and town heads.

#### **Article 106 [Corresponding Terms]**

The term of office of local people's governments at different levels is the same as that of the people's congresses at the corresponding level.

#### **Article 107 [Administrative Work]**

(1) Local people's governments at and above the county level, within the limits of their authority as prescribed by law, conduct the administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, nationalities affairs, judicial administration, supervision, and family planning in their respective administrative areas; issue decisions and orders; appoint, remove, and train administrative functionaries, appraise their work and reward or punish them.  
(2) People's governments of townships, nationality townships, and towns carry out the resolutions of the people's congress at the corresponding level as well as the decisions and orders of the state administrative organs at the next higher level and conduct administrative work in their respective administrative areas.  
(3) People's governments of provinces and municipalities directly under the Central Government decide on the establishment and geographic division of townships, nationality townships, and towns.

#### **Article 108 [Hierarchy of Government]**

Local people's governments at and above the county level direct the work of their subordinate departments and of people's governments at lower levels, and have the power to alter or annul inappropriate decisions of their subordinate departments and people's governments at lower levels.

#### **Article 109 [Auditing Bodies]**

Auditing bodies are established by local people's governments at and above the county level. Local auditing bodies at different levels independently exercise their power to supervise through auditing in accordance with the law and are responsible to the people's government at the corresponding level and to the auditing body at the next higher level.

**Article 110 [Responsibility]**

(1) Local people's governments at different levels are responsible, and report on their work, to people's congresses at the corresponding level. Local people's governments at and above the county level are responsible, and report on their work, to the standing committee of the people's congress at the corresponding level when the congress is not in session.

(2) Local people's governments at different levels are responsible, and report on their work, to the state administrative organs at the next higher level. Local people's governments at different levels throughout the country are state administrative organs under the unified leadership of the State Council and are subordinate to it.

**Article 111 [Committees on Grass Roots Level]**

(1) The residents' committees and villagers' committees established among urban and rural residents on the basis of their place of residence are mass organizations of self-management at the grass roots level. The chairman, vice chairmen and members of each residents' or villagers' committee are elected by the residents. The relationship between the residents' and villagers' committees and the grass roots organs of state power is prescribed by law.

(2) The residents' and villagers' committees establish committees for people's mediation, public security, public health, and other matters in order to manage public affairs and social services in their areas, mediate civil disputes, help maintain public order, and convey residents' opinions and demands and make suggestions to the people's government.

**Section VI Self-Government of National Autonomous Areas**

**Article 112 [Autonomies Areas]**

The organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures, and autonomous counties.

**Article 113 [Representation]**

(1) In the people's congress of an autonomous region, prefecture or county, in addition to the deputies of the nationality or nationalities exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation.

(2) The chairmanship and vice chairmanships of the standing committee of the people's congress of an autonomous region, prefecture or county shall include a citizen or citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

**Article 114 [Nationality of the Administrative Head]**

The administrative head of an autonomous region, prefecture or county shall be a citizen of the nationality, or of one of the nationalities, exercising regional autonomy in the area concerned.

**Article 115 [Power of Autonomy]**

The organs of self-government of autonomous regions, prefectures, and counties exercise the functions and powers of local organs of state as specified in Section V of Chapter Three of the Constitution. At the same time, they exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, the law of regional national autonomy and other laws, and implement the laws and policies of the state in the light of the existing local situation.

**Article 116 [Autonomy Regulations]**

People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic, and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

**Article 117 [Financial Autonomy]**

The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used by the organs of self-government of those areas on their own.

**Article 118 [Autonomous Development Plans]**

- (1) The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of state plans.
- (2) In exploiting natural resources and building enterprises in the national autonomous areas, the state shall give due consideration to the interests of those areas.

**Article 119 [Autonomous Education]**

The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health, and physical culture affairs in their respective areas, protect and accumulate the cultural heritage of the nationalities and work for the development and flourishing of their cultures.

**Article 120 [Autonomous Security Forces]**

The organs of self-government of the national autonomous areas may, in accordance with the military system of the state and concrete local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.

**Article 121 [Autonomous Language]**

In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the autonomy regulations of the respective areas, employ the spoken and written language or languages in common use in the locality.

**Article 122 [Minorities]**

- (1) The state gives financial, material, and technical assistance to the minority nationalities to accelerate their economic and cultural development.
- (2) The state helps the national autonomous areas train large numbers of cadres at different levels and specialized personnel and skilled workers of different professions and trades from among the nationality or nationalities in those areas.

## **Section VII The People's Courts and Procuratorates**

### **Article 123 [Judicial Organs]**

The people's courts in the People's Republic of China are the judicial organs of the state.

### **Article 124 [Supreme People's Court]**

- (1) The People's Republic of China establishes the Supreme People's Court and the local people's courts at different levels, military courts and other special people's courts.
- (2) The term of office of the President of the Supreme People's Court is the same as that of the National People's Congress; the President shall serve no more than two consecutive terms.
- (3) The organization of people's courts is prescribed by law.

### **Article 125 [Publicity, Right of Defence]**

All cases handled by the people's courts, except for those involving special circumstances as specified by law, shall be heard in public. The accused has the right of defence.

### **Article 126 [Independence]**

The people's courts shall, in accordance with the law exercise judicial power independently and are not subject to interference by administrative organs, public organizations, or individuals.

### **Article 127 [Highest Judicial Organ]**

- (1) The Supreme People's Court is the highest judicial organ.
- (2) The Supreme People's Court supervises the administration of justice by the local people's courts at different levels and by the special people's courts; people's courts at higher levels supervise the administration of justice by those at lower levels.

### **Article 128 [Responsibility of the Supreme People's Court]**

The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local people's courts at different levels are responsible to the organs of state power which created them.

### **Article 129 [People's Procuratorates]**

The people's procuratorates of the People's Republic of China are state organs for legal supervision.

### **Article 130 [Supreme People's Procuratorate]**

- (1) The People's Republic of China establishes the Supreme People's Procuratorate and

the local people's procuratorates at different levels, military procuratorates, and other special people's procuratorates.

(2) The term of office of the Procurator General of the Supreme People's Procuratorate is the same as that of the National People's Congress; the Procurator General shall serve no more than two consecutive terms.

(3) The organization of people's procuratorates is prescribed by law.

#### **Article 131 [Procuratorial Power, Independence]**

People's procuratorates shall, in accordance with the law, exercise procuratorial power independently and are not subject to interference by administrative organs, public organizations, or individuals.

#### **Article 132 [Highest Procuratorial Organ]**

(1) The Supreme People's Procuratorate is the highest procuratorial organ.

(2) The Supreme People's Procuratorate directs the work of the local people's procuratorates at different levels and of the special people's procuratorates; people's procuratorates at higher levels direct the work of those at lower levels.

#### **Article 133 [Responsibility of Supreme People's Procuratorate]**

The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. Local people's procuratorates at different levels are responsible to the organs of state power at the corresponding levels which created them and to the people's procuratorates at the higher level.

#### **Article 134 [Language in Trials]**

(1) Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality.

(2) In an area where people of a minority nationality live in a compact community or where a number of nationalities live together, hearings should be conducted in the language or languages in common use in the locality; indictments, judgements, notices, and other documents should be written, according to actual needs, in the language or languages in common use in the locality.

#### **Article 135 [Independence of Functions]**

The people's courts, people's procuratorates, and public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall co-ordinate their efforts and check each other to ensure correct and effective enforcement of law.

### **Chapter Four The National Flag, the National Anthem, the National Emblem and the Capital**

#### **Article 136 [National Flag]**

- (1) The national flag of the People's Republic of China is a red flag with five stars.
- (2) The National Anthem of the People's Republic of China is the March of the Volunteers.

**Article 137 [National Emblem]**

The national emblem of the People's Republic of China is Tian'anmen in the center illuminated by five stars and encircled by ears of grain and a cogwheel.

**Article 138 [Capital]**

The capital of the People's Republic of China is Beijing.

## 中华人民共和国宪法

(1982年12月4日第五届全国人民代表大会第五次会议通过 1982年12月4日全国人民代表大会公告公布施行)

根据 1988 年 4 月 12 日第七届全国人民代表大会第一次会议通过的《中华人民共和国宪法修正案》、1993 年 3 月 29 日第八届全国人民代表大会第一次会议通过的《中华人民共和国宪法修正案》、1999 年 3 月 15 日第九届全国人民代表大会第二次会议通过的《中华人民共和国宪法修正案》和 2004 年 3 月 14 日第十届全国人民代表大会第二次会议通过的《中华人民共和国宪法修正案》修正)

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## 序言

中国是世界上历史最悠久的国家之一。中国各族人民共同创造了光辉灿烂的文化，具有光荣的革命传统。

一八四〇年以后，封建的中国逐渐变成半殖民地、半封建的国家。中国人民为国家独立、民族解放和民主自由进行了前仆后继的英勇奋斗。

二十世纪，中国发生了翻天覆地的伟大历史变革。

一九一一年孙中山先生领导的辛亥革命，废除了封建帝制，创立了中华民国。但是，中国人民反对帝国主义和封建主义的历史任务还没有完成。

一九四九年，以毛泽东主席为领袖的中国共产党领导中国各族人民，在经历了长期的艰难曲折的武装斗争和其他形式的斗争以后，终于推翻了帝国主义、封建主义和官僚资本主义的统治，取得了新民主主义革命的伟大胜利，建立了中华人民共和国。从此，中国人民掌握了国家的权力，成为国家的主人。

中华人民共和国成立以后，我国社会逐步实现了由新民主主义到社会主义的过渡。生产资料私有制的社会主义改造已经完成，人剥削人的制度已经消灭，社会主义制度已经确立。工人阶级领导的、以工农联盟为基础的人民民主专政，实质上即无产阶级专政，得到巩固和发展。中国人民和中国人民解放军战胜了帝国主义、霸权主义的侵略、破坏和武装挑衅，维护了国家的独立和安全，增强了国防。经济建设取得了重大的成就，独立的、比较完整的社会主义工业体系已经基本形成，农业生产显著提高。教育、科学、文化等事业有了很大的发展，社会主义思想教育取得了明显的成效。广大人民的生活有了较大的改善。

中国新民主主义革命的胜利和社会主义事业的成就，是中国共产党领导中国各族人民，在马克思列宁主义、毛泽东思想的指引下，坚持真理，修正错误，战胜许多艰难险阻而取得的。我国将长期处于社会主义初级阶段。国家的根本任务是，沿着中国特色社会主义道路，集中力量进行社会主义现代化建设。中国各族人民将继续在中国共产党领导下，在马克思列宁主义、毛泽东思想、邓小平理论和“三个代表”重要思想指引下，坚持人民民主专政，坚持社会主义道路，坚持改革开放，不断完善社会主义的各项制度，发展社会主义市场经济，发展社会主义民主，健全社会主义法制，自力更生，艰苦奋斗，逐步实现工业、农业、国防和科学技术的现代化，推动物质文明、政治文明和精神文明协调发展，把我国建设成为富强、民主、文明的社会主义国家。

在我国，剥削阶级作为阶级已经消灭，但是阶级斗争还将在一定范围内长期存在。中国人民对敌视和破坏我国社会主义制度的国内外的敌对势力和敌对分子，必须进行斗争。

台湾是中华人民共和国的神圣领土的一部分。完成统一祖国的大业是包括台湾同胞在内的全中国人民的神圣职责。



社会主义的建设事业必须依靠工人、农民和知识分子，团结一切可以团结的力量。在长期的革命和建设过程中，已经结成由中国共产党领导的，有各民主党派和各人民团体参加的，包括全体社会主义劳动者、社会主义事业的建设者、拥护社会主义的爱国者和拥护祖国统一的爱国者的广泛的爱国统一战线，这个统一战线将继续巩固和发展。中国人民政治协商会议是有广泛代表性的统一战线组织，过去发挥了重要的历史作用，今后在国家政治生活、社会生活和对外友好活动中，在进行社会主义现代化建设、维护国家的统一和团结的斗争中，将进一步发挥它的重要作用。中国共产党领导的多党合作和政治协商制度将长期存在和发展。

中华人民共和国是全国各族人民共同缔造的统一的多民族国家。平等、团结、互助的社会主义民族关系已经确立，并将继续加强。在维护民族团结的斗争中，要反对大民族主义，主要是大汉族主义，也要反对地方民族主义。国家尽一切努力，促进全国各民族的共同繁荣。

中国革命和建设的成就是同世界人民的支持分不开的。中国的前途是同世界的前途紧密地联系在一起的。中国坚持独立自主的对外政策，坚持互相尊重主权和领土完整、互不侵犯、互不干涉内政、平等互利、和平共处的五项原则，发展同各国的外交关系和经济、文化的交流；坚持反对帝国主义、霸权主义、殖民主义，加强同世界各国人民的团结，支持被压迫民族和发展中国家争取和维护民族独立、发展民族经济的正义斗争，为维护世界和平和促进人类进步事业而努力。

本宪法以法律的形式确认了中国各族人民奋斗的成果，规定了国家的根本制度和根本任务，是国家的根本法，具有最高的法律效力。全国各族人民、一切国家机关和武装力量、各政党和各社会团体、各企业事业组织，都必须以宪法为根本的活动准则，并且负有维护宪法尊严、保证宪法实施的职责。

## 第一章 总纲

第一条 中华人民共和国是工人阶级领导的、以工农联盟为基础的人民民主专政的社会主义国家。

社会主义制度是中华人民共和国的根本制度。禁止任何组织或者个人破坏社会主义制度。

第二条 中华人民共和国的一切权力属于人民。

人民行使国家权力的机关是全国人民代表大会和地方各级人民代表大会。

人民依照法律规定，通过各种途径和形式，管理国家事务，管理经济和文化事业，管理社会事务。

第三条 中华人民共和国的国家机构实行民主集中制的原则。

全国人民代表大会和地方各级人民代表大会都由民主选举产生，对人民负责，受人民监督。

国家行政机关、审判机关、检察机关都由人民代表大会产生，对它负责，受它监督。

中央和地方的国家机构职权的划分，遵循在中央的统一领导下，充分发挥地方的主动性、积极性的原则。

第四条 中华人民共和国各民族一律平等。国家保障各少数民族的合法的权利和利益，维护和发展各民族的平等、团结、互助关系。禁止对任何民族的歧视和压迫，禁止破坏民族团结和制造民族分裂的行为。

国家根据各少数民族的特点和需要，帮助各少数民族地区加速经济和文化的发展。

各少数民族聚居的地方实行区域自治，设立自治机关，行使自治权。各民族自治地方都是中华人民共和国不可分离的部分。

各民族都有使用和发展自己的语言文字的自由，都有保持或者改革自己的风俗习惯的自由。

第五条 中华人民共和国实行依法治国，建设社会主义法治国家。

国家维护社会主义法制的统一和尊严。

一切法律、行政法规和地方性法规都不得同宪法相抵触。

一切国家机关和武装力量、各政党和各社会团体、各企业事业组织都必须遵守宪法和法律。一切违反宪法和法律的行为，必须予以追究。

任何组织或者个人都不得有超越宪法和法律的特权。

第六条 中华人民共和国的社会主义经济制度的基础是生产资料的社会主义公有制，即全民所有制和劳动群众集体所有制。社会主义公有制消灭人剥削人的制度，实行各尽所能、按劳分配的原则。

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，坚持按劳分配为主体、多种分配方式并存的分配制度。

第七条 国有经济，即社会主义全民所有制经济，是国民经济中的主导力量。国家保障国有经济的巩固和发展。

第八条 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。农村中的生产、供销、信用、消费等各种形式的合作经济，是社会主义劳动群众集体所有制经济。参加农村集体经济组织的劳动者，有权在法律规定的范围内经营自留地、自留山、家庭副业和饲养自留畜。

城镇中的手工业、工业、建筑业、运输业、商业、服务业等行业的各种形式的合作经济，都是社会主义劳动群众集体所有制经济。

国家保护城乡集体经济组织的合法的权利和利益，鼓励、指导和帮助集体经济的发展。

第九条 矿藏、水流、森林、山岭、草原、荒地、滩涂等自然资源，都属于国家所有，即全民所有；由法律规定属于集体所有的森林和山岭、草原、荒地、滩涂除外。

国家保障自然资源的合理利用，保护珍贵的动物和植物。禁止任何组织或者个人用任何手段侵占或者破坏自然资源。

第十条 城市的土地属于国家所有。

农村和城市郊区的土地，除由法律规定属于国家所有的以外，属于集体所有；宅基地和自留地、自留山，也属于集体所有。

国家为了公共利益的需要，可以依照法律规定对土地实行征收或者征用并给予补偿。

任何组织或者个人不得侵占、买卖或者以其他形式非法转让土地。土地的使用权可以依照法律的规定转让。

一切使用土地的组织和个人必须合理地利用土地。

第十一条 在法律规定范围内的个体经济、私营经济等非公有制经济，是社会主义市场经济的重要组成部分。

国家保护个体经济、私营经济等非公有制经济的合法的权利和利益。国家鼓励、支持和引导非公有制经济的发展，并对非公有制经济依法实行监督和管理。

第十二条 社会主义的公共财产神圣不可侵犯。

国家保护社会主义的公共财产。禁止任何组织或者个人用任何手段侵占或者破坏国家的和集体的财产。

第十三条 公民的合法的私有财产不受侵犯。

国家依照法律规定保护公民的私有财产权和继承权。

国家为了公共利益的需要，可以依照法律规定对公民的私有财产实行征收或者征用并给予补偿。

第十四条 国家通过提高劳动者的积极性和技术水平，推广先进的科学技术，完善经济管理体制和企业经营管理制度，实行各种形式的社会主义责任制，改进劳动组织，以不断提高劳动生产率和经济效益，发展社会生产力。

国家企业事业组织和街道组织举办各种医疗卫生设施，开展群众性的卫生活动，保护人民健康。

国家发展体育事业，开展群众性的体育活动，增强人民体质。

第二十二条 国家发展为人民服务、为社会主义服务的文学艺术事业、新闻广播电视事业、出版发行事业、图书馆博物馆文化馆和其他文化事业，开展群众性的文化活动。

国家保护名胜古迹、珍贵文物和其他重要历史文化遗产。

第二十三条 国家培养为社会主义服务的各种专业人才，扩大知识分子的队伍，创造条件，充分发挥他们在社会主义现代化建设中的作用。

第二十四条 国家通过普及理想教育、道德教育、文化教育、纪律和法制教育，通过在城乡不同范围的群众中制定和执行各种守则、公约，加强社会主义精神文明的建设。

国家提倡爱祖国、爱人民、爱劳动、爱科学、爱社会主义的公德，在人民中进行爱国主义、集体主义和国际主义、共产主义的教育，进行辩证唯物主义和历史唯物主义的教育，反对资本主义的、封建主义的和其他的腐朽思想。

第二十五条 国家推行计划生育，使人口的增长同经济和社会发展规划相适应。

第二十六条 国家保护和改善生活环境和生态环境，防治污染和其他公害。

国家组织和鼓励植树造林，保护林木。

第二十七条 一切国家机关实行精简的原则，实行工作责任制，实行工作人员的培训和考核制度，不断提高工作质量和工作效率，反对官僚主义。

一切国家机关和国家工作人员必须依靠人民的支持，经常保持同人民的密切联系，倾听人民的意见和建议，接受人民的监督，努力为人民服务。

第二十八条 国家维护社会秩序，镇压叛国和其他危害国家安全的犯罪活动，制裁危害社会治安、破坏社会主义经济和其他犯罪的活动，惩办和改造犯罪分子。

第二十九条 中华人民共和国的武装力量属于人民。它的任务是巩固国防，抵抗侵略，保卫祖国，保卫人民的和平劳动，参加国家建设事业，努力为人民服务。

国家加强武装力量的革命化、现代化、正规化的建设，增强国防力量。

第三十条 中华人民共和国的行政区域划分如下：

国家厉行节约，反对浪费。

国家合理安排积累和消费，兼顾国家、集体和个人的利益，在发展生产的基础上，逐步改善人民的物质生活和文化生活。

国家建立健全同经济发展水平相适应的社会保障制度。

第十五条 国家实行社会主义市场经济。

国家加强经济立法，完善宏观调控。

国家依法禁止任何组织或者个人扰乱社会经济秩序。

第十六条 国有企业在法律规定的范围内有权自主经营。

国有企业依照法律规定，通过职工代表大会和其他形式，实行民主管理。

第十七条 集体经济组织在遵守有关法律的前提下，有独立进行经济活动的自主权。

集体经济组织实行民主管理，依照法律规定选举和罢免管理人员，决定经营管理的重大问题。

第十八条 中华人民共和国允许外国的企业和其他经济组织或者个人依照中华人民共和国法律的规定在中国投资，同中国的企业或者其他经济组织进行各种形式的经济合作。

在中国境内的外国企业和其他外国经济组织以及中外合资经营的企业，都必须遵守中华人民共和国的法律。它们的合法的权利和利益受中华人民共和国法律的保护。

第十九条 国家发展社会主义的教育事业，提高全国人民的科学文化水平。

国家举办各种学校，普及初等义务教育，发展中等教育、职业教育和高等教育，并且发展学前教育。

国家发展各种教育设施，扫除文盲，对工人、农民、国家工作人员和其他劳动者进行政治、文化、科学、技术、业务的教育，鼓励自学成才。

国家鼓励集体经济组织、国家企业事业组织和其他社会力量依照法律规定举办各种教育事业。

国家推广全国通用的普通话。

第二十条 国家发展自然科学和社会科学事业，普及科学和技术知识，奖励科学研究成果和技术发明创造。

第二十一条 国家发展医疗卫生事业，发展现代医药和我国传统医药，鼓励和支持农村集体经济组织、

宗教团体和宗教事务不受外国势力的支配。

第三十七条 中华人民共和国公民的人身自由不受侵犯。

任何公民，非经人民检察院批准或者决定或者人民法院决定，并由公安机关执行，不受逮捕。

禁止非法拘禁和以其他方法非法剥夺或者限制公民的人身自由，禁止非法搜查公民的身体。

第三十八条 中华人民共和国公民的人格尊严不受侵犯。禁止用任何方法对公民进行侮辱、诽谤和诬告陷害。

第三十九条 中华人民共和国公民的住宅不受侵犯。禁止非法搜查或者非法侵入公民的住宅。

第四十条 中华人民共和国公民的通信自由和通信秘密受法律的保护。除因国家安全或者追查刑事犯罪的需要，由公安机关或者检察机关依照法律规定的程序对通信进行检查外，任何组织或者个人不得以任何理由侵犯公民的通信自由和通信秘密。

第四十一条 中华人民共和国公民对于任何国家机关和国家工作人员，有提出批评和建议的权利；对于任何国家机关和国家工作人员的违法失职行为，有向有关国家机关提出申诉、控告或者检举的权利，但是不得捏造或者歪曲事实进行诬告陷害。

对于公民的申诉、控告或者检举，有关国家机关必须查清事实，负责处理。任何人不得压制和打击报复。

由于国家机关和国家工作人员侵犯公民权利而受到损失的人，有依照法律规定取得赔偿的权利。

第四十二条 中华人民共和国公民有劳动的权利和义务。

国家通过各种途径，创造劳动就业条件，加强劳动保护，改善劳动条件，并在发展生产的基础上，提高劳动报酬和福利待遇。

劳动是一切有劳动能力的公民的光荣职责。国有企业和城乡集体经济组织的劳动者都应当以国家主人翁的态度对待自己的劳动。国家提倡社会主义劳动竞赛，奖励劳动模范和先进工作者。国家提倡公民从事义务劳动。

国家对就业前的公民进行必要的劳动就业训练。

第四十三条 中华人民共和国劳动者有休息的权利。

国家发展劳动者休息和休养的设施，规定职工的工作时间和休假制度。

(一)全国分为省、自治区、直辖市；

(二)省、自治区分为自治州、县、自治县、市；

(三)县、自治县分为乡、民族乡、镇。

直辖市和较大的市分为区、县。自治州分为县、自治县、市。

自治区、自治州、自治县都是民族自治地方。

第三十一条 国家在必要时得设立特别行政区。在特别行政区内实行的制度按照具体情况由全国人民代表大会以法律规定。

第三十二条 中华人民共和国保护在中国境内的外国人的合法权利和利益，在中国境内的外国人必须遵守中华人民共和国的法律。

中华人民共和国对于因为政治原因要求避难的外国人，可以给予受庇护的权利。

## 第二章 公民的基本权利和义务

第三十三条 凡具有中华人民共和国国籍的人都是中华人民共和国公民。

中华人民共和国公民在法律面前一律平等。

国家尊重和保障人权。

任何公民享有宪法和法律规定的权利，同时必须履行宪法和法律规定的义务。

第三十四条 中华人民共和国年满十八周岁的公民，不分民族、种族、性别、职业、家庭出身、宗教信仰、教育程度、财产状况、居住期限，都有选举权和被选举权；但是依照法律被剥夺政治权利的人除外。

第三十五条 中华人民共和国公民有言论、出版、集会、结社、游行、示威的自由。

第三十六条 中华人民共和国公民有宗教信仰自由。

任何国家机关、社会团体和个人不得强制公民信仰宗教或者不信仰宗教，不得歧视信仰宗教的公民和不信仰宗教的公民。

国家保护正常的宗教活动。任何人不得利用宗教进行破坏社会秩序、损害公民身体健康、妨碍国家教育制度的活动。

第四十四条 国家依照法律规定实行企业事业组织的职工和国家机关工作人员的退休制度。退休人员的生活受到国家和社会的保障。

第四十五条 中华人民共和国公民在年老、疾病或者丧失劳动能力的情况下，有从国家和社会获得物质帮助的权利。国家发展为公民享受这些权利所需要的社会保险、社会救济和医疗卫生事业。

国家和社会保障残废军人的生活，抚恤烈士家属，优待军人家属。

国家和社会帮助安排盲、聋、哑和其他有残疾的公民的劳动、生活和教育。

第四十六条 中华人民共和国公民有受教育的权利和义务。

国家培养青年、少年、儿童在品德、智力、体质等方面全面发展。

第四十七条 中华人民共和国公民有进行科学研究、文学艺术创作和其他文化活动的自由。国家对于从事教育、科学、技术、文学、艺术和其他文化事业的公民的有益于人民的创造性工作，给以鼓励和帮助。

第四十八条 中华人民共和国妇女在政治的、经济的、文化的、社会的和家庭的生活等各方面享有同男子平等的权利。

国家保护妇女的权利和利益，实行男女同工同酬，培养和选拔妇女干部。

第四十九条 婚姻、家庭、母亲和儿童受国家的保护。

夫妻双方有实行计划生育的义务。

父母有抚养教育未成年子女的义务，成年子女有赡养扶助父母的义务。

禁止破坏婚姻自由，禁止虐待老人、妇女和儿童。

第五十条 中华人民共和国保护华侨的正当的权利和利益，保护归侨和侨眷的合法的权利和利益。

第五十一条 中华人民共和国公民在行使自由和权利的时候，不得损害国家的、社会的、集体的利益和其他公民的合法的自由和权利。

第五十二条 中华人民共和国公民有维护国家统一和全国民族团结的义务。

第五十三条 中华人民共和国公民必须遵守宪法和法律，保守国家秘密，爱护公共财产，遵守劳动纪律，遵守公共秩序，尊重社会公德。

第五十四条 中华人民共和国公民有维护祖国的安全、荣誉和利益的义务，不得有危害祖国的安全、荣



誉和利益的行为。

第五十五条 保卫祖国、抵抗侵略是中华人民共和国每一个公民的神圣职责。

依照法律服兵役和参加民兵组织是中华人民共和国公民的光荣义务。

第五十六条 中华人民共和国公民有依照法律纳税的义务。

### 第三章 国家机构

#### 第一节 全国人民代表大会

第五十七条 中华人民共和国全国人民代表大会是最高国家权力机关。它的常设机关是全国人民代表大会常务委员会。

第五十八条 全国人民代表大会和全国人民代表大会常务委员会行使国家立法权。

第五十九条 全国人民代表大会由省、自治区、直辖市、特别行政区和军队选出的代表组成。各少数民族都应当有适当名额的代表。

全国人民代表大会代表的选举由全国人民代表大会常务委员会主持。

全国人民代表大会代表名额和代表产生办法由法律规定。

第六十条 全国人民代表大会每届任期五年。

全国人民代表大会任期届满的两个月以前，全国人民代表大会常务委员会必须完成下届全国人民代表大会代表的选举。如果遇到不能进行选举的非常情况，由全国人民代表大会常务委员会以全体组成人员的三分之二以上的多数通过，可以推迟选举，延长本届全国人民代表大会的任期。在非常情况结束后一年内，必须完成下届全国人民代表大会代表的选举。

第六十一条 全国人民代表大会会议每年举行一次，由全国人民代表大会常务委员会召集。如果全国人民代表大会常务委员会认为必要，或者有五分之一以上的全国人民代表大会代表提议，可以临时召集全国人民代表大会会议。

全国人民代表大会举行会议的时候，选举主席团主持会议。

第六十二条 全国人民代表大会行使下列职权：

(一)修改宪法；

(二)监督宪法的实施；

(三)制定和修改刑事、民事、国家机构的和其他的基本法律；

(四)选举中华人民共和国主席、副主席；

(五)根据中华人民共和国主席的提名，决定国务院总理的人选；根据国务院总理的提名，决定国务院副总理、国务委员、各部部长、各委员会主任、审计长、秘书长的人选；

(六)选举中央军事委员会主席；根据中央军事委员会主席的提名，决定中央军事委员会其他组成人员的人选；

(七)选举最高人民法院院长；

(八)选举最高人民检察院检察长；

(九)审查和批准国民经济和社会发展规划和计划执行情况的报告；

(十)审查和批准国家的预算和预算执行情况的报告；

(十一)改变或者撤销全国人民代表大会常务委员会不适当的决定；

(十二)批准省、自治区和直辖市的建置；

(十三)决定特别行政区的设立及其制度；

(十四)决定战争和和平的问题；

(十五)应当由最高国家权力机关行使的其他职权。

第六十三条 全国人民代表大会有权罢免下列人员：

(一)中华人民共和国主席、副主席；

(二)国务院总理、副总理、国务委员、各部部长、各委员会主任、审计长、秘书长；

(三)中央军事委员会主席和中央军事委员会其他组成人员；

(四)最高人民法院院长；

(五)最高人民检察院检察长。

第六十四条 宪法的修改，由全国人民代表大会常务委员会或者五分之一以上的全国人民代表大会代表提议，并由全国人民代表大会以全体代表的三分之二以上的多数通过。

法律和其他议案由全国人民代表大会以全体代表的过半数通过。

第六十五条 全国人民代表大会常务委员会由下列人员组成：

委员长，

副委员长若干人，

秘书长，

委员若干人。

全国人民代表大会常务委员会组成人员中，应当有适当名额的少数民族代表。

全国人民代表大会选举并有权罢免全国人民代表大会常务委员会的组成人员。

全国人民代表大会常务委员会的组成人员不得担任国家行政机关、审判机关和检察机关的职务。

第六十六条 全国人民代表大会常务委员会每届任期同全国人民代表大会每届任期相同，它行使职权到下届全国人民代表大会选出新的常务委员会为止。

委员长、副委员长连续任职不得超过两届。

第六十七条 全国人民代表大会常务委员会行使下列职权：

(一)解释宪法，监督宪法的实施；

(二)制定和修改除应当由全国人民代表大会制定的法律以外的其他法律；

(三)在全国人民代表大会闭会期间，对全国人民代表大会制定的法律进行部分补充和修改，但是不得同该法律的基本原则相抵触；

(四)解释法律；

(五)在全国人民代表大会闭会期间，审查和批准国民经济和社会发展规划、国家预算在执行过程中所必须作的部分调整方案；

(六)监督国务院、中央军事委员会、最高人民法院和最高人民检察院的工作；

(七)撤销国务院制定的同宪法、法律相抵触的行政法规、决定和命令；

(八)撤销省、自治区、直辖市国家权力机关制定的同宪法、法律和行政法规相抵触的地方性法规和决议；

(九)在全国人民代表大会闭会期间，根据国务院总理的提名，决定部长、委员会主任、审计长、秘书长的人选；

(十)在全国人民代表大会闭会期间，根据中央军事委员会主席的提名，决定中央军事委员会其他组成人员的人选；

(十一)根据最高人民法院院长的提请，任免最高人民法院副院长、审判员、审判委员会委员和军事法院院长；

(十二)根据最高人民检察院检察长的提请，任免最高人民检察院副检察长、检察员、检察委员会委员和军事检察院检察长，并且批准省、自治区、直辖市的人民检察院检察长的任免；

(十三)决定驻外全权代表的任免；

(十四)决定同外国缔结的条约和重要协定的批准和废除；

(十五)规定军人和外交人员的衔级制度和其他专门衔级制度；

(十六)规定和决定授予国家的勋章和荣誉称号；

(十七)决定特赦；

(十八)在全国人民代表大会闭会期间，如果遇到国家遭受武装侵犯或者必须履行国际间共同防止侵略的条约的情况，决定战争状态的宣布；

(十九)决定全国总动员或者局部动员；

(二十)决定全国或者个别省、自治区、直辖市进入紧急状态；

(二十一)全国人民代表大会授予的其他职权。

第六十八条 全国人民代表大会常务委员会委员长主持全国人民代表大会常务委员会的工作，召集全国人民代表大会常务委员会会议。副委员长、秘书长协助委员长工作。

委员长、副委员长、秘书长组成委员长会议，处理全国人民代表大会常务委员会的重要日常工作。

第六十九条 全国人民代表大会常务委员会对全国人民代表大会负责并报告工作。

第七十条 全国人民代表大会设立民族委员会、法律委员会、财政经济委员会、教育科学文化卫生委员会、外事委员会、华侨委员会和其他需要设立的专门委员会。在全国人民代表大会闭会期间，各专门委员会受全国人民代表大会常务委员会的领导。

各专门委员会在全国人民代表大会和全国人民代表大会常务委员会领导下，研究、审议和拟订有关议案。

第七十一条 全国人民代表大会和全国人民代表大会常务委员会认为必要的时候，可以组织关于特定问题的调查委员会，并且根据调查委员会的报告，作出相应的决议。

调查委员会进行调查的时候，一切有关的国家机关、社会团体和公民都有义务向它提供必要的材料。

第七十二条 全国人民代表大会代表和全国人民代表大会常务委员会组成人员，有权依照法律规定的程序分别提出属于全国人民代表大会和全国人民代表大会常务委员会职权范围内的议案。

第七十三条 全国人民代表大会代表在全国人民代表大会开会期间，全国人民代表大会常务委员会组成人员在常务委员会开会期间，有权依照法律规定的程序提出对国务院或者国务院各部、各委员会的质询案。受质询的机关必须负责答复。

第七十四条 全国人民代表大会代表，非经全国人民代表大会会议主席团许可，在全国人民代表大会闭会期间非经全国人民代表大会常务委员会许可，不受逮捕或者刑事审判。

第七十五条 全国人民代表大会代表在全国人民代表大会各种会议上的发言和表决，不受法律追究。

第七十六条 全国人民代表大会代表必须模范地遵守宪法和法律，保守国家秘密，并且在自己参加的生产、工作和社会活动中，协助宪法和法律的实施。

全国人民代表大会代表应当同原选举单位和人民保持密切的联系，听取和反映人民的意见和要求，努力为人民服务。

第七十七条 全国人民代表大会代表受原选举单位的监督。原选举单位有权依照法律规定的程序罢免本单位选出的代表。

第七十八条 全国人民代表大会和全国人民代表大会常务委员会的组织和工作程序由法律规定。

## 第二节 中华人民共和国主席

第七十九条 中华人民共和国主席、副主席由全国人民代表大会选举。

有选举权和被选举权的年满四十五周岁的中华人民共和国公民可以被选为中华人民共和国主席、副主席。

中华人民共和国主席、副主席每届任期同全国人民代表大会每届任期相同，连续任职不得超过两届。

第八十条 中华人民共和国主席根据全国人民代表大会的决定和全国人民代表大会常务委员会的决定，公布法律，任免国务院总理、副总理、国务委员、各部部长、各委员会主任、审计长、秘书长，授予国家的勋章和荣誉称号，发布特赦令，宣布进入紧急状态，宣布战争状态，发布动员令。

第八十一条 中华人民共和国主席代表中华人民共和国，进行国事活动，接受外国使节；根据全国人民代表大会常务委员会的决定，派遣和召回驻外全权代表，批准和废除同外国缔结的条约和重要协定。

第八十二条 中华人民共和国副主席协助主席工作。

中华人民共和国副主席受主席的委托，可以代行主席的部分职权。

第八十三条 中华人民共和国主席、副主席行使职权到下届全国人民代表大会选出的主席、副主席就职为止。

第八十四条 中华人民共和国主席缺位的时候，由副主席继任主席的职位。

中华人民共和国副主席缺位的时候，由全国人民代表大会补选。

中华人民共和国主席、副主席都缺位的时候，由全国人民代表大会补选；在补选以前，由全国人民代表大会常务委员会委员长暂时代理主席职位。

### 第三节 国务院

第八十五条 中华人民共和国国务院，即中央人民政府，是最高国家权力机关的执行机关，是最高国家行政机关。

第八十六条 国务院由下列人员组成：

总理，

副总理若干人，

国务委员若干人，

各部部长，

各委员会主任，

审计长，

秘书长。

国务院实行总理负责制。各部、各委员会实行部长、主任负责制。

国务院的组织由法律规定。

第八十七条 国务院每届任期同全国人民代表大会每届任期相同。

总理、副总理、国务委员连续任职不得超过两届。

第八十八条 总理领导国务院的工作。副总理、国务委员协助总理工作。

总理、副总理、国务委员、秘书长组成国务院常务会议。

总理召集和主持国务院常务会议和国务院全体会议。

第八十九条 国务院行使下列职权：

(一)根据宪法和法律，规定行政措施，制定行政法规，发布决定和命令；

(二)向全国人民代表大会或者全国人民代表大会常务委员会提出议案；

(三)规定各部和各委员会的任务和职责，统一领导各部和各委员会的工作，并且领导不属于各部和各委员会的全国性的行政工作；

(四)统一领导全国地方各级国家行政机关的工作，规定中央和省、自治区、直辖市的国家行政机关的职权的具体划分；

(五)编制和执行国民经济和社会发展计划和国家预算；

(六)领导和管理经济工作和城乡建设；

(七)领导和管理教育、科学、文化、卫生、体育和计划生育工作；

(八)领导和管理民政、公安、司法行政和监察等工作；

(九)管理对外事务，同外国缔结条约和协定；

- (十)领导和管理国防建设事业；
- (十一)领导和管理民族事务，保障少数民族的平等权利和民族自治地方的自治权利；
- (十二)保护华侨的正当的权利和利益，保护归侨和侨眷的合法的权利和利益；
- (十三)改变或者撤销各部、各委员会发布的不适当的命令、指示和规章；
- (十四)改变或者撤销地方各级国家行政机关的不适当的决定和命令；
- (十五)批准省、自治区、直辖市的区域划分，批准自治州、县、自治县、市的建置和区域划分；
- (十六)依照法律规定决定省、自治区、直辖市的范围内部分地区进入紧急状态；
- (十七)审定行政机构的编制，依照法律规定任免、培训、考核和奖惩行政人员；
- (十八)全国人民代表大会和全国人民代表大会常务委员会授予的其他职权。

第九十条 国务院各部部长、各委员会主任负责本部门的工作；召集和主持部务会议或者委员会会议、委务会议，讨论决定本部门工作的重大问题。

各部、各委员会根据法律和国务院的行政法规、决定、命令，在本部门的权限内，发布命令、指示和规章。

第九十一条 国务院设立审计机关，对国务院各部门和地方各级政府的财政收支，对国家的财政金融机构和企业事业组织的财务收支，进行审计监督。

审计机关在国务院总理领导下，依照法律规定独立行使审计监督权，不受其他行政机关、社会团体和个人的干涉。

第九十二条 国务院对全国人民代表大会负责并报告工作；在全国人民代表大会闭会期间，对全国人民代表大会常务委员会负责并报告工作。

#### 第四节 中央军事委员会

第九十三条 中华人民共和国中央军事委员会领导全国武装力量。

中央军事委员会由下列人员组成：

主席，



副主席若干人，

委员若干人。

中央军事委员会实行主席负责制。

中央军事委员会每届任期同全国人民代表大会每届任期相同。

第九十四条 中央军事委员会主席对全国人民代表大会和全国人民代表大会常务委员会负责。

#### 第五节 地方各级人民代表大会和地方各级人民政府

第九十五条 省、直辖市、县、市、市辖区、乡、民族乡、镇设立人民代表大会和人民政府。

地方各级人民代表大会和地方各级人民政府的组织由法律规定。

自治区、自治州、自治县设立自治机关。自治机关的组织和工作根据宪法第三章第五节、第六节规定的基本原则由法律规定。

第九十六条 地方各级人民代表大会是地方国家权力机关。

县级以上的地方各级人民代表大会设立常务委员会。

第九十七条 省、直辖市、设区的市的人民代表大会代表由下一级的人民代表大会选举；县、不设区的市、市辖区、乡、民族乡、镇的人民代表大会代表由选民直接选举。

地方各级人民代表大会代表名额和代表产生办法由法律规定。

第九十八条 地方各级人民代表大会每届任期五年。

第九十九条 地方各级人民代表大会在本行政区域内，保证宪法、法律、行政法规的遵守和执行；依照法律规定的权限，通过和发布决议，审查和决定地方的经济建设、文化建设和公共事业建设的计划。

县级以上的地方各级人民代表大会审查和批准本行政区域内的国民经济和社会发展计划、预算以及它们的执行情况的报告；有权改变或者撤销本级人民代表大会常务委员会不适当的决定。

民族乡的人民代表大会可以依照法律规定的权限采取适合民族特点的具体措施。

第一百条 省、直辖市的人民代表大会和它们的常务委员会，在不同宪法、法律、行政法规相抵触的前提下，可以制定地方性法规，报全国人民代表大会常务委员会备案。

第一百零一条 地方各级人民代表大会分别选举并且有权罢免本级人民政府的省长和副省长、市长和副

市长、县长和副县长、区长和副区长、乡长和副乡长、镇长和副镇长。

县级以上地方各级人民代表大会选举并且有权罢免本级人民法院院长和本级人民检察院检察长。选出或者罢免人民检察院检察长，须报上级人民检察院检察长提请该级人民代表大会常务委员会批准。

第一百零二条 省、直辖市、设区的市的人民代表大会代表受原选举单位的监督；县、不设区的市、市辖区、乡、民族乡、镇的人民代表大会代表受选民的监督。

地方各级人民代表大会代表的选举单位和选民有权依照法律规定的程序罢免由他们选出的代表。

第一百零三条 县级以上地方各级人民代表大会常务委员会由主任、副主任若干人和委员若干人组成，对本级人民代表大会负责并报告工作。

县级以上地方各级人民代表大会选举并有权罢免本级人民代表大会常务委员会的组成人员。

县级以上地方各级人民代表大会常务委员会的组成人员不得担任国家行政机关、审判机关和检察机关的职务。

第一百零四条 县级以上地方各级人民代表大会常务委员会讨论、决定本行政区域内各方面工作的大事项；监督本级人民政府、人民法院和人民检察院的工作；撤销本级人民政府的不适当的决定和命令；撤销下一级人民代表大会的不适当的决议；依照法律规定的权限决定国家机关工作人员的任免；在本级人民代表大会闭会期间，罢免和补选上一级人民代表大会的个别代表。

第一百零五条 地方各级人民政府是地方各级国家权力机关的执行机关，是地方各级国家行政机关。

地方各级人民政府实行省长、市长、县长、区长、乡长、镇长负责制。

第一百零六条 地方各级人民政府每届任期同本级人民代表大会每届任期相同。

第一百零七条 县级以上地方各级人民政府依照法律规定的权限，管理本行政区域内的经济、教育、科学、文化、卫生、体育事业、城乡建设事业和财政、民政、公安、民族事务、司法行政、监察、计划生育等行政工作，发布决定和命令，任免、培训、考核和奖惩行政工作人员。

乡、民族乡、镇的人民政府执行本级人民代表大会的决议和上级国家行政机关的决定和命令，管理本行政区域内的行政工作。

省、直辖市的人民政府决定乡、民族乡、镇的建置和区域划分。

第一百零八条 县级以上地方各级人民政府领导所属各工作部门和下级人民政府的工作，有权改变或者撤销所属各工作部门和下级人民政府的不适当的决定。

第一百零九条 县级以上地方各级人民政府设立审计机关。地方各级审计机关依照法律规定独立行使审计监督权，对本级人民政府和上一级审计机关负责。

第一百一十条 地方各级人民政府对本级人民代表大会负责并报告工作。县级以上的地方各级人民政府在本级人民代表大会闭会期间，对本级人民代表大会常务委员会负责并报告工作。

地方各级人民政府对上一级国家行政机关负责并报告工作。全国地方各级人民政府都是国务院统一领导下的国家行政机关，都服从国务院。

第一百一十一条 城市和农村按居民居住地区设立的居民委员会或者村民委员会是基层群众性自治组织。居民委员会、村民委员会的主任、副主任和委员由居民选举。居民委员会、村民委员会同基层政权的相互关系由法律规定。

居民委员会、村民委员会设人民调解、治安保卫、公共卫生等委员会，办理本居住地区的公共事务和公益事业，调解民间纠纷，协助维护社会治安，并且向人民政府反映群众的意见、要求和提出建议。

#### 第六节 民族自治地方的自治机关

第一百一十二条 民族自治地方的自治机关是自治区、自治州、自治县的人民代表大会和人民政府。

第一百一十三条 自治区、自治州、自治县的人民代表大会中，除实行区域自治的民族的代表外，其他居住在本行政区域内的民族也应当有适当名额的代表。

自治区、自治州、自治县的人民代表大会常务委员会中应当有实行区域自治的民族的公民担任主任或者副主任。

第一百一十四条 自治区主席、自治州州长、自治县县长由实行区域自治的民族的公民担任。

第一百一十五条 自治区、自治州、自治县的自治机关行使宪法第三章第五节规定的地方国家机关的职权，同时依照宪法、民族区域自治法和其他法律规定的权限行使自治权，根据本地方实际情况贯彻执行国家的法律、政策。

第一百一十六条 民族自治地方的人民代表大会有权依照当地民族的政治、经济和文化的特点，制定自治条例和单行条例。自治区的自治条例和单行条例，报全国人民代表大会常务委员会批准后生效。自治州、自治县的自治条例和单行条例，报省或者自治区的人民代表常务委员会批准后生效，并报全国人民代表大会常务委员会备案。

第一百一十七条 民族自治地方的自治机关有管理地方财政的自治权。凡是依照国家财政体制属于民族自治地方的财政收入，都应当由民族自治地方的自治机关自主地安排使用。

第一百一十八条 民族自治地方的自治机关在国家计划的指导下，自主地安排和管理地方性的经济建设事业。

国家在民族自治地方开发资源、建设企业的时候，应当照顾民族自治地方的利益。

第一百一十九条 民族自治地方的自治机关自主地管理本地方的教育、科学、文化、卫生、体育事业，保护和整理民族的文化遗产，发展和繁荣民族文化。

第一百二十条 民族自治地方的自治机关依照国家的军事制度和当地的实际需要，经国务院批准，可以组织本地方维护社会治安的公安部队。

第一百二十一条 民族自治地方的自治机关在执行职务的时候，依照本民族自治地方自治条例的规定，使用当地通用的一种或者几种语言文字。

第一百二十二条 国家从财政、物资、技术等方面帮助各少数民族加速发展经济建设和文化建设事业。

国家帮助民族自治地方从当地民族中大量培养各级干部、各种专业人才和技术工人。

#### 第七节 人民法院和人民检察院

第一百二十三条 中华人民共和国人民法院是国家的审判机关。

第一百二十四条 中华人民共和国设立最高人民法院、地方各级人民法院和军事法院等专门人民法院。

最高人民法院院长每届任期同全国人民代表大会每届任期相同，连续任职不得超过两届。

人民法院的组织由法律规定。

第一百二十五条 人民法院审理案件，除法律规定的特殊情况外，一律公开进行。被告人有权获得辩护。

第一百二十六条 人民法院依照法律规定独立行使审判权，不受行政机关、社会团体和个人的干涉。

第一百二十七条 最高人民法院是最高审判机关。

最高人民法院监督地方各级人民法院和专门人民法院的审判工作，上级人民法院监督下级人民法院的审判工作。

第一百二十八条 最高人民法院对全国人民代表大会和全国人民代表大会常务委员会负责。地方各级人民法院对产生它的国家权力机关负责。

第一百二十九条 中华人民共和国人民检察院是国家的法律监督机关。

第一百三十条 中华人民共和国设立最高人民检察院、地方各级人民检察院和军事检察院等专门人民检察院。

最高人民检察院检察长每届任期同全国人民代表大会每届任期相同，连续任职不得超过两届。

人民检察院的组织由法律规定。

第一百三十一条 人民检察院依照法律规定独立行使检察权，不受行政机关、社会团体和个人的干涉。

第一百三十二条 最高人民检察院是最高检察机关。

最高人民检察院领导地方各级人民检察院和专门人民检察院的工作，上级人民检察院领导下级人民检察院的工作。

第一百三十三条 最高人民检察院对全国人民代表大会和全国人民代表大会常务委员会负责。地方各级人民检察院对产生它的国家权力机关和上级人民检察院负责。

第一百三十四条 各民族公民都有用本民族语言文字进行诉讼的权利。人民法院和人民检察院对于不通晓当地通用的语言文字的诉讼参与人，应当为他们翻译。

在少数民族聚居或者多民族共同居住的地区，应当用当地通用的语言进行审理；起诉书、判决书、布告和其他文书应当根据实际需要当地通用的一种或者几种文字。

第一百三十五条 人民法院、人民检察院和公安机关办理刑事案件，应当分工负责，互相配合，互相制约，以保证准确有效地执行法律。

#### 第四章 国旗、国歌、国徽、首都

第一百三十六条 中华人民共和国国旗是五星红旗。

中华人民共和国国歌是《义勇军进行曲》。

第一百三十七条 中华人民共和国国徽，中间是五星照耀下的天安门，周围是谷穗和齿轮。

第一百三十八条 中华人民共和国首都北京。

**Civil Procedure Law of the People's Republic of China (2007)**

(Adopted on April 9, 1991 at the Fourth Session of the Seventh National People's Congress, and revised according to the Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China as adopted at the 30th Session of the Standing Committee of the 10th National People's Congress)

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Part One General Principles

Chapter 1 Purposes, Scope of Regulation and Basic Principles

Article 1 The Civil Procedure Law of the People's Republic of China is formulated according to the Constitution and in the light of the experience and actual conditions of adjudicating civil cases in our country.

Article 2 The purposes of the Civil Procedure Law of the People's Republic of China are to protect the litigation rights exercised by the parties, to ensure that the people's courts find facts, to distinguish right from wrong, to apply the law correctly, to try civil cases promptly, to affirm the rights and obligations in civil affairs, to impose sanctions for civil wrong doings, to protect the lawful rights and interests of the parties, to educate citizens to voluntarily abide by the law, to maintain the social and economic order, and to guarantee the smooth progress of the socialist construction.

Article 3 The provisions of this Law shall apply to all the civil litigation accepted by people's courts regarding disputes over the status of property and personal relations among citizens, legal persons, or other organizations respectively and mutually between citizens, legal persons, or other organizations.

Article 4 All those who involve in civil lawsuits within the territory of the People's Republic of China must abide by this Law.

Article 5 Foreign nationals, stateless persons, foreign enterprises, or organizations, which initiate or respond to lawsuits in people's courts, shall have the same litigation rights and obligations as the citizens, legal persons, or other organizations of the People's Republic of China.

Should the courts of a foreign country impose restrictions on the civil litigation rights of the citizens, legal persons, or other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall follow the principle of reciprocity regarding the civil litigation rights of the citizens, enterprises, or organizations of that foreign country.

Article 6 The adjudication authority over civil cases shall be exercised by the people's courts only.

The people's courts shall adjudicate civil cases independently according to law, and shall not be subject to any interference from an administrative organ, public organization, or individual.

Article 7 The people's courts must take the facts as the basis and take the law as the criterion when adjudicating civil cases.

Article 8 All parties to a civil litigation shall have equal litigation rights. The people's courts shall, when adjudicating civil

cases, guarantee and facilitate all parties to exercise their litigation rights, and apply the law equally to all parties.

Article 9 When adjudicating civil cases, the people's courts may mediate the disputes according to the principles of voluntariness and lawfulness; if a mediation agreement can not be reached, the courts shall render judgments without delay.

Article 10 When adjudicating civil cases, the people's courts shall apply the systems of collegial panel, recusal, public trial, and "two trials and the second one is final".

Article 11 Chinese citizens of all ethnicities shall have the right to use their native spoken and written languages in civil proceedings.

In the areas where an ethnic minority is concentrated or a number of different ethnic nationalities live together, the people's courts shall conduct hearings and publish legal documents in the spoken and written languages commonly used by these people.

The people's courts shall provide translations for any litigation participants who are not familiar with the spoken or written languages commonly used by the local people.

Article 12 When adjudicating civil cases by the people's court, the parties shall have the right to engage in argument.

Article 13 The parties to a civil litigation shall be entitled, within the scope stipulated by law, to dispose their rights of civil affairs and litigation.

Article 14 The people's procuratorates shall have the right to exercise legal supervision over the civil proceedings.

Article 15 If the civil rights and interests of the state, a collective, or an individual have been infringed, a state organ, public organization, enterprise, or institution may support the injured unit or individual to initiate legal action in a people's court.

Article 16 The People's Conciliation Committees are the organizations for mass to mediate civil disputes derived from private citizens under the guidance of basic people's governments and the basic people's courts.

The People's Conciliation Committees shall conduct all mediations according to legal provisions and the principle of voluntariness. All concerned parties shall enforce mediation agreement. Where any concerned parties refuse mediation, fail to reach a mediation agreement, or retract a mediation agreement, they may initiate legal proceedings in a people's court.

If a People's Conciliation Committee violates the law when mediating civil disputes, the people's court shall correct it.

Article 17 The people's congresses of the national autonomous areas may formulate some accommodating or supplementary provisions according to the principles of the Constitution and this Law and based on the specific circumstances of their localities. Such provisions made by an autonomous region shall be submitted to the Standing Committee of the National People's Congress for approval. The provisions made by an autonomous prefecture or autonomous county shall be submitted to the standing committee of the people's congress of the relevant autonomous region or province for approval and to the Standing Committee of the National People's Congress for the record.

## Chapter 2 Jurisdiction

### Section 1 Jurisdiction by Levels of Courts

Article 18 A basic people's court shall have jurisdiction as the court of first instance over civil cases, unless otherwise stipulated in this Law.

Article 19 An intermediate people's court shall have jurisdiction as courts of first instance over the following civil cases:

- (1) Major cases involving foreign elements;
- (2) Cases that have major impacts in the area of its jurisdiction; and



(3) Cases under the jurisdiction of the intermediate people's courts as determined by the Supreme People's Court.

Article 20 A higher people's courts shall have jurisdiction as the court of first instance over civil cases that have major impacts on the areas of its jurisdiction.

Article 21 The Supreme People's Court shall have jurisdiction as the court of first instance over the following civil cases:

- (1) Cases that have major impacts on the whole country; and
- (2) Cases that the Supreme People's Court deems should be adjudicated by itself.

## Section 2 Territorial Jurisdiction

Article 22 A civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court located in the place where the defendant has his domicile; if the defendant's domicile is different from his habitual residence, the lawsuit shall be under the jurisdiction of the people's court located in the place of his habitual residence.

A civil lawsuit brought against a legal person or an organization shall be under the jurisdiction of the people's court located in the place where the defendant has its domicile.

Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit.

Article 23 The civil litigations described below shall be under the jurisdiction of the people's court located in the place where the plaintiff has his domicile; if the plaintiff's domicile is different from his habitual residence, the lawsuit shall be under the jurisdiction of the people's court located in the place of the plaintiff's habitual residence. The relevant civil litigations are:

- (1) Litigations concerning the status of persons who do not reside within the territory of the People's Republic of China;
- (2) Litigations concerning the status of persons whose whereabouts are unknown or whom have been declared missing;
- (3) Litigations brought against the persons who are undergoing reeducation through labor; and
- (4) Litigations brought against persons who are in imprisonment.

Article 24 A lawsuit brought about a contract dispute shall be under the jurisdiction of the people's court located in the place where the defendant has his domicile or where the contract is performed.

Article 25 The parties to a contract may, through the written contract, choose a people's court, which located in the place where the defendant would have his domicile, the contract would be performed, the contract would be signed, the plaintiff would have his domicile, or the subject of the contract would be located, to have jurisdiction over the case, as long as this jurisdiction choice does not violate the provisions of this Law regarding the Jurisdiction by Level and the Exclusive Jurisdiction.

Article 26 A lawsuit brought for insurance contract dispute shall be under the jurisdiction of the people's court located in the place where the defendant has his domicile or where the insured subject matter is located.

Article 27 A lawsuit brought for a negotiable instrument dispute shall be under the jurisdiction of the people's court located in the place where the negotiable instrument is to be paid or where the defendant has his domicile.

Article 28 A lawsuit brought for a dispute over transportation contract via railway, highway, water, air, or combined transportation shall be under the jurisdiction of the people's court located in the place of the departure or the destination, or where the defendant has his domicile.

Article 29 A lawsuit brought for a tortious act shall be under the jurisdiction of the people's court located in the place where the infringing act took place or where the defendant has his domicile.

Article 30 A lawsuit to claim damages caused by a railway, highway, water, or aviation transportation accident shall be under the jurisdiction of the people's court located in the place where the accident took place, where the vehicle or ship

first arrived after the accident, where the aircraft first landed after the accident, or where the defendant has his domicile.

Article 31 A lawsuit brought for damages caused by a ship collision or any other maritime accident shall be under the jurisdiction of the people's court located in the place where the collision took place or where the collision ship first docked after the accident or where the ship at fault was detained, or where the defendant has his domicile.

Article 32 A lawsuit brought for a maritime salvage shall be under the jurisdiction of the people's court located in the place where the salvage took place or where the salvaged vessel first docked after the disaster.

Article 33 A lawsuit brought for a general average shall be under the jurisdiction of the people's court located in the place where the ship first docked after the general average adjustment took place or the adjustment thereof was conducted or where the voyage ended.

Article 34 The following cases shall be under the exclusive jurisdiction of the people's courts herein specified:

(1) A lawsuit brought for real estate shall be under the jurisdiction of the people's court located in the place where the real estate is located;

(2) A lawsuit concerning harbor operations shall be under the jurisdiction of the people's court located in the place where the harbor is located; and

(3) A lawsuit concerning an inheritance shall be under the jurisdiction of the people's court located in the place where the decedent had his domicile upon his death, or where the principal portion of his estate is located.

Article 35 When two or more people's courts have jurisdiction over a lawsuit, the plaintiff may bring his lawsuit in one of these people's courts; if the plaintiff brings the lawsuit in two or more people's courts that have jurisdiction over the lawsuit, it shall be handled by the people's court that accepts the case first.

### Section 3 Jurisdiction by Transfer and Jurisdiction by Designation

Article 36 If a people's court discovers that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that does have jurisdiction over the case. The people's court to which a case has been transferred shall accept the case, and if it considers that, according to relevant regulations, the transferred case is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not transfer the case to another people's court without authorization.

Article 37 If a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for a special reason, the superior people's court shall designate another court to exercise the jurisdiction.

If there is a dispute over a jurisdiction among people's courts, it shall be resolved by the disputing parties through consultation; if the dispute cannot be resolved through consultation, the disputing courts shall ask their superior people's court to designate the jurisdiction.

Article 38 If a party rejects the jurisdiction of his case after the case was accepted by a people's court, the party shall raise the rejection during the period for submitting briefs. The people's court shall examine such objection. If the objection is tenable, the people's court shall rule that the case be transferred to the people's court that does have jurisdiction over the case; if the rejection is untenable, the people's court shall overrule the objection.

Article 39 People's courts at higher levels shall have the authority to try civil cases over which people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer civil cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for adjudication.

If a people's court at a lower level deems it necessary for a civil case of first instance under its jurisdiction to be tried by a people's court at a higher level, it may request such a people's court to adjudicate the case.

### Chapter 3 Trial Organization

Article 40 Civil cases of first instance shall be tried in a people's court by a collegial bench consisting of both judges and assessors or of judges alone. The numbers of members of a collegial bench shall be odd.

Civil cases to which summary procedure is applied shall be tried by a single judge alone.

When carrying out their duties as assessors, the assessors shall have equal rights and obligations as the judges.

Article 41 Civil cases of second instance shall be tried in a people's court by a collegial bench of judges. The numbers of members of a collegial bench shall be odd.

For the retrial of a remanded case, the people's court of first instance shall form a new collegial bench according to the procedure of first instance.

If a case for retrial was originally tried at first instance, a new collegial bench shall be formed according to the procedure of first instance; if the case was originally tried at second instance or was removed to a people's court at a higher level for trial, a new collegial bench shall be formed according to the procedure of second instance.

Article 42 The president of the court or the chief judge of a division shall designate a judge to serve as the presiding judge of the collegial bench; if the president or the chief judge participates in trial, he himself shall serve as the presiding judge.

Article 43 When deliberating a case, a collegial bench shall observe the principle of minority obeying majority. The deliberations shall be recorded in writing, and the transcript shall be signed by the members of the collegial bench. The dissenting opinions in the deliberations shall be truthfully recorded in the transcript.

Article 44 The adjudicating personnel shall handle the case impartially and according to law.

The adjudicating personnel shall not accept a treat or gift from the parties or their agents.

Any adjudicating personnel who commits embezzlement, accepts bribes, practices favoritism for himself or relatives, twists the law in rendering judgment shall be investigated for legal responsibility; if a crime is committed, the offender shall be investigated for criminal responsibility according to law.

#### Chapter 4 Recusal of Adjudicating Personnel

Article 45 Any member of the adjudicating personnel in any of the following circumstances shall be disqualified, and the litigation parties shall also have the right to request, orally or in writing, such an adjudicator to be withdrawn from this case. The relevant circumstances are:

- (1) He is a party or a near relative of a party or a near relative of a litigation representative to the case;
- (2) He has a personal interest in the case; or
- (3) He has some other relationship with a party to the case, which could influence the impartial adjudication.

The above provisions shall also apply to clerks, interpreters, expert witnesses, and examiners.

Article 46 When a party makes a request to disqualify an adjudicator, he shall make an explanation and submit the request at the beginning of the proceedings; a request for recusal may also be submitted before the end of court debate if the recusal reason is uncovered after the proceeding begins.

If a recusal decision is waiting for a people's court to decide, the personnel who have been requested to be disqualified shall temporarily be suspended from participating in the proceedings, but with the exception of cases that require emergency measures.

Article 47 The recusal of a court president who serves as the presiding judge shall be decided by the adjudicating committee; the recusal of adjudicators shall be decided by the court president; the recusal of other personnel shall be decided by the presiding judge.

Article 48 The decision of a people's court on a request for recusal shall be made orally or in writing within three days after the request was made. If a party is not satisfied with a recusal decision, it may apply for reconsideration once. During the period of reconsideration, the personnel who have been requested to be disqualified shall not be suspended from

participating in the proceedings. The decision of a people's court on an application for reconsideration shall be made within three days after receiving the application and the person who has made the application for reconsideration shall be notified of the decision.

#### Chapter 5 Litigation Participants

##### Section 1 Parties

Article 49 Any citizen, legal person or any other organization may become a party to a civil lawsuit.

Legal persons shall be represented by their legal representatives in litigation. Other organizations shall be represented by their principal leading personnel in litigation.

Article 50 The parties shall have the right to appoint representatives, request recusals of adjudicating personnel, collect and provide evidence, engage in debate, request mediation, file an appeal, and apply for an enforcement of judgments. The parties may consult the materials relating to the court proceedings of the case and copy the materials and other legal documents pertaining to the case. However, materials involving state secrets, trade secrets, or the private affairs of individuals shall be exceptions.

The parties must exercise their litigation rights according to the law, observe litigation procedures and carry out legally effective written judgments or orders and mediation statements.

Article 51 The two parties may reach a settlement agreement on their own.

Article 52 The plaintiff may relinquish or modify his claim. The defendant may confirm or repudiate the claim and shall have the right to file a counterclaim.

Article 53 When one party or both parties consist of two or more persons and the subject matter of the action is the same or under the same category, the people's court may adjudicate them together upon the consent of all the parties. Such adjudication is called joint litigation.

If a party of two or more persons of a joint litigation who have the common rights and obligations with respect to the subject matter of action and the act of any of them is recognized by the others of the party, such an act shall bind the rest of the party; if a party of two or more persons have no common rights and obligations with respect to the subject matter of action, any acts taken by any one of them shall not bind the rest of the party.

Article 54 A joint litigation in which one party has numerous litigants may be brought by the representatives elected by the litigants of the party. The act of litigation taken by these representatives shall bind all litigants of the party whom they represent. However, any substitution of representatives, relinquishing claims, acceptance of claims of the opposing party, or negotiating settlement shall be approved by the litigants of the party.

Article 55 Where the subject matters of an action is under the same category and one of the parties has numerous litigants but the exact number of the litigants is uncertain when the lawsuit is filed, the people's court may issue a public notice to explain the nature of the case and the claims of the litigation and informing those interested persons who are entitled to the claim to register their rights with the people's court within a fixed period of time.

Those who have registered their rights with the people's court may elect representatives from among themselves to proceed with the litigation; if the election fails its purpose, such representatives may be determined by the people's court through consultation with those who have registered their rights with the court.

The acts of litigation taken by these representatives shall bind all litigants of the party whom they represent. However, any substitution of representatives, relinquishing claims, acceptance of claims of the opposing party, or negotiating settlement shall be approved by the litigants of the party.

The judgments or written orders rendered by the people's court shall bind all those interested persons who have registered their rights with the court. Such judgments or written orders shall apply to those who have not registered their

rights but have instituted legal proceedings during the time of the statute of limitation.

Article 56 If a third party considers that he has the independent right to claim the subject matter of the action of both parties, he shall have the right to bring an action.

If a third party does not have the independent right to claim the subject matter of the action of both parties but the outcome of the case will affect his legal interest, it may file a request to join the litigation or the people's court may notify him to join the litigation. If a people's court holds a third party to bear a civil liability, such a third party shall have the litigation rights as a party to the litigation.

## Section 2 Litigation Representatives

Article 57 For litigation-incompetent persons, their guardians shall be their legal representative in their litigations. If all legal representatives try to avoid their duties of representation, the people's court may appoint one of them as the litigation represent.

Article 58 Each party or legal representative may appoint one or two persons to act as his litigation representatives. Lawyers, a party's near relatives, persons recommended by relevant public organizations or the units to which a party belongs, or any other citizens approved by a people's court may be entrusted as the party's litigation representatives.

Article 59 When a party entrusts a person to be his litigation representative, he shall submit a power of attorney bearing his signature or seal to the people's court.

The power of attorney must specify the matters and authority scopes entrusted. A litigation representative must possess special authorization from his principal to be able to accept, relinquish, or modify the claim, to reach a settlement, or bring a counterclaim or an appeal.

When a citizen of the People's Republic of China, who is residing abroad, mails or entrusts someone to deliver a power of attorney to China, he shall have the power of attorney certified by the Chinese embassy or consulate to that country. If there is no Chinese embassy or consulate in that country, he shall have the power of attorney certified by an embassy or a consulate of a third country, which has diplomatic relations with the People's Republic of China and is stationed in the country, and then be transferred to the embassy or consulate of the People's Republic of China stationed in that third state for verification; he may have the power of attorney certified by a local patriotic overseas Chinese organization.

Article 60 A party who changes or revokes the authority of his litigation representative shall inform the people's court in writing and the court shall notify the other party of the change or revocation.

Article 61 Lawyers who serve as litigation representatives or other litigation representatives shall have the right to investigate and collect evidence, and may consult relevant materials to the case. The scopes and measures of consulting relevant materials to a case shall be regulated by the Supreme People's Court

Article 62 For a divorce case in which a party has appointed a litigation representative, that party shall appear in court in person unless he is incapable of expressing his own opinion. A party who is truly unable to appear in court due to a special reason shall submit his opinion in writing to the people's court.

## Chapter 6 Evidence

Article 63 Evidence shall be classified as follows:

- (1) documentary evidence;
- (2) physical evidence;
- (3) audio and visual material;
- (4) testimony of witnesses;
- (5) statements of involving parties;
- (6) conclusions of expert witnesses, and

(7) transcripts of inspection and examination.

Any of the above-mentioned evidence must be verified before it can be taken as a basis for finding a fact.

Article 64 A party shall have the responsibility to provide evidence in support of its own propositions.

For the evidence that cannot be obtained by any parties or their litigation representatives because of some realistic reasons or for the evidence that the people's court considers necessary for adjudicating the case, the people's court shall investigate and collect such evidence.

The people's court shall, according to the procedure prescribed by law, collect and examine evidence comprehensively and objectively.

Article 65 The people's court shall have the authority to obtain evidence from any relevant units or individuals, and such units or individuals may not refuse to provide evidence.

The people's court shall verify and determine the validity of documentary evidence provided by relevant units or individuals.

Article 66 Evidence shall be presented in the court and cross-examined by parties, however, evidence that involves state secrets, trade secrets, or individual privacy shall not be presented in an open court session.

Article 67 The people's court shall admit the legal acts, legal facts and documents that are notarized according to legal procedures as a basis for finding facts, except when there is contrary evidence that is sufficient to invalidate the notarization.

Article 68 Any document submitted as evidence shall be the original one. Physical evidence shall also be original. If it is truly difficult to present the original document or physical evidence, then duplications, photographs, copies, or extracts of the original evidence may be admitted.

If a document in a foreign language is submitted as evidence, a Chinese translation shall be appended.

Article 69 The people's court shall authenticate audio and visual materials and decide whether they can be admitted as a basis for finding the facts after examining them and comparing them with other evidence of the same case.

Article 70 All units and individuals who have information about a case shall have the obligation to testify in court. The responsible persons of relevant units shall encourage the witnesses to give testimony. When it is truly too difficult for a witness to appear in court, he may, with the approval of the people's court, submit a written testimony.

Any person who is incapable of expressing his opinion properly shall not testify.

Article 71 The people's court shall examine the statements of the parties in connection with other evidence of the case to decide whether such statements can be taken as a basis for finding the facts.

The refusal of a party to make a statement shall not prevent the people's court from finding the facts of a case based on other evidence.

Article 72 When a people's court deems it necessary to make an evaluation of a specialized issue, it shall refer the issue to an authentication department authorized by law for the evaluation. In the absence of such department, the people's court shall appoint an authentication department to make the evaluation.

The authentication department and the expert witness designated by the department shall have the right to consult the case materials necessary for the evaluation and direct inquiries to the parties and witnesses when circumstances require. An authentication department and expert witness shall present its or his conclusion of the evaluation in writing and sign it or put his seal on it. With respect to an evaluation made by an expert witness, the unit to which the expert witness belongs shall certify his status by affixing its seal to the expert conclusion.

Article 73 When inspecting or examining physical evidence on site, the inspector must show his credentials issued by a people's court. He shall invite the local basic organization or the relevant unit to send personnel to participate in the

inspection. The parties concerned or the adult members of their families shall be present; however, their refusal to appear on the scene shall not prevent the inspection from proceeding.

Upon notification by the people's court, the relevant units and individuals shall have the obligation to preserve the site and provide assistance for the inspection.

The inspector and examiner shall prepare a written record for the circumstances and results of the inspection or examination. The inspector, examiner, the party concerned and the invited participants shall affix their signatures or seals to the record.

Article 74 Under circumstances where there is a likely-hood that evidence may be destroyed, lost or too difficult to obtain later on, any litigation participants may apply to the people's court for the preservation of the evidence. The people's court may also take initiative to preserve such evidence.

## Chapter 7 Time Periods and Service

### Section 1 Time Periods

Article 75 Time periods shall include those prescribed by law and those designated by a people's court.

Time periods shall be computed by hour, day, month, and year. The hour and day from which a time period begins shall not be computed as within that time period.

If the expiration date of a time period falls on a holiday, the day immediately following the holiday shall be regarded as the expiration date.

A statutory time period shall not include the time spent in transmittal of documents. A litigation document that is mailed before a deadline shall not be regarded as overdue.

Article 76 If a party fails to meet a deadline due to reasons beyond his control or other justifiable reasons, he may petition for an extension of the time limit within 10 days after the obstacle is removed. The requested extension shall be subject to approval by a people's court.

### Section 2 Service

Article 77 A receipt shall be required for every litigation document that is served and it shall bear the signature or seal of the recipient of the service and the date of receipt.

The date of receipt as signed by the recipient of the service shall be regarded as the date the document is served.

Article 78 Litigation documents shall be served directly on the recipient of the service. If the recipient of the service is a citizen, the documents may, in the case of his absence, be served on an adult member of the recipient's family who lives with him. If the recipient of the service is a legal person or any other organization, the document shall be served on the legal representatives of the legal person, the principal leading personnel of any other organization, the personnel of the legal person or any other organization in charge of receiving such documents; If the recipient of the service has a litigation representative, the documents may be served on the litigation representative. If the recipient of the service has designated an agent to receive his litigation documents and has informed the people's court of it, the documents may be served on the agent.

The date of receipt as signed by the adult family member living with the recipient of service, or persons in charge of receiving documents of the legal persons or other organizations, or litigation representative, or agents designated to receive his documents shall be regarded as the date the document is served.

Article 79 If the recipient of a service or any of his adult family members living with him refuses to accept a legal document, the person serving the document shall ask the representatives of the relevant basic organization or unit to which the recipient of the service belongs to appear on the scene, explain the situation to them, and record the reasons of the refusal and the date on the receipt. After the person serving the document and the witnesses have affixed their

signatures or seals on the receipt, the document may be left at the place where the recipient of the service stays and the service shall be considered completed.

Article 80 If direct delivery service of a litigation document proves too difficult, such a service may be entrusted to the other people's court, or it may be served by postal service. If a document is served by post, the date as stated on the receipt shall be regarded as the date the document is served.

Article 81 If the recipient of a service is in the military, the document shall be forwarded to him via the political organ at or above the regimen level in the unit to which the recipient belongs.

Article 82 If the recipient of the service is undergoing imprisonment, the document shall be forwarded to him via the prison or the unit of rehabilitation through labor where he is serving his sentence.

If the recipient of the service is undergoing reeducation through labor, the document shall be forwarded to him via the unit supervising his reeducation through labor.

Article 83 Any organization or unit that receives a litigation document to be forwarded must immediately deliver it to the recipient of the service for a receipt. The date as stated on the receipt shall be regarded as the date the document is served.

Article 84 If the whereabouts of a recipient is unknown, or if a document cannot be served by the other methods prescribed in this section, the document shall be served by public announcement. Sixty days after the date of the public announcement, the document shall be deemed to have been served.

The reasons for service by public announcement and the procedures taken shall be recorded in the case files.

#### Chapter 8 Mediation

Article 85 In handling civil cases, the people's court may distinguish between right and wrong and mediate disputes according to the principle of parties' voluntariness and based on clear facts.

Article 86 When a people's court conducts mediation, a single judge or a collegial bench may preside in the mediation. Mediations shall be conducted locally whenever possible.

When a people's court conducts mediation, it may employ simplified methods to notify the parties and witnesses to appear in court.

Article 87 When a people's court conducts mediation, it may request assistance from relevant units or individuals. The invited units or individuals shall assist the people's court in mediation.

Article 88 A mediation agreement must be based on voluntariness of both parties, and shall not be reached through compulsion. The content of the mediation agreement may not contravene the law.

Article 89 When a mediation agreement is reached, the people's court shall draw up a written mediation agreement. A mediation agreement shall clearly set forth the claims of the action, the facts about the case, and the result of the mediation.

The mediation statement shall be signed by the judge and the court clerk, sealed by the people's court, and served on both parties.

Once the mediation agreement is signed and exchanged by both parties, it shall become legally binding.

Article 90 The people's court need not draw up a mediation agreement for the following cases when an agreement is reached through mediation:

- (1) Divorce cases in which both parties have become reconciled after mediation;
- (2) Adoption cases in which adoptive relationship has been retained through mediation;
- (3) Cases in which the claims can be immediately satisfied; and



(4) Other cases that do not require mediation statements.

Any agreement that does not require a mediation agreement shall be entered into the transcript and become legally effective after the transcript is signed or sealed by both parties, the judge, and the court clerk.

Article 91 If no agreement is reached through mediation or if one party retracts his reconciliation before the mediation agreement is served, the people's court shall render a judgment without delay.

#### Chapter 9 Property Preservation and Advance Enforcement

Article 92 If it becomes impossible or difficult to enforce a judgment because of the acts taken by one of the parties or for other reasons, the people's court may, upon the request of the other party, make an order to preserve the property. In the absence of such requests, the people's court may, when necessary, also order to adopt property preservation measures. When a people's court has decided to adopt property preservation, it may instruct the applicant to provide a surety; if the applicant fails to do so, his application may be rejected.

After receiving a party's application, if the case is urgent, the people's court must make an order regarding property preservation within 48 hours; if a people's court makes an order for property preservation, it shall enforce the preservation immediately.

Article 93 Any interested party whose lawful rights and interests, due to urgent circumstances, would suffer from unremediable harms if he fails to petition for property preservation immediately, may, before filing the lawsuit, petition to the people's court for the adoption of property preservation measures. The petitioner shall provide a surety; if the petitioner fails to do so, his petition may be rejected.

After receiving a party's petition for property preservation, the people's court shall make a ruling within 48 hours; if property preservation is granted by a ruling, the preservation thereof shall be enforced immediately.

If the petitioner fails to file a lawsuit within 15 days after the people's court has adopted the preservation measures, the people's court shall cancel the property preservation.

Article 94 Property preservation shall be limited to the scope of the claim or to the property related to the case. The measures of property preservation may include seizure, detain, freeze, or other methods as prescribed by law. When a people's court freezes a property, it shall notify the person whose property is frozen. Those properties that have already been seized, detained, or frozen shall not be seized or frozen again.

Article 95 If the defending party whose property is preserved provides a security, the people's court shall cancel the property preservation.

Article 96 Where a petition is wrongfully made, the petitioner shall compensate the defending party for any loss incurred from the property preservation.

Article 97 The people's court may, at the request of a party, order the measures for the following cases to be enforced in advance:

- (1) Cases involving claims of alimonies, supports for children or elders, pension for the disabled or the family of a decedent, or expenses for medical care;
- (2) Cases involving claims of wages; and
- (3) Cases involving urgent circumstances that require enforcement in advance.

Article 98 The people's court shall make sure the following conditions are met before making a ruling to enforce the property preservation in advance:

- (1) The relationship of rights and obligations between the parties is definite, and the refusal of advance enforcement would seriously affect the life or business operation of petitioners; and
- (2) The defending party whose property would be preserved is capable of fulfilling the obligations involved in the advance

enforcement.

The people's court may order the petitioners to provide sureties; if a petitioner fails to do so, his petition may be rejected. If the petitioner loses the lawsuit, he shall compensate the defending party whose property was preserved for any loss incurred from the advance enforcement.

Article 99 If a party is not satisfied with an order on property preservation or advance enforcement, he may petition for reconsideration that can be granted only once. However, the enforcement of the order shall not be suspended during the time of reconsideration.

#### Chapter 10 Compulsory Measures against Obstruction of Civil Actions

Article 100 If a defendant who is required to appear in court has been served twice with subpoena but still refuses to appear in court without legitimate reason, the people's court may summon him to court by force.

Article 101 All litigation participants and other persons shall abide by the court rules.

For those persons who violate the court rules, the people's courts may reprimand them, evict them from the courts, or impose a fine or detention on them.

For those persons who create uproars, disturb courtrooms, insult, slander, threat, or assault adjudicating personnel, or seriously disrupt the order of courtrooms, the people's court shall investigate them for criminal liabilities according to law; if the circumstances are minor, a fine or detention may be imposed on the offender.

Article 102 Where any litigation participants or any other persons commit any of the following acts, the people's courts shall impose a fine or detention on them based on the circumstances; if a crime is committed, the people's court shall investigate them for criminal liabilities according to law.

- (1) Forging or destroying significant evidence, which would obstruct the a people's court's adjudication of a case;
- (2) Using violence, threats, or bribery to hinder a witness from giving testimony, or instigating, bribing, or coercing others to commit perjury;
- (3) Concealing, transferring, selling, or destroying any properties that have been seized or detained, or any properties that have been inventoried and ordered by a court under the offenders' custody, or transferring the property that has been frozen;
- (4) Insulting, slandering, incriminating with false charges, beating up, or retaliating adjudicating personnel, litigation participants, witnesses, interpreters, experts witnesses, inspectors, or personnel assisting in enforcement; or
- (5) Using violence, threats, or other means to hinder adjudicating personnel from performing their duties; or
- (6) Refusing to comply with legally effective judgments or orders rendered by a people's court.

Where a unit commits any of the following acts stipulated in the preceding paragraph, the people's courts may impose a fine or detention on the principal leading personnel of the unit or the person directly responsible; if a crime is committed, the people's court shall investigate them for criminal liabilities according to law.

Article 103 If a unit that has an obligation to assist in judicial investigation or enforcement commits any of the following acts, the people's court may order the unit to perform its obligation but also impose a fine on the unit:

- (1) Refusing or obstructing a people's court from investigation or collecting evidence;
- (2) Where the unit is a bank, credit union, or other institution engaging in saving deposit business, refusing to assist in inquiring, freezing, or transferring funds after receiving a notification from the people's court for enforcement assistance;
- (3) After receiving a notification on assistance in enforcement from the people's court, refusing to assist in withholding the income of a defending party whom is ordered to pay or handling the transfer of property titles, relevant negotiable instruments, certificates and licenses, or other properties; or
- (4) Refusing to provide other assistance in enforcement order by court.

With respect to a unit that commits any of the acts specified in the preceding paragraph, the people's court may impose a fine on the principal leading personnel of the unit or the person directly responsible; and may detain them if they still fail to

perform the obligation to provide assistance; and may also make judicial suggestions to the supervisory organ or other relevant organs on imposing a disciplinary sanction on the unit.

Article 104 A fine on an individual shall be not more than Renminbi 10,000 Yuan. A fine on a unit shall be not less than Renminbi 10,000 Yuan and not more than Renminbi 300,000 Yuan.

A detention period shall not be longer than fifteen days.

The people's court shall deliver detainees to a public security organ for custody. The people's court may decide to grant the detainee an early release if he admits and is willing to correct his wrongdoing.

Article 105 Any summons by force, fines, or detentions shall be approved by the president of a people's court.

A warrant shall be issued before carrying out a summon by force.

The rulings of fines and detentions shall be issued in written letter form. If a party does not agree with a decision, he may apply to a people's court at a higher level for reconsideration and the reconsideration can be granted only once. However, the enforcement of the decision shall not be suspended during the time of reconsideration.

Article 106 Any decision on the adoption of compulsory measures against obstruction of civil actions shall be made by the people's court. Any unit or individual pressing a debt payment by unlawfully detaining a person or illegally seizing other people's property shall be investigated for criminal liabilities according to law or may be punished by detention or fine.

#### Chapter 11 Litigation Expenses

Article 107 Any party filing a civil lawsuit shall pay a case handling fee according to relevant regulations. For cases involving property, the party shall pay other litigation expenses, in addition to case handling fee.

Parties who truly have difficulties to pay litigation expenses may, according to relevant regulations, petition the people's court to postpone, reduce, or waive the payment.

Procedures for the payment of litigation expenses shall be formulated separately.

#### Part Two Trial Procedure

#### Chapter 12 Ordinary Procedure of First Instance

##### Section 1 Filing and Accepting Lawsuits

Article 108 The following conditions must be met before a lawsuit is filed:

- (1) The plaintiff must be a citizen, legal person, or an organization having a direct interest with the case;
- (2) There must be a specific defendant;
- (3) There must be a concrete claim, a factual basis, and a cause for the lawsuit; and
- (4) The lawsuit must be within the scope of civil lawsuits to be accepted by the people's courts and within the jurisdiction of the people's court to which the lawsuit is filed.

Article 109 When filing a lawsuit, the motion of complaint shall be submitted to the people's court with enough copies of the motion for all members of defendants.

If a plaintiff is truly difficult to write a motion of complaint, he may file his complaint orally, and the court shall record his complain in the transcript and inform the other party.

Article 110 A motion of complaint shall clearly state the following items:

- (1) The name, sex, age, ethnicity, occupation, working unit, and address of parties or, if the parties are legal persons or organizations, their names and addresses and the names and positions of their legal representatives or principal leading personnel;
- (2) The claims of the lawsuit and the facts and grounds on which the lawsuit is based; and
- (3) Evidence and its source, as well as the names and addresses of witnesses.

Article 111 People's courts shall accept the lawsuits filed in conformity with the provisions of Article 108 of this Law. For the lawsuits described below, people's courts shall handle them according to their specific circumstances:

- (1) For the cases within the scope of administrative lawsuits according to the provisions of the Administrative Procedure Law, the plaintiffs shall be informed to file administrative lawsuits;
- (2) For the cases where both parties have voluntarily reached a written agreement according to law to submit their contract disputes to an arbitration agency for an arbitration, no one shall file a lawsuit in a people's court and the plaintiffs shall be notified to submit the disputes to the arbitration agencies for arbitration;
- (3) For the disputes which, according to law, should be handled by other organs, the plaintiffs shall be notified to petition the relevant organs for settlement;
- (4) For the cases that are not within their jurisdictions, the people's courts shall notify the plaintiffs to bring their lawsuits to the proper people's courts that have the jurisdictions;
- (5) Where one side of the parties file lawsuits against the same cases in which their judgments or orders have become legally effective, the people's courts shall notify the plaintiffs to file a grievance instead except those cases in which the orders rendered by the people's courts to allow the lawsuits to be withdrawn;
- (6) If cases that are not permitted by law to be filed within a specified period of time are filed during the same period of time, they shall not be accepted by any courts; or
- (7) For those divorce cases in which the judgments did not grant divorce or both parties have become reconciled after mediation and for those adoption cases in which the judgments have been given to maintain the adoptive relationship or that have been mediated to maintain the adoptive relationship, if there is no new developments or reasons, the plaintiffs are barred from filing new lawsuits regarding the same cases in six months.

Article 112 When a people's court receives a motion of complaint or an oral complaint and finds the complaint meets the requirements of a civil lawsuit after reviewing the complaint, the court shall accept the case within seven days and notify the parties involved; if the complaint does not meet the requirements of a civil lawsuit, the court shall, within seven days, make a ruling to reject the complaint. If the plaintiff does not agree with the ruling, he may appeal on the ruling.

## Section 2 Pretrial Preparation

Article 113 The people's court shall deliver a copy of a motion of complaint to the defendant within five days from its acceptance of a case, and the defendant shall file a motion of defense within 15 days after receiving the copy of the motion of complaint.

If the defendant files a motion of defense, the people's court shall deliver a copy of the motion of defense to the plaintiff within five days after receiving the motion of defense. If the defendant fails to file a motion of defense, it shall not prevent the case from being heard by the people's court.

Article 114 When a people's court decides to accept a case, the court shall inform the parties orally or in the notice of case acceptance or in the notice of litigation response, with their rights and obligations to the litigation.

Article 115 The parties shall be promptly notified after the members of a collegial bench are decided.

Article 116 The adjudicating personnel shall carefully examine the case materials and carry out investigation and collection of necessary evidence.

Article 117 The personnel sent by a people's court to conduct an investigation shall first show their credentials to the person being investigated. The written record of an investigation shall be checked by the person investigated and then signed or sealed by both the investigator and the investigated.

Article 118 A people's court may, when necessary, entrust a people's court in another locality to conduct an investigation. The entrusting people's court shall clearly set out the matters and requirements of the entrusted investigation. The entrusted people's court may, on its own initiative, conduct further investigation.

The entrusted people's court shall complete the investigation within 30 days after receiving the letter to entrust the investigation. If for some reasons the entrusted court cannot complete the investigation, it shall notify the entrusting people's court in writing within the 30 days.

Article 119 When a party who must appear in a joint litigation but fails to do so, the people's court shall notify him to participate in the proceeding.

### Section 3 Courtroom Trial

Article 120 Civil cases adjudicated by people's courts shall usually be heard publicly, except for the cases that involve state secrets or the private affairs of individuals, or are otherwise provided by law.

A divorce case or a case involving trade secrets may not be heard publicly if a party so requests.

Article 121 When adjudicating civil cases, the people's courts may, whenever necessary and possible, send out circuit tribunals to hold trials on the spot.

Article 122 The people's court shall notify the parties and other participants in a civil case three days before the opening of a court session. If a case is to be heard publicly, the names of the parties, the cause of action, and the time and location of the court session shall be announced publicly.

Article 123 Before a court session is called to order, the court clerk shall find whether or not the parties and other participants of the case are present and announce the rules of court order.

At the beginning of a trial, the presiding judge shall check the identities of parties who appear in court, announce the cause of action and the names of the adjudicating personnel and court clerks, inform the parties of their relevant litigation rights and obligations, and ask the parties whether or not they wish to apply for the withdrawal of any court personnel.

Article 124 Courtroom investigation shall be conducted in the following order:

- (1) Opening statements presented by both parties;
- (2) Informing the witnesses of their rights and obligations, testimonies given by the witnesses, and reading the statements of absentee witnesses;
- (3) Presenting documentary evidence, physical evidence, and audio and visual reference material;
- (4) Reading the conclusions of expert witnesses; and
- (5) Reading the transcripts of investigation and examination.

Article 125 The parties may present new evidence during a court session.

With the permission of the court, the parties may cross-examine witnesses, expert witnesses, and inspectors.

The parties may request a new investigation, expert evaluation, or inspection and such requests are subject to the approval of the people's court.

Article 126 The additional claims of a plaintiff, the counterclaims of a defendant, and the claims of any third-party related to the same case may be combined and tried together.

Article 127 Courtroom debates shall be conducted in the following order:

- (1) Opening statement presented by the plaintiff and his litigation representative;
- (2) Responding statement presented by the defendant and his litigation representative;
- (3) Statements or defending statements presented by third parties and their litigation representatives; and
- (4) Debate between the two sides.

At the end of a courtroom debate, the presiding judge shall ask each side to present his final opinions in the order of plaintiff going first, defendant second, and third party last.

Article 128 At the end of a courtroom debate, a judgment shall be made according to law. Where mediation is possible

prior to the rendering of a judgment, a session of mediation may be conducted; if mediation proves to be unsuccessful, a judgment shall be made without delay.

Article 129 If a plaintiff who has been served with a legal subpoena from a people's court refuses to appear in court without proper reason, or if he walks out during a court session without the permission of the court, the court may consider the plaintiff has withdrawn his complaint; under these two circumstances, if the defendant files a counterclaim, the court may enter a default judgment.

Article 130 If a defendant who has been served with a legal subpoena from a people's court refuses to appear in court without proper reason, or if he walks out during a court session without the permission of the court, the court may enter a default judgment.

Article 131 If a plaintiff applies to withdraw his complaints before a judgment is pronounced, the people's court shall make a ruling regarding the application.

If a people's court decides to reject an application of withdrawing a complaint and the plaintiff who has been served with a subpoena refuses to appear in court without proper reason, the people's court may enter a default judgment.

Article 132 Under any of the following circumstances, their trial at courtroom may be postponed:

- (1) Parties and other litigation participants who must appear in court fail to appear in court without proper reasons;
- (2) A party requests the recusal of an adjudicating personnel without an advance notice;
- (3) It is necessary to summon new witnesses to court, collect new evidence, make a new expert evaluation, hold another examination, or make a supplementary investigation; or
- (4) Their circumstances that warrant the postponement.

Article 133 The court clerk shall record the entire court proceedings into a transcript and the transcript shall be signed by the adjudicating personnel and the court clerk.

The courtroom transcript shall be read out in court or the parties and other litigation participants may be notified to read the transcript while in court or come to court to read the transcript within five days. If a party or other litigation participants consider that there are omissions or errors in the transcript regarding their statements, they shall have the right to apply for additions or corrections. If such additions or corrections are not made, their application shall be recorded into the case file. The courtroom transcript shall be signed or sealed by the parties and other litigation participants. If there is any refusal to do so, the refusal shall be recorded in a note to be attached to the file.

Article 134 People's courts shall publicly pronounce their judgments in all case regardless if the cases were tried publicly or privately.

If a judgment is pronounced in court, the written judgment shall be issued and delivered within ten days; if a judgment is pronounced later on a fixed date, the written judgment shall be issued immediately after the pronouncement.

Upon pronouncement of a judgment, the parties must be informed of their right of appeal, the time limit for appeal, and the court to which they may appeal.

Upon pronouncement of a divorce judgment, the parties must be informed that none of them can marry another person before the judgment takes legal effect.

Article 135 A people's court shall complete the adjudication of a case to which ordinary procedure is applied within six months after the case is accepted. Where an extension of the term is necessary for special circumstances, a six-month extension may be given upon the approval of the president of the court. Any further extension shall be reported to the people's court at a higher level for approval.

#### Section 4 Lawsuit Suspension and Conclusion

Article 136 A lawsuit shall be suspended if it involves any of the following circumstances:

- (1) One of the parties dies and it is necessary to wait for his successor to express whether he would participate in the proceedings;
- (2) One of the parties has lost the capacity to engage in litigation and his litigation representative has not been designated;
- (3) The legal person or any other organization as one of the parties has terminated, and the person succeeding to its rights and obligations has not been determined;
- (4) One of the parties is unable to participate in the proceedings for reasons of force majeure;
- (5) The current case is dependent on the results of the trial of another case that has not yet been concluded; or
- (6) Other circumstances warrant the suspension of the lawsuit.

The proceedings shall resume after the causation of suspension is eliminated.

Article 137 A lawsuit shall be ended, if it involves any of the following circumstances:

- (1) The plaintiff dies without a successor, or the heir waives his right of litigation;
- (2) The defendant dies without estate or anyone to assume his obligations;
- (3) In a divorce case, one of the parties dies, or
- (4) In a case involving claims for overdue alimony, support of children or elders, or a claim for the termination of adoptive relationship, one of the parties dies.

#### Section 5 Judgments and Rulings

Article 138 A judgment shall clearly set forth the following:

- (1) The cause of action, claims, and the facts and reasons of disputes;
- (2) The facts and reasons on which the judgment is based and the laws to which are applied;
- (3) The consequences of a judgment and the obligation of litigation costs; and
- (4) The time limit for filing an appeal and the appellate court with which the appeal shall be filed.

The judgment shall be signed by the adjudicating personnel and the court clerk, and the seal of the people's court shall be affixed to it.

Article 139 If some of the facts in a case being adjudicated by a people's court have already been clear, the court may render judgments regarding these facts first.

Article 140 Rulings shall be applicable to the following:

- (1) Rejection of a lawsuit;
- (2) Objection to the jurisdiction of a court;
- (3) Rejection of a complaint;
- (4) Property preservation and advance enforcement;
- (5) Approval or disapproval of withdrawal of a lawsuit;
- (6) Suspension or ending of a lawsuit;
- (7) Correction of typos in a judgment;
- (8) Suspension or termination of enforcement;
- (9) Cancellation or refusal of enforcing an arbitration award;
- (10) Refusal of enforcing a document of creditor's rights issued by a notary office; or
- (11) Other matters to be decided by a ruling.

An appeal may be filed against a ruling against items 1, 2, or 3 of the preceding paragraph.

A written ruling shall be signed by the adjudicating personnel and the court clerk, and the seal of the people's court shall be affixed to it. If an order is issued orally, it shall be entered into the record.

Article 141 All judgments and rulings rendered by the Supreme People's Court, as well as judgments and rulings against which shall not be appealed according to law or have not been appealed within the prescribed time limit, shall be legally effective.

#### Chapter 13 Summary Procedure

Article 142 When adjudicating simple civil cases in which facts are clear, the relations of rights and obligations are definite, and disputes are minor, the basic people's courts or their dispatched tribunals may apply the summary procedure stipulated in this Chapter.

Article 143 For simple civil cases, their plaintiffs may file their complaints orally.

Both parties may appear at the same time in a basic people's court or its dispatched tribunal for a solution of their dispute. The basic people's court or its dispatched tribunal may adjudicate the case immediately or set a date for the trial.

Article 144 When adjudicating a simple civil case, the basic people's court or its dispatched tribunal may, at any time, use simplified methods to summon the parties and witnesses.

Article 145 A simple civil case shall be tried by one judge alone and the trial of such cases shall not be restricted by the provisions of Articles 123, 125, and 128 of this Law.

Article 146 The people's court shall complete the adjudication of a case to which the summary procedure is applied within three months after the case is accepted.

#### Chapter 14 Procedure of Second Instance

Article 147 If a party disagrees with a judgment rendered by a local people's court of first instance, he shall have the right to file an appeal with the people's court at the next higher level within 15 days from the date when the written judgment is served.

If a party disagrees with a ruling made by a local people's court of first instance, he shall have the right to file an appeal with a people's court at the next higher level within 10 days from the date when the written ruling is served.

Article 148 When filing an appeal, a motion of appeal shall be submitted. A motion of appeal shall include the names of all parties, the names of legal persons and their legal representatives, or the names of other organizations and their principal leading personnel; the name of the people's court where the case was originally tried, the docket number, and the cause of action; and the claims and reasons of appeal.

Article 149 A motion of appeal shall be submitted via the people's court that originally tried the case and the copies of the motion shall be prepared according to the number of people or representatives in the opposing party.

If a party appeals directly to a people's court of second instance, the court shall, within five days, transfer the motion of appeal to the people's court that originally tried the case.

Article 150 Within five days after receiving a motion of appeal, the people's court that originally tried the case shall deliver the copies of the motion of appeal to the appellee. After receiving the copies of the motion of appeal, the appellee shall submit its motion of defense within 15 days. The people's court shall, within five days from receiving the motion defense, deliver the copies of the motion of defense to the appellant. Failure by the appellee to submit a motion of defense shall not prevent the case from being adjudicated by the people's court.

After receiving the motion of appeal and the motion of defense, the people's court that originally tried the case shall, within five days, deliver them together with the entire case file and evidence to the people's court of second instance.

Article 151 A people's court of second instance shall review the facts and the law used in an appellate case.

Article 152 When handling an appellate case, the people's court of second instance shall form a collegial bench to adjudicate the case. After verifying the facts of the appellate case by consulting the files, making necessary investigations, and questioning the parties, if the collegial bench believes that it is not necessary to hold a trial, it may make a judgment or ruling without a trial.

A people's court of second instance may try an appellate case in its own courthouse or in the place where the case



originated or where the people's court that originally tried the case is located.

Article 153 After hearing an appellate case, the people's court of second instance shall handle the case respectively according to the following circumstances:

- (1) If the facts were clearly found and the law was correctly applied in the original judgment, the appeal shall be rejected by a judgment and the original judgment shall be sustained;
  - (2) If the law was incorrectly applied in the original judgment, the judgment shall be amended according to law;
  - (3) If in the original judgment the facts were incorrectly found or were not clearly found and the evidence was inconclusive, the judgment shall be rescinded and the case remanded by an order to the original people's court for a retrial, or the people's court of second instance may amend the judgment after investigating and clarifying the facts; or
  - (4) If in the original judgment a violation of the prescribed procedure may have affected the correctness of the judgment, the judgment shall be rescinded and the case remanded by an order to the original people's court for a retrial.
- The parties may appeal against the judgment or ruling rendered in a retrial of their case.

Article 154 A people's court of second instance shall use rulings to rule on all appellate cases that appealed against the rulings made by the people's court of first instance.

Article 155 When adjudicating an appellate case, the people's court of second instance may offer mediation for the parties. If an agreement is reached through mediation, a mediation statement shall be made and signed by the adjudicating personnel and the court clerk, and the seal of the people's court shall be affixed to it. After the mediation statement has been delivered, the judgment rendered by the people's court that originally tried the case shall be considered rescinded.

Article 156 If an appellant requests to withdraw his appeal before the people's court of second instance pronounces its judgment, the court shall rule to approve or disapprove such a request.

Article 157 When a people's court of second instance adjudicates an appeal, it shall apply the ordinary procedure of first instance unless otherwise stipulated in this Chapter.

Article 158 The judgments and rulings of a people's court of second instance shall be final.

Article 159 When adjudicating an appeal from a judgment, the people's court shall make a final judgment within three months after the appeal was accepted for an adjudication of second instance. Any extension of the term necessitated by special circumstances shall be subject to the approval of the president of the court.

When adjudicating an appeal from a ruling, the people's court shall make a final ruling within 30 days after the case was accepted for an adjudication of second instance.

## Chapter 15 Special Procedure

### Section 1 General Stipulations

Article 160 When a people's court adjudicates cases concerning the credentials of voters, the declaration of a missing or dead person, the civil capacity of a citizen (incompetent or limited capacity in civil conduct), or the ownership of unclaimed property, the provisions of this Chapter shall be applicable. For matters not covered in this Chapter, the relevant provisions of this Law and other laws shall be applicable.

Article 161 For cases to be adjudicated according to the procedure stipulated in this Chapter, the system of one trial to conclude a case shall be applied. A collegial bench of judges shall be formed for the adjudication of any cases involving the credentials of voters, or any major, difficult, or complicated cases; and all the other kinds of cases shall be tried by one judge alone.

Article 162 If a people's court, while adjudicating a case according to the procedure stipulated in this Chapter, discovers that the case involves a dispute over civil rights and interests, it shall make a ruling to terminate the special procedure and

inform the interested parties that they may bring a new lawsuit.

Article 163 When adjudicating a case to which special procedure is applied, the people's court shall conclude the adjudication within one month after the case is accepted or within one month from expiration of the term set forth in the public announcement. Any extension of the term necessitated by special circumstances shall be subject to the approval of the president of the court. However, this article does not apply to the adjudication of voters' credentials

#### Section 2 Cases Concerning the Credentials of Voters

Article 164 If citizens refuse to accept an election committee's decision on an appeal concerning the credentials of voters, they may, in five days before the election day, bring a lawsuit in the basic people's court located in their electoral districts.

Article 165 After a people's court has accepted a case concerning the credentials of voters, it must conclude the case before the election day.

The plaintiff, the representative of the election committee, and the relevant citizens shall participate in the proceedings. The written judgment of the people's court shall be delivered to the election committee and the plaintiff before the election day, and the relevant citizens shall be notified of the judgment.

#### Section 3 Cases Concerning the Declaration of Missing or Dead Persons

Article 166 Where a citizen whose whereabouts have been unknown for two years and the interested party pleads for the declaration of the person to be missing, the pleading shall be filed with the basic people's court in the locality where the missing person has his domicile.

The pleading shall clearly state the facts and time of the disappearance as well as the action requested, and documentary evidence from a public security organ or other relevant organs concerning the disappearance of the citizen shall be appended.

Article 167 Where a citizen whose whereabouts have been unknown for four years or whose whereabouts have been unknown for two years after an accident in which he was involved, or whose whereabouts have been unknown after an accident in which he was involved and whose surviving chance is impossible based on the evaluation of a relevant authority, and if the interested party pleads for the declaration of the citizen to be dead, the pleading shall be filed with the basic people's court in the locality where the missing person has his domicile.

The pleading shall clearly state the facts and time of the disappearance as well as the action requested, and documentary evidence from a public security organ or other relevant organs concerning the disappearance of this citizen shall be appended.

Article 168 After accepting a case concerning a declaration of a missing or dead person, the people's court shall issue a public announcement to search for the missing person. The time period to declare a person is missing shall last for three months, and the time period to declare a person is dead shall last for one year. Where a citizen's whereabouts have been unknown after an accident in which he was involved and his surviving chance is impossible based on the evaluation of a relevant authority, the time limit to declare such a person is dead shall be three months.

Upon the expiration of the time period for the public announcement, the people's court shall, depending on whether the facts about the missing or death of a person can be confirmed, make a judgment to declare the person is missing or dead, or make a judgment to reject such a pleading.

Article 169 Should a citizen who was declared as a missing or dead person by a people's court reappear, the people's court shall, upon the application of that person or an interested party, make a new judgment to nullify the previous one.

#### Section 4 Cases Concerning the Determination of Citizens' Capacities in Civil Conducts

Article 170 A pleading for determining if a citizen has limited capacity or does not have capacity in civil conduct shall be

filed by the citizen's close relatives or any other interested party with the basic people's court in the locality where the citizen has his domicile.

The pleading shall clearly state the facts and grounds on which the citizen's incompetence or limited capacity in civil conducts is claimed.

Article 171 After accepting such a pleading, the people's court shall, when necessary, appoint an expert to perform an evaluation on the citizen whom is pleaded to have incompetent or limited capacity in civil conducts; if the petitioner has already provided an evaluation conclusion, the people's court shall review the conclusion.

Article 172 When a people's court adjudicates a case to determine if a citizen has incompetent or with limited capacity in civil conduct, a close relative of the citizen shall be the litigation representative unless he is also the petitioner. If none of the close relatives are willing to assume the responsibility as the litigation representative, the people's court shall appoint one of them as a litigation representative for the citizen. If the citizen's state of health permits, the people's court may also question the citizen.

If the people's court is convinced, after adjudication, that the pleading is based on facts, it shall make a judgment to determine the citizen has incompetent or limited capacity in civil conduct; if the court finds that the pleading is not based on facts, it shall make a judgment to reject the plead.

Article 173 Based on a pleading filed by a person who was found to have incompetent or limited capacity in civil conduct or filed by his guardian, if the people's court finds that the causation that makes the person to have incompetent or limited capacity in civil conduct has disappeared, it shall make a new judgment to nullify the previous one.

#### Section 5 Cases Concerning the Determination of Ownerless Property

Article 174 A petition for determining a property to be ownerless shall be filed by a citizen, legal person, or an organization with the basic people's court located in the place where the property is located.

The petition shall clearly state the type and quantity of the property and the grounds on which the petition for determining the property to be ownerless is filed.

Article 175 After accepting such a petition, the people's court shall review and verify the petition and then issue a public announcement to see if anyone would claim the property. If no one claims the property for a year after the public announcement was issued, the people's court shall make a judgment to declare the property is ownerless and turn the property over to the treasury of the state or a collective unit.

Article 176 After a property was determined by a judgment to be ownerless, if the owner of the property or his successor emerges, he may claim the property within the statutory limitation proscribed in the General Principle of Civil Law, the people's court shall, after examination and verification, make a new judgment to nullify the previous one.

#### Chapter 16 Procedure of Adjudication Supervision

Article 177 If the president of a people's court at any level finds some definite errors in a legally effective judgment or ruling rendered by his court and deems it is necessary to have the case re-adjudicated, he shall refer the case to the adjudication committee for discussion and decision.

If the Supreme People's Court finds some definite errors in a legally effective judgment or rulings rendered by a local people's court at any level, or if a people's court at a higher level finds some definite errors in a legally effective judgment or ruling of a people's court at a lower level, the Supreme People's Court or the people's court at the higher level shall have the power to bring the case up to be re-adjudicated by itself or direct the people's court at a lower level to conduct a re-adjudication.

Article 178 If a party considers that a legally effective judgment or ruling has some errors, he may petition the people's court at the next higher level for retrial; however, the enforcement of the judgment or ruling shall not be suspended.

Article 179 If a petition for retrial made by a party involves any of the following circumstances, the people's court shall retry the case:

- (1) There is new evidence which is conclusive enough to overrule the original judgment or ruling;
- (2) The main evidence used in the original judgment or ruling to find the facts was insufficient;
- (3) The main evidence used in the original judgment or ruling to find the facts was forged;
- (4) The main evidence used in the original judgment or ruling to find the facts was not cross-examined;
- (5) Any party to a lawsuit is unable to obtain the evidence necessary for adjudicating the case because of some realistic reasons and has applied to the people's court for investigation and collection of such evidence in writing, but the people's court fails to investigate and collect such evidence;
- (6) There was an error in the application of the law in the original judgment or ruling;
- (7) The jurisdiction was in violation of legal provisions and was improper;
- (8) The trial organization was unlawfully formed or the adjudicators that should withdraw have not done so;
- (9) The person incapable of action is not represented by a legal agent, or the party that should participate in the litigation failed to do so because of the reasons not attributable to himself or his legal agent;
- (10) The party's right to debate was deprived of in violation of the law;
- (11) The default judgment in the absence of the party was made whereas that party was not served with summons;
- (12) Some claims were omitted or exceeded in the original judgment or ruling; or
- (13) The legal document on which the original judgment or ruling was made is cancelled or revised.

With respect to a violation of the legal procedure by a people's court that may have affected the correctness of the judgment or ruling in the case or the situation that adjudicating personnel involved themselves in any conduct of embezzlement, bribery, practicing favoritism for himself or relatives, or twisting the law in rendering judgment, the people's court shall retry the case.

Article 180 A party that applies for retrial shall submit a retrial petition and other materials. The people's court shall, within five days after receiving the retrial petition, serve the duplicate of the retrial petition on the opposing party. The opposing party shall submit written opinions within 15 days after receiving the duplicate of the retrial petition; and the failure to submit written opinions will not affect the review by the people's court. The people's court may require the applicant and the opposing party to supplement relevant matters and may inquire about relevant matters.

Article 181 The people's court shall review a retrial petition within three months after receiving it, and rule to retry the case if the retrial petition is under any of the circumstances specified in Article 179 of this Law; or rule to reject the petition if the retrial petition is not under any of the circumstances specified in Article 179 of this Law. Where an extension of the term is necessary for special circumstances, it shall be subject to the approval of the president of the court.

If a case is ruled to be retried upon application of a party involved, the case shall be retried by an intermediate people's court or a people's court at a higher level. If a case is ruled to be retried by the Supreme People's Court or a higher people's court, the case shall be retried by the court that ruled the retrial or any other people's court, or may be retried by the people's court that originally tried the case.

Article 182 For a legally effective mediation statement, if evidence provided by a party proves that the mediation violates the principle of voluntariness and the content of the mediation statement is in violation of the law, the party may plead for a re-adjudication. The people's court shall, upon examination and verification, re-adjudicate the case.

Article 183 For a legally effective judgment on dissolution of marriage, no party shall apply for a re-adjudication.

Article 184 Any retrial petition by a party shall be made within two years after the judgment or ruling becomes legally effective, or be made within three months after the party has known or should know that the legal document on which the original judgment or ruling was made is cancelled or revised or that the adjudicating personnel were involved in any conduct of embezzlement, bribery, practicing favoritism for himself or relatives, or twisting the law in rendering judgment

after two years.

Article 185 When a decision is made to retry a case according to the procedure of adjudication supervision, the enforcement of the original judgment shall be ordered to be suspended. The order shall be signed by the president of the court, and the seal of the people's court shall be affixed to it

Article 186 For a case to be retried by a people's court according to the procedure of adjudication supervision, if the legally effective judgment or ruling was made by a court of first instance, the case shall be retried according to the procedure of first instance, and the parties may appeal against the new judgment or ruling; if the legally effective judgment or ruling was made by a court of second instance, it shall be retried according to the procedure of second instance, and the new judgment or ruling shall be legally effective; if it is a case that was brought up for a retrial by a people's court at a higher level, it shall be retried according to the procedure of second instance, and the new judgment or ruling shall be legally effective.

The people's court shall, in retrying a case, form a new collegial bench.

Article 187 If the Supreme People's Procuratorate discovers that a legally effective judgment or ruling made by a people's court at any level, or if a people's procuratorate at a higher level discovers that a legally effective judgment or ruling made by a people's court at a lower level, involves any of the circumstances specified in Article 179 of this Law, the Supreme People's Procuratorate or the people's procuratorate at a higher level shall respectively file a protest.

If a local people's procuratorate at any level discovers that a legally effective judgment or ruling made by a people's court at the same level involves any of the circumstances specified in Article 179 of this Law, the people's procuratorate shall ask the people's procuratorate at a higher level to file a protest with the people's court at the same level.

Article 188 With respect to a case protested by a people's procuratorate, the people's court that has accepted the protest shall render a ruling for retrial within 30 days after receiving the protest; and a case under any of the circumstances specified in Items (1) up to (5) of Paragraph 1 of Article 179 of this Law may be retried by the people's court at the next lower level.

Article 189 When the people's procuratorate decides to file a protest against a judgment or ruling made by a people's court, it shall produce a motion of protest.

Article 190 When a people's court hears a case protested by a people's procuratorate, the court shall notify the people's procuratorate to send personnel to the court.

#### Chapter 17 Procedure for Hastening Debt Recovery

Article 191 When a creditor requests his debtor to repay money or negotiable instrument, he may plead the basic people's court that has jurisdiction to issue a warrant for payment if the following requirements are met:

- (1) The creditor and the debtor are not involved in other debt disputes; and
- (2) The warrant for payment can be served on the debtor.

The pleading shall clearly state the requested amount of money or quantity of negotiable instrument and the facts and evidence on the basis of which the request is made.

Article 192 After a creditor files his pleading, the people's court shall, within five days, inform the creditor whether his pleading is accepted.

Article 193 After accepting such a pleading, the people's court shall, upon examination of the facts and evidence provided by the creditor, if the relationship of the creditor's rights and the debtor's obligations is definite and legitimate, issue a warrant for payment to the debtor within 15 days from accepting the pleading. If the pleading is untenable, the people's court shall make a ruling to dismiss it.

The debtor shall, within 15 days from the receipt of the warrant for payment, pay off his debts or submit a written objection

to the people's court.

If the debtor has neither submitted an objection nor complied with the warrant for payment within the time limit specified in the preceding paragraph, the creditor may ask the people's court to enforce the warrant.

Article 194 The people's court shall, upon receiving the written objection submitted by the debtor, make a ruling to stop the procedure for supervising debt collection and the warrant for payment shall be invalidated automatically. However, the creditor may then file a lawsuit.

#### Chapter 18 Procedure of Public Summon

Article 195 An owner of a transferable negotiable instrument according to regulations may, if the instrument is stolen, lost, or missing, plead the basic people's court located in the place where the instrument to be paid to issue a public summon. The provisions of this Chapter shall also be applicable to other matters related to public summon according to legal provisions.

Anyone who applies for a public summon shall submit to the people's court an application which shall clearly state the main contents of the bill such as the face value, the issuer, the holder, the endorser, and the grounds and facts on which the application is made.

Article 196 The people's court shall, upon deciding to accept the pleading, notify the payer to suspend the payment, and within three days, issue a public summon to invite the interested parties to claim their rights or interests. The time limit of the public summon shall be at the discretion of the people's court, however, it shall not be less than sixty days.

Article 197 The payer shall, upon receiving the notification of payment suspension issued by a people's court, suspend the payment till the conclusion of the procedure of public summon.

Within the time limit of a public summon, any act to transfer the rights of the disputed instrument shall have no legal effects.

Article 198 Any interested parties shall plead the people's court for asserting their claims within the time limit of a public summon.

After receiving a pleading of an interested party for asserting his claims, the people's court shall make a ruling to conclude the procedure of the public summon to invite the interested parties to assert their claims and notify the applicant and the payer.

The applicant or the claimant may institute a lawsuit in the people's court.

Article 199 If no one asserts a claim, the people's court shall make a judgment on the basis of the petition to declare the negotiable instrument null and void. The judgment shall be announced in a public notice, and the payer of the bill shall be notified of the judgment. As of the date of the public notice, the applicant shall be entitled to claim payment from the payer.

Article 200 If an interested party for a legitimate reason was unable to plead the people's court for asserting his claim before the judgment was made, he may, within one year from the day he knew or should have known of the public notice of the judgment, file a lawsuit in the people's court that made the judgment.

#### Part Three Procedure of Enforcement

##### Chapter 19 General Stipulations

Article 201 Legally effective judgments or rulings of civil cases and the parts of judgments or rulings related to property in criminal cases shall be enforced by the people's court of first instance or the people's court at the same level where the property that is to be enforced is located.

Other legal documents that are to be enforced by a people's court as prescribed by law shall be enforced by the people's court located in the place where the person to be enforced has his domicile or where the property that is subject to the

enforcement is located.

Article 202 If a party or any interested party considers that the enforcement is in violation of legal provisions, it may raise a written objection to the people's court in charge of the enforcement. If a party or any interested party raises a written objection, the people's court shall review the written objection within 15 days after receiving it. If the objection is tenable, the people's court shall rule to cancel or correct the enforcement; and if the objection is untenable, the people's court shall rule to reject the objection. If a party or any interested party is not satisfied with the ruling, it may apply for reconsideration to the people's court at the next higher level within 10 days after the ruling is served.

Article 203 If the people's court fails to make enforcement within six months after receiving the application for enforcement, the person who has applied for the enforcement may apply for enforcement to the people's court at the next higher level. Upon review, the people's court at the next higher level may order the original people's court to make enforcement within a specified period of time, or may decide to make enforcement by itself or direct any other people's court to make enforcement.

Article 204 If, during the course of enforcement, a person who is not involved in the case raises a written objection to the subject matter of the enforcement, the people's court shall review the written objection within 15 days after receiving it. If the objection is tenable, the people's court shall rule to suspend the enforcement on the subject matter; and if the objection is untenable, it shall be rejected. If a person who is not involved in the case or a party involved is not satisfied with the ruling and considers that there is an error in the original judgment or ruling, it shall be dealt with according to the procedure of adjudication supervision; and if a written objection is irrelevant to the original judgment or ruling, the relevant party may file a lawsuit with the people's court within 15 days after the ruling is served.

Article 205 The enforcement shall be carried out by the enforcement officer.

In carrying out a compulsory enforcement measure, the enforcement officer shall show his credentials. After the enforcement is completed, the enforcement officer shall make a written record for the particulars of the enforcement, and have it signed or sealed by the persons concerned on the scene.

The people's court may, when necessary, establish executive organs.

Article 206 If a person or property to be subject to enforcement is in another locality, the people's court in that locality may be entrusted to enforce the enforcement. The entrusted people's court shall begin the enforcement within 15 days after receiving a power of attorney and shall not refuse to do so. After the enforcement has been completed, the entrusted people's court shall promptly inform the entrusting people's court with the result of the enforcement by writing. If the enforcement has not been completed within 30 days, the entrusted people's court shall also inform the entrusting people's court with the particulars of the enforcement by writing.

If the entrusted people's court fails to enforce the enforcement within 15 days after receiving the power of attorney, the entrusting people's court may request the people's court at a higher level of the entrusted people's court to instruct the entrusted people's court to enforce the enforcement.

Article 207 If, during the course of enforcement, both disputing parties reconcile themselves and reach a settlement agreement on their own initiative, the enforcement officer shall make a written record of the terms of the settlement and have both parties affix their signatures or seals onto the record.

If one party fails to fulfill the settlement agreement, the people's court may, at the request of the other party, resume the enforcement according to the original and effective legal document.

Article 208 During the course of enforcement, if the person to be enforced provides a surety, the people's court may, with the consent of the person who has applied for the enforcement, decide to postpone the enforcement or defer the time limit for the enforcement. If the person to be enforced fails again to perform his duty within the new time limit, the people's court shall have the power to enforce the guaranteed property of the person to be enforced or the property of the guarantor.

Article 209 If the citizen to be enforced dies, his debts shall be paid off from his estate; if a legal person or any other organization to be subject to enforcement is terminated, the party that succeeds to its rights and obligations shall fulfill the obligations.

Article 210 After an enforcement has been enforced according to a judgment, ruling, or legal document, if a definite error is discovered in such a judgment, ruling, or legal document and therefore such a judgment, ruling, or legal document has been revoked by a people's court, the people's court shall, with respect to the property which has been enforcement, make a ruling to order the person who has received the enforcement property to return the property. If he refuses to return the property, a compulsory enforcement shall be enforced on him.

Article 211 The provisions of this Part shall be applicable to the enforcement of a mediation agreement drawn up by a people's court.

#### Chapter 20 Application and Referral of Enforcement

Article 212 All the parties shall comply with a legally effective judgment or ruling in a civil case. If a party refuses to comply, the other party may apply to the people's court for enforcement, or the judge may refer the matter to an enforcement officer for enforcement.

All the parties shall also comply with a mediation agreement or other legal documents that are to be enforced by a people's court. If a party refuses to comply, the other party may apply to the people's court for enforcement.

Article 213 If a party fails to comply with an award made by an arbitration institution that was established according to law, the other party may apply for enforcement to the people's court which has jurisdiction over the case. The applied people's court shall enforce the award.

If the party whom the application of enforcement is filed against provides evidence to prove that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial bench, rule to revoke the enforcement of the arbitration award:

- (1) Where the parties have not stipulated an arbitration clause in the contract or have not subsequently reached a written agreement on arbitration;
- (2) Where the matters being arbitrated exceed the scope of the arbitration agreement or the authority of the arbitration agency;
- (3) Where the formation of an arbitration tribunal or the procedure of arbitration is not in conformity with the legal procedure;
- (4) Where the main evidence for finding the facts is insufficient;
- (5) Where there is an error in the application of the law; or
- (6) Where the arbitrators involved in any of conducts of embezzlement, bribery, practicing favoritism for himself or relatives, twisting the law in rendering arbitration award.

If a people's court determines that the enforcement of an arbitration award would contradict the social and public interest, it shall make a ruling of not to enforce the award.

The above-mentioned order shall be served on both parties and the arbitration agency.

Where an arbitration award is ruled by a people's court not to be enforced, the parties may, according to the written arbitration agreement reached by them, apply to the arbitration agency for a new arbitration or bring a lawsuit to a people's court.

Article 214 If a party fails to comply with a certificate of obligation enforcement by a notary office according to law, the other party may apply to the people's court that has the jurisdiction over the case for the enforcement of the obligation and the applied people's court shall enforce such an obligation.

If a people's court discovers a definite error in a notarized certificate of obligation, the people's court shall make a ruling not to enforce the obligation and serve the letter of the ruling to the both parties and the notary office.



Article 215 The time limit for the submission of an application for enforcement shall be two years. The suspension or termination of the time limit for the submission of an application for enforcement shall be governed by the provisions on the suspension or termination of the statute of limitation.

The time limit prescribed in the preceding paragraph shall be calculated from the last day of the period specified by a legal document for its performance. If a legal document specifies an installment performance, the time limit shall be calculated from the last day of the period specified for each installment of performance. If a legal document does not specify the period of performance, the time limit shall be calculated from the day when the legal document takes effects.

Article 216 An enforcement officer shall, after receiving the application for enforcement or the writ of referral of enforcement, send an enforcement notice to the person to be enforced, instructing him to comply with the enforcement within the specified time limit. If the person fails to comply with the enforcement within the time limit, a compulsory enforcement shall be enforced.

If a person to be enforced fails to fulfill the obligations specified in a legal document and may hide or transfer his property, the enforcement officers may take the compulsory enforcement measure immediately.

#### Chapter 21 Enforcement Measures

Article 217 If a person to be enforced fails to fulfill the obligations specified in a legal document as instructed by the enforcement notice, he shall report his property situation for the time being and one year before he has received the enforcement notice. If a person to be enforced refuses to report his property situation or makes a false report, the people's court may, based on the circumstances, impose a fine or detention on the person to be enforced, his legal representative or the principal leading personnel of the unit or the person directly responsible.

Article 218 If a person to be enforced fails to fulfill the obligations specified in a legal document as instructed by the enforcement notice, the people's court shall have the power to make inquiries to the banks, credit unions or other units that deal with saving deposits about the savings deposited by the person subject to the enforcement, and shall also have the power to freeze and appropriate the savings deposited by the person subject to the enforcement, however, the inquiry, freeze, or appropriation of the deposits shall not exceed the scope of the obligation that the person subject to the enforcement should fulfill.

A people's court shall make a ruling to freeze or appropriate a deposit and issue a notice for assisting the enforcement. The banks, credit unions, or other units that deal with saving deposits shall comply with the notice.

Article 219 If a person to be enforced fails to fulfill the obligations specified in a legal documents instructed by an enforcement notice, the people's court shall have the power to withhold or withdraw the portion of his income to fulfill his obligation. However, the court shall leave the necessary living expenses for the person and his dependent family members.

A people's court shall make a ruling to withhold or withdraw a person's income and issue a notice for assisting the enforcement. The unit for which the person to be enforced works, banks, credit unions, or other units that deal with savings deposits shall comply with the notice.

Article 220 If a person to be enforced fails to fulfill his obligation specified in a legal document instructed by the enforcement notice, the people's court shall have the power to seize, detain, freeze, auction, or sell the portion of his property in order to fulfill his obligations. However, the court shall leave the articles of daily necessity used by the person and his dependent family members.

The people's court shall make a ruling in order to take the measures specified in the preceding paragraph.

Article 221 When a people's court seizes or detains a property, if the person to be enforced is a citizen, the court shall notify the person or an adult member of his family to appear on the scene; if the person to be enforced is a legal person or another organization, the court shall notify its legal representatives or the principal leading personnel to appear on the

scene. Their refusal to appear on the scene shall not prevent the enforcement. If a person to be enforced is a citizen, his unit or the basic-level organization in the place where his property is located shall send someone to the scene.

An inventory of the seized or detained property shall be made by the enforcement officer and, after the inventory has been signed or sealed by the persons on the scene, a copy of the inventory shall be given to the person subject to the enforcement. If the person subject to the enforcement is a citizen, a copy of the inventory may also be given to an adult member of his family.

Article 222 The enforcement officer may ask the person to be enforced to safeguard the seized property. The person who is subject to enforcement shall be held responsible for any losses incurred due to his fault.

Article 223 After a property has been seized or detained, the enforcement officer shall order the person to be enforced to fulfill, within the prescribed time limit, the obligations specified in a legal document. If the person fails to fulfill his obligations within the prescribed time limit, the people's court may, according to relevant regulations, ask the relevant units to auction or sell the seized or detained property. The articles that are prohibited from free trading by the state shall be purchased by the relevant units at the price fixed by the state.

Article 224 If a person to be enforced fails to fulfill his obligations specified in a legal document and conceals his property, the people's court shall have the power to issue a search warrant and search his domicile or the place where the property may be concealed.

The adoption of the measures mentioned in the preceding paragraph shall be subject to a search warrant signed by the president of the people's court

Article 225 The delivery of property or negotiable instrument specified in a legal document shall be conducted in the presence of both parties summoned by the enforcement officer or the enforcement officer may deliver the property or the negotiable instrument to the recipient. The recipient of the property or the negotiable instrument shall sign a receipt. Any unit that holds the property or negotiable instruments to be enforced shall pass it on according to the enforcement assistance notice issued by the people's court and the recipient shall sign a receipt

If any citizen holds the property or negotiable instruments to be enforced, the people's court shall notify him to relinquish them. If he refuses to do so, a compulsory enforcement may be enforced.

Article 226 For a compulsory eviction from a building or a plot of land, the president of a people's court shall sign and issue a public announcement to order the person to be enforcement to perform his obligations within a designated period of time. If the person fails to do so within the designated time, a compulsory enforcement may be enforced by the enforcement officer.

When a compulsory enforcement is being enforced, if the person subject to the enforcement is a citizen, the person or an adult member of his family shall be notified to be present on the scene; if the person subject to the enforcement is a legal person or any other organization, its legal representatives or principal leading personnel shall be notified to be present on the scene; their refusal to be present shall not stop the enforcement. If the person to be enforced is a citizen, his work unit or the basic-level organization in the locality of the building or the plot of land to be enforcement shall send people to participate in the enforcement. The enforcement officer shall make a written record of the particulars of the compulsory enforcement, and the people on the scene shall affix their signatures or seals to the record.

The people's court shall assign personnel to transport the properties involved in a compulsory eviction from a building to a designated location and deliver them to the person to be enforced or to an adult member of his family; if any loss is incurred due to the person's refusal to accept the properties, he shall be liable for the loss

Article 227 During the course of enforcement, if some formalities to transfer the certificates of titles need to be done, the people's court may issue an enforcement assistance notice to relevant units and these units shall comply with the notice.

Article 228 If a person to be enforced fails to fulfill his obligations prescribed in a judgment, ruling, or any other legal

document as instructed by the notice of enforcement, the people's court may conduct a compulsory enforcement or entrust a relevant unit or other persons to carry out the enforcement and the person subject to the enforcement shall bear the expenses thus incurred.

Article 229 If a person to be enforced fails to fulfill his obligations of paying money within the time limit specified by a judgment, ruling, or any other legal documents, he shall pay a multiplied interest for the debt based on the default time. If the person subject to the enforcement fails to fulfill his other obligations within the time limit specified by a judgment, ruling, or any other legal documents, he shall pay a surcharge for the deferred performance.

Article 230 After a people's court adopts an enforcement measure stipulated in Articles 118, 119, and 120 of this Law, if the person subject to the enforcement is still unable to pay debts, he shall continue to fulfill his obligations. Once the creditor discovers that the person subject to the enforcement has other properties, the creditor may at any time apply to the people's court for an enforcement of these properties.

Article 231 If a person to be enforced fails to fulfill the obligations specified in a legal document, the people's court may adopt or notify relevant units to assist to adopt the measure of restricting the exit, making records on the credit system, making public the information about nonperformance of duty through public media or any other measure stipulated by law.

#### Chapter 22 Suspension and Termination of Enforcement

Article 232 Under any of the following circumstances, the people's court shall make a ruling to suspend the enforcement:

- (1) The applicant indicates that the enforcement may be postponed;
- (2) A person not involved in the case raises a justified objection to the subject matter of the enforcement;
- (3) A citizen as one of the parties dies and it is necessary to wait for an heir to inherit the rights of the deceased or to succeed his obligations;
- (4) A legal person or any other organization as one of the parties ceases its existence, and the person succeeding to its rights and obligations has not been determined; or
- (5) Other circumstances that the people's court deems the enforcement should be suspended.

Enforcement shall be resumed when the circumstances that caused the suspension of enforcement have disappeared.

Article 233 Under any of the following circumstances, the people's court shall make a ruling to terminate the enforcement:

- (1) The applicant has withdrawn his application of enforcement;
- (2) The legal document on which the enforcement is based has been repealed;
- (3) The citizen to be enforced dies and there is no estate to be enforced and no one to succeed his obligations;
- (4) The person who is entitled to alimony or supports for children or elders dies;
- (5) The citizen to be enforced is too poor to repay his debts, has no source of income, and loses his ability to work; or
- (6) Other circumstances that the people's court deems the enforcement should be concluded.

Article 234 A ruling to suspend or terminate the enforcement shall become effective immediately after being served on the parties concerned.

#### Part Four Special Provisions of the Civil Procedures Involving Foreign Elements

##### Chapter 23 General Principles

Article 235 The provisions of this Part shall be applicable to any civil litigation involving foreign elements within the territory of the People's Republic of China. Where it is not covered by the provisions of this Part, other relevant provisions of this Law shall apply.

Article 236 If an international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those found in this Law, the provisions of the international treaty shall apply, unless the provisions are the

ones on which China has announced reservations.

Article 237 Any civil lawsuits brought against a foreign national, a foreign organization, or an international organization that enjoys diplomatic privileges or immunities shall be dealt with according to the relevant laws of the People's Republic of China and with the international treaties concluded or acceded to by the People's Republic of China.

Article 238 A people's court shall use the spoken and written languages commonly used in the People's Republic of China to adjudicate civil cases involving foreign elements. Translation may be provided at the request of the parties concerned and the expenses of the translation shall be borne by the requesting parties.

Article 239 When foreign nationals, stateless persons, or foreign enterprises or organizations need to appoint lawyers for filing or respond to a lawsuit in a people's court, they shall appoint the lawyers of the People's Republic of China only.

Article 240 Any power of attorney mailed or forwarded from outside the territory of the People's Republic of China by a foreign national, stateless person, or a foreign enterprise or organization that has no domicile in the People's Republic of China to appoint a lawyer or any other person of the People's Republic of China as an litigation representative must be authenticated by a notary office in the country where that person, enterprise, or organization has domicile and confirmed by the Chinese embassy or consulate stationed in that country or shall go through the notary formalities stipulated in the relevant bilateral treaties between China and that country before the power of attorney becomes effective.

#### Chapter 24 Jurisdiction

Article 241 A lawsuit brought against a defendant who has no domicile in the People's Republic of China concerning a contract dispute or other disputes over property rights and interests, if the contract is signed or performed within the territory of the People's Republic of China, or the object of the action is within the territory of the People's Republic of China, or the defendant has detainable property within the territory of the People's Republic of China, or the defendant has its representative agency, branch, or business agent within the territory of the People's Republic of China, may be under the jurisdiction of the people's court located in the place where the contract is signed or performed, the subject of the action is located, the defendant's detainable property is located, the infringing act takes place, or the representative agency, branch or business agent is located.

Article 242 The parties to a disputed contract involving foreign elements or the parties having disputes over property rights and interests involving foreign elements may reach a written agreement to choose the people's court located in the place that has actual connections with their disputes as the court to adjudicate their disputes. If a people's court of the People's Republic of China is chosen as the court having the jurisdiction, such a jurisdiction shall not contravene with the stipulations on the jurisdictions by level or the exclusive jurisdiction proscribed in this Law.

Article 243 If the defendant in a civil litigation involving foreign elements raises no objection to the jurisdiction of a people's court and files his defense with the court, he shall be deemed to have accepted that this people's court has jurisdiction over the case.

Article 244 Lawsuits brought for disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, or Chinese-foreign cooperative exploration and development of the natural resources in the People's Republic of China shall be under the jurisdiction of the people's courts of the People's Republic of China.

#### Chapter 25 Service and Time Periods

Article 245 A people's court may serve litigation documents to a party who has no domicile within the territory of the People's Republic of China by the following methods:

(1) By the method specified in the international treaties concluded or acceded to by both the People's Republic of China

and the country where the recipient of service resides;

(2) Through diplomatic channels;

(3) By entrusting the service to the embassy or consulate of the People's Republic of China stationed in the country where the recipient of service resides;

(4) Through the litigation representative who is empowered by the recipient of service to receive the service for it;

(5) Through the party's representative agency, branch, or business agent whom are authorized to receive the service within the territory of the People's Republic of China;

(6) Via postal service if the law of the country where the recipient of service resides permits serving litigation documents via postal service; in the event that no receipt is returned in six months after the date on which the document was posted, but various circumstances justify the assumption that it has been served, the service shall be deemed completed upon the expiration of the time limit; or

(7) By public announcement if none of the above-mentioned methods can be employed and the service shall be considered completed in six months after the date when the public announcement was issued.

Article 246 If a defendant has no domicile in the People's Republic of China, the people's court shall serve a copy of the motion of complaint on the defendant and notify him to file his motion of defense within 30 days after he receives the copy of the motion of complaint. Any extension of the time requested by the defendant shall be at the discretion of the people's court.

Article 247 If any party who has no domicile in the People's Republic of China is dissatisfied with a judgment or ruling made by a people's court of first instance, he shall have the right to file an appeal within 30 days from the date the written judgment or ruling is served. The appellee shall forward his motion of defense within 30 days after he has received a copy of the motion of appeal. If a party is unable to file an appeal or forward a motion of defense within the period of time prescribed by law and therefore requests an extension of the period, the people's court shall decide to approve or disapprove the request.

Article 248 The time period for handling a civil case involving foreign elements by the people's court shall not be limited by the provisions of Article 135 and 159 of this Law.

#### Chapter 26 Property Preservation

Article 249 The parties may, according to the provisions of Article 92 of this Law, apply to the people's court for property preservation.

The interested parties may, according to the provisions of Article 94 of this Law, apply to the people's court for property preservation before a lawsuit is brought.

Article 250 After a people's court rules to grant a request for property preservation before litigation, the applicant shall bring a lawsuit within 30 days. If he fails to bring a lawsuit within the time limit, the people's court shall cancel the property preservation.

Article 251 After a people's court rules to grant a request for property preservation, if a surety is provided by the person against whom application for the property preservation is made, the people's court shall cancel the property preservation.

Article 252 If an application is wrongfully made, the applicant shall compensate the person against whom the application is made for losses incurred by the property preservation.

Article 253 If a property preserved by a people's court needs to be kept under surveillance, it shall notify the unit concerned to be responsible for the surveillance, and the person against whom the application is made shall bear the expenses thus incurred.

Article 254 A ruling to cancel the preservation issued by a people's court shall be carried out by an enforcement officer.

## Chapter 27 Arbitration

Article 255 For disputes involving foreign economic, trade, transport, or maritime activities, if the parties have stipulated clauses on arbitration in their contracts or have subsequently reached written agreements on arbitration, they shall submit such disputes for arbitration to the foreign-affair arbitration institutions of the People's Republic of China and shall not bring lawsuits in a people's court.

If the parties have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement on arbitration, they may file a lawsuit in a people's court.

Article 256 If a party applies for the adoption of property preservation measure, the foreign-affair arbitration institution of the People's Republic of China shall submit the party's application to the intermediate people's court located in the place where the person against whom the application for the property preservation is filed has his domicile or where the person's property is located.

Article 257 If one party fails to comply with the award made by a foreign-affair arbitration institution of the People's Republic of China, the other party may apply for the enforcement of the award to the intermediate people's court located in the place where the person against whom the application for the enforcement is made has his domicile or where the property of the person is located.

Article 258 If a defendant provides evidence to prove that the arbitration award made by a foreign-affair arbitration institution of the People's Republic of China involves any of the following circumstances, the people's court shall, after examination and verification by a collegial bench, rule to disallow the enforcement of the award:

- (1) The parties have not stipulated any clause regarding arbitration in their contract or have not subsequently reached a written agreement on arbitration;
- (2) The defendant is not duly notified of the appointment of the arbitrators or the arbitration proceeding, or the defendant fails to express his defense due to the reasons for which he is not held responsible;
- (3) The formation of the arbitration panel or the arbitration procedure is not in conformity with rules of arbitration; or
- (4) The matters decided by arbitration exceed the scope of the arbitration agreement or the authority of the arbitration institution.

If a people's court determines that the enforcement of an award will violate the social and public interest, the court shall make a ruling to disallow the enforcement of the arbitration award.

Article 259 If the enforcement of an arbitration award is disallowed, the parties may reach a written agreement on arbitration to re-submit their dispute for a new arbitration or file a lawsuit in a people's court.

## Chapter 28 Judicial Assistance

Article 260 According to the international treaties concluded or acceded to by the People's Republic of China or the principle of reciprocity, the people's courts of China and foreign courts may request each other's assistance in the service of legal documents, the investigation and collection of evidence, or other litigation actions.

If any matter requested by a foreign court for assistance would impair the sovereignty, security, or social and public interests of the People's Republic of China, the people's court shall refuse the request.

Article 261 A request for providing of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China; if there is no treaty regarding judicial assistance between China and the foreign country, such a request may be made through diplomatic channels.

A foreign embassy or consulate to the People's Republic of China may serve legal documents to its citizens or conduct the investigation and collection of evidence on its citizens with the conditions of no laws of the People's Republic of China to be violated and no compulsory measures to be taken.

Except for the circumstances proscribed in the preceding paragraph, no foreign organ or individual may, without obtaining

an approval from the relevant authorities of the People's Republic of China, serve documents or conduct any investigation and collection of evidence within the territory of the People's Republic of China.

Article 262 A letter of request for judicial assistance and its annexes submitted by a foreign court to a people's court shall be appended with Chinese translations or the texts in the language specified in the relevant international treaty.

A letter of request and its annexes submitted to a foreign court by a people's court for judicial assistance shall also be appended with the translations in the language of the country or the texts in the language specified in the relevant international treaty.

Article 263 The judicial assistance provided by the people's courts shall be carried out according to the procedure stipulated by the laws of the People's Republic of China. If a foreign court request for judicial assistance to be conducted in a special method, it may be conducted as requested as long as the special method does not violate any laws of the People's Republic of China

Article 264 If a party applies for enforcement of a legally effective judgment or ruling made by a people's court and the party subject to the enforcement or its property is not within the territory of the People's Republic of China, the applicant may directly apply for the recognition and enforcement of the judgment or ruling to the foreign court that has jurisdiction over the case, or have the people's court request a foreign court to recognize and enforce the judgment or ruling according to the relevant provisions of the international treaties concluded or acceded to by China or on the principle of reciprocity.

If a party applies for the enforcement of a legally effective arbitration award made by a foreign-affair arbitration institution of the People's Republic of China and the party subject to the enforcement or its property is not within the territory of the People's Republic of China, the applicant may directly apply for the recognition and enforcement of the arbitration award to the foreign court that has jurisdiction over the case.

Article 265 If a legally effective judgment or ruling made by a foreign court seeks the recognition and enforcement of a people's court of the People's Republic of China, the party may directly apply to the intermediate people's court of the People's Republic of China that has the jurisdiction over the case for the recognition and enforcement, or the foreign court may, according to the provisions of the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, request the recognition and enforcement of a people's court.

Article 266 After a people's court of the People's Republic of China reviews an application or pleading for the recognition and enforcement of a legally effective judgment or ruling rendered by a foreign court according to the international treaties concluded or acceded to by the People's Republic of China or based on the principle of reciprocity, if the court considers that such a judgment or ruling does not contradict the basic principles of the laws of the People's Republic of China nor violates the national, social, and public interest of China, the court may render a ruling to recognize its force. Where the enforcement is necessary, the court may issue an order to enforce a foreign judgment according to the relevant provisions of this Law. If a legally effective judgment or ruling rendered by a foreign court contradicts the basic principles of the law of the People's Republic of China or the national, social, and public interest of China, the people's court shall reject the application of recognition and enforcement.

Article 267 If an award made by a foreign arbitration institution needs the recognition and enforcement of a people's court of the People's Republic of China, the party shall directly apply to the intermediate people's court located in the place where the party subject to the enforcement has its domicile or where its property is located. The people's court shall deal with the matter according to the relevant provisions of the international treaties concluded or acceded to by the People's Republic of China or on the principle of reciprocity.

Article 268 This Law shall become effective as of the date of promulgation, and the Civil Procedure Law of the People's Republic of China (for Trial Implementation) shall be annulled as of the same date.





## 中华人民共和国民事诉讼法

(1991年4月9日第七届全国人民代表大会第四次会议通过 根据2007年10月28日第十届全国人民代表大会常务委员会第二十次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》修正)

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## 第一编 总 则

### 第一章 任务、适用范围和基本原则

第一条 中华人民共和国民事诉讼法以宪法为根据，结合我国民事审判工作的经验和实际情况制定。

第二条 中华人民共和国民事诉讼法的任务，是保护当事人行使诉讼权利，保证人民法院查明事实，分清是非，正确适用法律，及时审理民事案件，确认民事权利义务关系，制裁民事违法行为，保护当事人的合法权益，教育公民自觉遵守法律，维护社会秩序、经济秩序，保障社会主义建设事业顺利进行。

第三条 人民法院受理公民之间、法人之间、其他组织之间以及他们相互之间因财产关系和人身关系提起的民事诉讼，适用本法的规定。

第四条 凡在中华人民共和国领域内进行民事诉讼，必须遵守本法。

第五条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，同中华人民共和国公民、法人和其他组织有同等的诉讼权利义务。

外国法院对中华人民共和国公民、法人和其他组织的民事诉讼权利加以限制的，中华人民共和国人民法院对该国公民、企业和组织的民事诉讼权利，实行对等原则。

第六条 民事案件的审判权由人民法院行使。

人民法院依照法律规定对民事案件独立进行审判，不受行政机关、社会团体和个人的干涉。

第七条 人民法院审理民事案件，必须以事实为根据，以法律为准绳。

第八条 民事诉讼当事人有平等的诉讼权利。人民法院审理民事案件，应当保障和便利当事人行使诉讼权利，对当事人在适用法律上一律平等。

第九条 人民法院审理民事案件，应当根据自愿和合法的原则进行调解；调解不成的，应当及时判决。

第十条 人民法院审理民事案件，依照法律规定实行合议、回避、公开审判和两审终审制度。

第十一条 各民族公民都有用本民族语言、文字进行民事诉讼的权利。

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

第十二条 人民法院审理民事案件时，当事人有权进行辩论。

第十三条 当事人有权在法律规定的范围内处分自己的民事权利和诉讼权利。

第十四条 人民检察院有权对民事审判活动实行法律监督。

第十五条 机关、社会团体、企业事业单位对损害国家、集体或者个人民事权益的行为，可以支持受损害的单位或者个人向人民法院起诉。

第十六条 人民调解委员会是在基层人民政府和基层人民法院指导下，调解民间纠纷的群众性组织。

人民调解委员会依照法律规定，根据自愿原则进行调解，当事人对调解达成的协议应当履行；不愿调解、调解不成或者反悔的，可以向人民法院起诉。

人民调解委员会调解民间纠纷，如有违背法律的，人民法院应当予以纠正。

第十七条 民族自治地方的人民代表大会根据宪法和本法的原则，结合当地民族的具体情况，可以制定变通或者补充的规定。自治区的规定，报全国人民代表大会常务委员会批准。自治州、自治县的规定，报省或者自治区的人民代表大会常务委员会批准，并报全国人民代表大会常务委员会备案。

## 第二章 管辖

### 第一节 级别管辖

第十八条 基层人民法院管辖第一审民事案件，但本法另有规定的除外。

第十九条 中级人民法院管辖下列第一审民事案件：

- (一) 重大涉外案件；
- (二) 在本辖区有重大影响的案件；
- (三) 最高人民法院确定由中级人民法院管辖的案件。

第二十条 高级人民法院管辖在本辖区有重大影响的第一审民事案件。

第二十一条 最高人民法院管辖下列第一审民事案件：

- (一) 在全国有重大影响的案件；
- (二) 认为应当由本院审理的案件。

### 第二节 地域管辖

第二十二条 对公民提起的民事诉讼，由被告住所地人民法院管辖；被告住所地与经常居住地不一致的，由经常居住地人民法院管辖。

对法人或者其他组织提起的民事诉讼，由被告住所地人民法院管辖。

同一诉讼的几个被告住所地、经常居住地在两个以上人民法院辖区的，各该人民法院都有管辖权。

第二十三条 下列民事诉讼，由原告住所地人民法院管辖；原告住所地与经常居住地不一致的，由原告经常居住地人民法院管辖：

- (一) 对不在中华人民共和国领域内居住的人提起的有关身份关系的诉讼；
- (二) 对下落不明或者宣告失踪的人提起的有关身份关系的诉讼；

(三) 对被劳动教养的人提起的诉讼;

(四) 对被监禁的人提起的诉讼。

第二十四条 因合同纠纷提起的诉讼, 由被告住所地或者合同履行地人民法院管辖。

第二十五条 合同的双方当事人可以在书面合同中协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地人民法院管辖, 但不得违反本法对级别管辖和专属管辖的规定。

第二十六条 因保险合同纠纷提起的诉讼, 由被告住所地或者保险标的物所在地人民法院管辖。

第二十七条 因票据纠纷提起的诉讼, 由票据支付地或者被告住所地人民法院管辖。

第二十八条 因铁路、公路、水上、航空运输和联合运输合同纠纷提起的诉讼, 由运输始发地、目的地或者被告住所地人民法院管辖。

第二十九条 因侵权行为提起的诉讼, 由侵权行为地或者被告住所地人民法院管辖。

第三十条 因铁路、公路、水上和航空事故请求损害赔偿提起的诉讼, 由事故发生地或者车辆、船舶最先到达地、航空器最先降落地或者被告住所地人民法院管辖。

第三十一条 因船舶碰撞或者其他海事损害事故请求损害赔偿提起的诉讼, 由碰撞发生地、碰撞船舶最先到达地、加害船舶被扣留地或者被告住所地人民法院管辖。

第三十二条 因海难救助费用提起的诉讼, 由救助地或者被救助船舶最先到达地人民法院管辖。

第三十三条 因共同海损提起的诉讼, 由船舶最先到达地、共同海损理算地或者航程终止地的人民法院管辖。

第三十四条 下列案件, 由本条规定的人民法院专属管辖:

(一) 因不动产纠纷提起的诉讼, 由不动产所在地人民法院管辖;

(二) 因港口作业中发生纠纷提起的诉讼, 由港口所在地人民法院管辖;

(三) 因继承遗产纠纷提起的诉讼, 由被继承人死亡时住所地或者主要遗产所在地人民法院管辖。

第三十五条 两个以上人民法院都有管辖权的诉讼, 原告可以向其中一个人民法院起诉; 原告向两个以上有管辖权的人民法院起诉的, 由最先立案的人民法院管辖。

### 第三节 移送管辖和指定管辖

第三十六条 人民法院发现受理的案件不属于本院管辖的, 应当移送有管辖权的人民法院, 受移送的人民法院应当受理。受移送的人民法院认为受移送的案件依照规定不属于本院管辖的, 应当报请上级人民法院指定管辖, 不得再自行移送。

第三十七条 有管辖权的人民法院由于特殊原因, 不能行使管辖权的, 由上级人民法院指定管辖。

人民法院之间因管辖权发生争议, 由争议双方协商解决; 协商解决不了的, 报请它们的共同上级人民法院指定管辖。

第三十八条 人民法院受理案件后, 当事人对管辖权有异议的, 应当在提交答辩状期间提出。人民法院对当事人提出的异议, 应当审查。异议成立的, 裁定将案件移送有管辖权的人民法院; 异议不成立的, 裁定驳回。

第三十九条 上级人民法院有权审理下级人民法院管辖的第一审民事案件, 也可以把本院管辖的第一审民事案件交下级人民法院审理。

下级人民法院对它所管辖的第一审民事案件, 认为需要由上级人民法院审理的, 可以报

请上级人民法院审理。

### 第三章 审判组织

第四十条 人民法院审理第一审民事案件，由审判员、陪审员共同组成合议庭或者由审判员组成合议庭。合议庭的成员人数，必须是单数。

适用简易程序审理的民事案件，由审判员一人独任审理。

陪审员在执行陪审职务时，与审判员有同等的权利义务。

第四十一条 人民法院审理第二审民事案件，由审判员组成合议庭。合议庭的成员人数，必须是单数。

发回重审的案件，原审人民法院应当按照第一审程序另行组成合议庭。

审理再审案件，原来是第一审的，按照第一审程序另行组成合议庭；原来是第二审的或者是上级人民法院提审的，按照第二审程序另行组成合议庭。

第四十二条 合议庭的审判长由院长或者庭长指定审判员一人担任；院长或者庭长参加审判的，由院长或者庭长担任。

第四十三条 合议庭评议案件，实行少数服从多数的原则。评议应当制作笔录，由合议庭成员签名。评议中的不同意见，必须如实记入笔录。

第四十四条 审判人员应当依法秉公办案。

审判人员不得接受当事人及其诉讼代理人请客送礼。

审判人员有贪污受贿，徇私舞弊，枉法裁判行为的，应当追究法律责任；构成犯罪的，依法追究刑事责任。

### 第四章 回避

第四十五条 审判人员有下列情形之一的，必须回避，当事人有权用口头或者书面方式申请他们回避：

- (一) 是本案当事人或者当事人、诉讼代理人的近亲属；
- (二) 与本案有利害关系；
- (三) 与本案当事人有其他关系，可能影响对案件公正审理的。

前款规定，适用于书记员、翻译人员、鉴定人、勘验人。

第四十六条 当事人提出回避申请，应当说明理由，在案件开始审理时提出；回避事由在案件开始审理后知道的，也可以在法庭辩论终结前提出。

被申请回避的人员在人民法院作出是否回避的决定前，应当暂停参与本案的工作，但案件需要采取紧急措施的除外。

第四十七条 院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。

第四十八条 人民法院对当事人提出的回避申请，应当在申请提出的三日内，以口头或者书面形式作出决定。申请人对决定不服的，可以在接到决定时申请复议一次。复议期间，被申请回避的人员，不停止参与本案的工作。人民法院对复议申请，应当在三日内作出复议决定，并通知复议申请人。

### 第五章 诉讼参加人

#### 第一节 当事人

第四十九条 公民、法人和其他组织可以作为民事诉讼的当事人。

法人由其法定代表人进行诉讼。其他组织由其主要负责人进行诉讼。

第五十条 当事人有权委托代理人，提出回避申请，收集、提供证据，进行辩论，请求调解，提起上诉，申请执行。

当事人可以查阅本案有关材料，并可以复制本案有关材料和法律文书。查阅、复制本案有关材料的范围和办法由最高人民法院规定。

当事人必须依法行使诉讼权利，遵守诉讼秩序，履行发生法律效力的判决书、裁定书和调解书。

第五十一条 双方当事人可以自行和解。

第五十二条 原告可以放弃或者变更诉讼请求。被告可以承认或者反驳诉讼请求，有权提起反诉。

第五十三条 当事人一方或者双方为二人以上，其诉讼标的是共同的，或者诉讼标的是同一种类、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。

共同诉讼的一方当事人对诉讼标的有共同权利义务的，其中一人的诉讼行为经其他共同诉讼人承认，对其他共同诉讼人发生法律效力；对诉讼标的没有共同权利义务的，其中一人的诉讼行为对其他共同诉讼人不发生法律效力。

第五十四条 当事人一方人数众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生法律效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

第五十五条 诉讼标的是同一种类、当事人一方人数众多在起诉时人数尚未确定的，人民法院可以发出公告，说明案件情况和诉讼请求，通知权利人在一定期间向人民法院登记。

向人民法院登记的权利人可以推选代表人进行诉讼；推选不出代表人的，人民法院可以与参加登记的权利人商定代表人。

代表人的诉讼行为对其所代表的当事人发生法律效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

人民法院作出的判决、裁定，对参加登记的全体权利人发生法律效力。未参加登记的权利人在诉讼时效期间提起诉讼的，适用该判决、裁定。

第五十六条 对当事人双方的诉讼标的，第三人认为有独立请求权的，有权提起诉讼。

对当事人双方的诉讼标的，第三人虽然没有独立请求权，但案件处理结果同他有法律上的利害关系的，可以申请参加诉讼，或者由人民法院通知他参加诉讼。人民法院判决承担民事责任的第三人，有当事人的诉讼权利义务。

## 第二节 诉讼代理人

第五十七条 无诉讼行为能力人由他的监护人作为法定代理人代为诉讼。法定代理人之间互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

第五十八条 当事人、法定代理人可以委托一至二人作为诉讼代理人。

律师、当事人的近亲属、有关的社会团体或者所在单位推荐的人、经人民法院许可的其他公民，都可以被委托为诉讼代理人。

第五十九条 委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。

授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进

行和解，提起反诉或者上诉，必须有委托人的特别授权。

侨居在外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

第六十条 诉讼代理人的权限如果变更或者解除，当事人应当书面告知人民法院，并由人民法院通知对方当事人。

第六十一条 代理诉讼的律师和其他诉讼代理人有权调查收集证据，可以查阅本案有关材料。查阅本案有关材料的范围和办法由最高人民法院规定。

第六十二条 离婚案件有诉讼代理人的，本人除不能表达意志的以外，仍应出庭；确因特殊情况无法出庭的，必须向人民法院提交书面意见。

## 第六章 证据

第六十三条 证据有下列几种：

- (一) 书证；
- (二) 物证；
- (三) 视听资料；
- (四) 证人证言；
- (五) 当事人的陈述；
- (六) 鉴定结论；
- (七) 勘验笔录。

以上证据必须查证属实，才能作为认定事实的根据。

第六十四条 当事人对自己提出的主张，有责任提供证据。

当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。

人民法院应当按照法定程序，全面地、客观地审查核实证据。

第六十五条 人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。

人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

第六十六条 证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人隐私的证据应当保密，需要在法庭出示的，不得在公开开庭时出示。

第六十七条 经过法定程序公证证明的法律行为、法律事实和文书，人民法院应当作为认定事实的根据。但有相反证据足以推翻公证证明的除外。

第六十八条 书证应当提交原件，物证应当提交原物。提交原件或者原物确有困难的，可以提交复制品、照片、副本、节录本。

提交外文书证，必须附有中文译本。

第六十九条 人民法院对视听资料，应当辨别真伪，并结合本案的其他证据，审查确定能否作为认定事实的根据。

第七十条 凡是知道案件情况的单位和个人，都有义务出庭作证。有关单位的负责人应当支持证人作证。证人确有困难不能出庭的，经人民法院许可，可以提交书面证言。

不能正确表达意志的人，不能作证。

第七十一条 人民法院对当事人的陈述，应当结合本案的其他证据，审查确定能否作为认定事实的根据。

当事人拒绝陈述的，不影响人民法院根据证据认定案件事实。

第七十二条 人民法院对专门性问题认为需要鉴定的,应当交由法定鉴定部门鉴定;没有法定鉴定部门的,由人民法院指定的鉴定部门鉴定。

鉴定部门及其指定的鉴定人有权了解进行鉴定所需要的案件材料,必要时可以询问当事人、证人。

鉴定部门和鉴定人应当提出书面鉴定结论,在鉴定书上签名或者盖章。鉴定人鉴定的,应当由鉴定人所在单位加盖印章,证明鉴定人身份。

第七十三条 勘验物证或者现场,勘验人必须出示人民法院的证件,并邀请当地基层组织或者当事人所在单位派人参加。当事人或者当事人的成年家属应当到场,拒不到场的,不影响勘验的进行。

有关单位和个人根据人民法院的通知,有义务保护现场,协助勘验工作。

勘验人应当将勘验情况和结果制作笔录,由勘验人、当事人和被邀参加人签名或者盖章。

第七十四条 在证据可能灭失或者以后难以取得的情况下,诉讼参加人可以向人民法院申请保全证据,人民法院也可以主动采取保全措施。

## 第七章 期间、送达

### 第一节 期间

第七十五条 期间包括法定期间和人民法院指定的期间。

期间以时、日、月、年计算。期间开始的时和日,不计算在期间内。

期间届满的最后一日是节假日的,以节假日后的第一日为期间届满的日期。

期间不包括在途时间,诉讼文书在期满前交邮的,不算过期。

第七十六条 当事人因不可抗拒的事由或者其他正当理由耽误期限的,在障碍消除后的十日内,可以申请顺延期限,是否准许,由人民法院决定。

### 第二节 送达

第七十七条 送达诉讼文书必须有送达回证,由受送达人在送达回证上记明收到日期,签名或者盖章。

受送达人在送达回证上的签收日期为送达日期。

第七十八条 送达诉讼文书,应当直接送交受送达人。受送达人是公民的,本人不在交他的同住成年家属签收;受送达人是法人或者其他组织的,应当由法人的法定代表人、其他组织的主要负责人或者该法人、组织负责收件的人签收;受送达人有诉讼代理人的,可以送交其代理人签收;受送达人已向人民法院指定代收人的,送交代收人签收。

受送达人的同住成年家属,法人或者其他组织的负责收件的人,诉讼代理人或者代收人在送达回证上签收的日期为送达日期。

第七十九条 受送达人或者他的同住成年家属拒绝接收诉讼文书的,送达人应当邀请有关基层组织或者所在单位的代表到场,说明情况,在送达回证上记明拒收事由和日期,由送达人、见证人签名或者盖章,把诉讼文书留在受送达人的住所,即视为送达。

第八十条 直接送达诉讼文书有困难的,可以委托其他人民法院代为送达,或者邮寄送达。邮寄送达的,以回执上注明的收件日期为送达日期。

第八十一条 受送达人是军人的,通过其所在部队团以上单位的政治机关转交。

第八十二条 受送达人是被监禁的,通过其所在监所或者劳动改造单位转交。



受送达人是被劳动教养的，通过其所在劳动教养单位转交。

第八十三条 代为转交的机关、单位收到诉讼文书后，必须立即交受送达人签收，以在送达回证上的签收日期，为送达日期。

第八十四条 受送达人下落不明，或者用本节规定的其他方式无法送达的，公告送达。自发出公告之日起，经过六十日，即视为送达。

公告送达，应当在案卷中记明原因和经过。

## 第八章 调解

第八十五条 人民法院审理民事案件，根据当事人自愿的原则，在事实清楚的基础上，分清是非，进行调解。

第八十六条 人民法院进行调解，可以由审判员一人主持，也可以由合议庭主持，并尽可能就地进行。

人民法院进行调解，可以用简便方式通知当事人、证人到庭。

第八十七条 人民法院进行调解，可以邀请有关单位和个人协助。被邀请的单位和个人，应当协助人民法院进行调解。

第八十八条 调解达成协议，必须双方自愿，不得强迫。调解协议的内容不得违反法律规定。

第八十九条 调解达成协议，人民法院应当制作调解书。调解书应当写明诉讼请求、案件的事实和调解结果。

调解书由审判人员、书记员署名，加盖人民法院印章，送达双方当事人。

调解书经双方当事人签收后，即具有法律效力。

第九十条 下列案件调解达成协议，人民法院可以不制作调解书：

- (一) 调解和好的离婚案件；
- (二) 调解维持收养关系的案件；
- (三) 能够即时履行的案件；
- (四) 其他不需要制作调解书的案件。

对不需要制作调解书的协议，应当记入笔录，由双方当事人、审判人员、书记员签名或者盖章后，即具有法律效力。

第九十一条 调解未达成协议或者调解书送达前一方反悔的，人民法院应当及时判决。

## 第九章 财产保全和先予执行

第九十二条 人民法院对于可能因当事人一方的行为或者其他原因，使判决不能执行或者难以执行的案件，可以根据对方当事人的申请，作出财产保全的裁定；当事人没有提出申请的，人民法院在必要时也可以裁定采取财产保全措施。

人民法院采取财产保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。

人民法院接受申请后，对情况紧急的，必须在四十八小时内作出裁定；裁定采取财产保全措施的，应当立即开始执行。

第九十三条 利害关系人因情况紧急，不立即申请财产保全将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取财产保全措施。申请人应当提供担保，不提供担保的，驳回申请。

人民法院接受申请后，必须在四十八小时内作出裁定；裁定采取财产保全措施的，应当

立即开始执行。

申请人在人民法院采取保全措施后十五日内不起诉的，人民法院应当解除财产保全。

第九十四条 财产保全限于请求的范围，或者与本案有关的财物。

财产保全采取查封、扣押、冻结或者法律规定的其他方式。

人民法院冻结财产后，应当立即通知被冻结财产的人。

财产已被查封、冻结的，不得重复查封、冻结。

第九十五条 被申请人提供担保的，人民法院应当解除财产保全。

第九十六条 申请有错误的，申请人应赔偿被申请人因财产保全所遭受的损失。

第九十七条 人民法院对下列案件，根据当事人的申请，可以裁定先予执行：

- (一) 追索赡养费、扶养费、抚育费、抚恤金、医疗费用的；
- (二) 追索劳动报酬的；
- (三) 因情况紧急需要先予执行的。

第九十八条 人民法院裁定先予执行的，应当符合下列条件：

(一) 当事人之间权利义务关系明确，不先予执行将严重影响申请人的生活或者生产经营的；

(二) 被申请人有履行能力。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请，申请人败诉的，应当赔偿被申请人因先予执行遭受的财产损失。

第九十九条 当事人对财产保全或者先予执行的裁定不服的，可以申请复议一次。复议期间不停止裁定的执行。

## 第十章 对妨害民事诉讼的强制措施

第一百条 人民法院对必须到庭的被告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

第一百零一条 诉讼参与人和其他人应当遵守法庭规则。

人民法院对违反法庭规则的人，可以予以训诫，责令退出法庭或者予以罚款、拘留。

人民法院对哄闹、冲击法庭、侮辱、诽谤、威胁、殴打审判人员，严重扰乱法庭秩序的人，依法追究刑事责任；情节较轻的，予以罚款、拘留。

第一百零二条 诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任：

- (一) 伪造、毁灭重要证据，妨碍人民法院审理案件的；
- (二) 以暴力、威胁、贿买方法阻止证人作证或者指使、贿买、胁迫他人作伪证的；
- (三) 隐藏、转移、变卖、毁损已被查封、扣押的财产，或者已被清点并责令其保管的财产，转移已被冻结的财产的；
- (四) 对司法工作人员、诉讼参加人、证人、翻译人员、鉴定人、勘验人、协助执行的人，进行侮辱、诽谤、诬陷、殴打或者打击报复的；
- (五) 以暴力、威胁或者其他方法阻碍司法工作人员执行职务的；
- (六) 拒不履行人民法院已经发生法律效力的判决、裁定的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款、拘留；构成犯罪的，依法追究刑事责任。

第一百零三条 有义务协助调查、执行的单位有下列行为之一的，人民法院除责令其履行协助义务外，并可以予以罚款：

- (一) 有关单位拒绝或者妨碍人民法院调查取证的；

(二) 银行、信用合作社和其他有储蓄业务的单位接到人民法院协助执行通知书后, 拒不协助查询、冻结或者划拨存款的;

(三) 有关单位接到人民法院协助执行通知书后, 拒不协助扣留被执行人的收入、办理有关财产权证照转移手续、转交有关票证、证照或者其他财产的;

(四) 其他拒绝协助执行的。

人民法院对有前款规定的行为之一的单位, 可以对其主要负责人或者直接责任人员予以罚款; 对仍不履行协助义务的, 可以予以拘留; 并可以向监察机关或者有关机关提出予以纪律处分的司法建议。

**第一百零四条** 对个人的罚款金额, 为人民币一万元以下。对单位的罚款金额, 为人民币一万元以上三十万元以下。

拘留的期限, 为十五日以下。

被拘留的人, 由人民法院交公安机关看管。在拘留期间, 被拘留人承认并改正错误的, 人民法院可以决定提前解除拘留。

**第一百零五条** 拘传、罚款、拘留必须经院长批准。

拘传应当发拘传票。

罚款、拘留应当用决定书。对决定不服的, 可以向上一级人民法院申请复议一次。复议期间不停止执行。

**第一百零六条** 采取对妨害民事诉讼的强制措施必须由人民法院决定。任何单位和个人采取非法拘禁他人或者非法私自扣押他人财产追索债务的, 应当依法追究刑事责任, 或者予以拘留、罚款。

## 第十一章 诉讼费用

**第一百零七条** 当事人进行民事诉讼, 应当按照规定交纳案件受理费。财产案件除交纳案件受理费外, 并按照规定交纳其他诉讼费用。

当事人交纳诉讼费用确有困难的, 可以按照规定向人民法院申请缓交、减交或者免交。收取诉讼费用的办法另行制定。

## 第二编 审判程序

### 第十二章 第一审普通程序

#### 第一节 起诉和受理

**第一百零八条** 起诉必须符合下列条件:

(一) 原告是与本案有直接利害关系的公民、法人和其他组织;

(二) 有明确的被告;

(三) 有具体的诉讼请求和事实、理由;

(四) 属于人民法院受理民事诉讼的范围和受诉人民法院管辖。

**第一百零九条** 起诉应当向人民法院递交起诉状, 并按照被告人数提出副本。

书写起诉状确有困难的, 可以口头起诉, 由人民法院记入笔录, 并告知对方当事人。

**第一百一十条** 起诉状应当记明下列事项:

(一) 当事人的姓名、性别、年龄、民族、职业、工作单位和住所, 法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务;

(二) 诉讼请求和所根据的事实与理由;

(三) 证据和证据来源, 证人姓名和住所。

第一百一十一条 人民法院对符合本法第一百零八条的起诉, 必须受理; 对下列起诉, 分别情形, 予以处理:

(一) 依照行政诉讼法的规定, 属于行政诉讼受案范围的, 告知原告提起行政诉讼;

(二) 依照法律规定, 双方当事人对合同纠纷自愿达成书面仲裁协议向仲裁机构申请仲裁、不得向人民法院起诉的, 告知原告向仲裁机构申请仲裁;

(三) 依照法律规定, 应当由其他机关处理的争议, 告知原告向有关机关申请解决;

(四) 对不属于本院管辖的案件, 告知原告向有管辖权的人民法院起诉;

(五) 对判决、裁定已经发生法律效力, 当事人又起诉的, 告知原告按照申诉处理, 但人民法院准许撤诉的裁定除外;

(六) 依照法律规定, 在一定期限内不得起诉的案件, 在不得起诉的期限内起诉的, 不予受理;

(七) 判决不准离婚和调解和好的离婚案件, 判决、调解维持收养关系的案件, 没有新情况、新理由, 原告在六个月内又起诉的, 不予受理。

第一百一十二条 人民法院收到起诉状或者口头起诉, 经审查, 认为符合起诉条件的, 应当在七日内立案, 并通知当事人; 认为不符合起诉条件的, 应当在七日内裁定不予受理; 原告对裁定不服的, 可以提起上诉。

## 第二节 审理前的准备

第一百一十三条 人民法院应当在立案之日起五日内将起诉状副本发送被告, 被告在收到之日起十五日内提出答辩状。

被告提出答辩状的, 人民法院应当在收到之日起五日内将答辩状副本发送原告。被告不提出答辩状的, 不影响人民法院审理。

第一百一十四条 人民法院对决定受理的案件, 应当在受理案件通知书和应诉通知书中向当事人告知有关的诉讼权利义务, 或者口头告知。

第一百一十五条 合议庭组成人员确定后, 应当在三日内告知当事人。

第一百一十六条 审判人员必须认真审核诉讼材料, 调查收集必要的证据。

第一百一十七条 人民法院派出人员进行调查时, 应当向被调查人出示证件。

调查笔录经被调查人校阅后, 由被调查人、调查人签名或者盖章。

第一百一十八条 人民法院在必要时可以委托外地人民法院调查。

委托调查, 必须提出明确的项目和要求。受委托人民法院可以主动补充调查。

受委托人民法院收到委托书后, 应当在三十日内完成调查。因故不能完成的, 应当在上述期限内函告委托人民法院。

第一百一十九条 必须共同进行诉讼的当事人没有参加诉讼的, 人民法院应当通知其参加诉讼。

## 第三节 开庭审理

第一百二十条 人民法院审理民事案件, 除涉及国家秘密、个人隐私或者法律另有规定的以外, 应当公开进行。

离婚案件, 涉及商业秘密的案件, 当事人申请不公开审理的, 可以不公开审理。

第一百二十一条 人民法院审理民事案件, 根据需要可以进行巡回审理, 就地办案。

第一百二十二条 人民法院审理民事案件, 应当在开庭三日前通知当事人和其他诉讼参与人。公开审理的, 应当公告当事人姓名、案由和开庭的时间、地点。

第一百二十三条 开庭审理前, 书记员应当查明当事人和其他诉讼参与人是否到庭, 宣布法庭纪律。

开庭审理时, 由审判长核对当事人, 宣布案由, 宣布审判人员、书记员名单, 告知当事

人有关的诉讼权利义务，询问当事人是否提出回避申请。

第一百二十四条 法庭调查按照下列顺序进行：

- (一) 当事人陈述；
- (二) 告知证人的权利义务，证人作证，宣读未到庭的证人证言；
- (三) 出示书证、物证和视听资料；
- (四) 宣读鉴定结论；
- (五) 宣读勘验笔录。

第一百二十五条 当事人在法庭上可以提出新的证据。

当事人经法庭许可，可以向证人、鉴定人、勘验人发问。

当事人要求重新进行调查、鉴定或者勘验的，是否准许，由人民法院决定。

第一百二十六条 原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理。

第一百二十七条 法庭辩论按照下列顺序进行：

- (一) 原告及其诉讼代理人发言；
- (二) 被告及其诉讼代理人答辩；
- (三) 第三人及其诉讼代理人发言或者答辩；
- (四) 互相辩论。

法庭辩论终结，由审判长按照原告、被告、第三人的先后顺序征询各方最后意见。

第一百二十八条 法庭辩论终结，应当依法作出判决。判决前能够调解的，还可以进行调解，调解不成的，应当及时判决。

第一百二十九条 原告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以按撤诉处理；被告反诉的，可以缺席判决。

第一百三十条 被告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以缺席判决。

第一百三十一条 宣判前，原告申请撤诉的，是否准许，由人民法院裁定。

人民法院裁定不准许撤诉的，原告经传票传唤，无正当理由拒不到庭的，可以缺席判决。

第一百三十二条 有下列情形之一的，可以延期开庭审理：

- (一) 必须到庭的当事人和其他诉讼参与人有正当理由没有到庭的；
- (二) 当事人临时提出回避申请的；
- (三) 需要通知新的证人到庭，调取新的证据，重新鉴定、勘验，或者需要补充调查的；
- (四) 其他应当延期的情形。

第一百三十三条 书记员应当将法庭审理的全部活动记入笔录，由审判人员和书记员签名。

法庭笔录应当当庭宣读，也可以告知当事人和其他诉讼参与人当庭或者在五日内阅读。当事人和其他诉讼参与人认为对自己的陈述记录有遗漏或者差错的，有权申请补正。如果不予补正，应当将申请记录在案。

法庭笔录由当事人和其他诉讼参与人签名或者盖章。拒绝签名盖章的，记明情况附卷。

第一百三十四条 人民法院对公开审理或者不公开审理的案件，一律公开宣告判决。

当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立即发给判决书。

宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的法院。

宣告离婚判决，必须告知当事人在判决发生法律效力前不得另行结婚。

第一百三十五条 人民法院适用普通程序审理的案件，应当在立案之日起六个月内审结。有特殊情况需要延长的，由本院院长批准，可以延长六个月；还需要延长的，报请上级人民

法院批准。

#### 第四节 诉讼中止和终结

第一百三十六条 有下列情形之一的，中止诉讼：

- (一) 一方当事人死亡，需要等待继承人表明是否参加诉讼的；
- (二) 一方当事人丧失诉讼行为能力，尚未确定法定代理人的；
- (三) 作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；
- (四) 一方当事人因不可抗拒的事由，不能参加诉讼的；
- (五) 本案必须以另一案的审理结果为依据，而另一案尚未审结的；
- (六) 其他应当中止诉讼的情形。

中止诉讼的原因消除后，恢复诉讼。

第一百三十七条 有下列情形之一的，终结诉讼：

- (一) 原告死亡，没有继承人，或者继承人放弃诉讼权利的；
- (二) 被告死亡，没有遗产，也没有应当承担义务的人的；
- (三) 离婚案件一方当事人死亡的；
- (四) 追索赡养费、扶养费、抚育费以及解除收养关系案件的一方当事人死亡的。

#### 第五节 判决和裁定

第一百三十八条 判决书应当写明：

- (一) 案由、诉讼请求、争议的事实和理由；
- (二) 判决认定的事实、理由和适用的法律依据；
- (三) 判决结果和诉讼费用的负担；
- (四) 上诉期间和上诉的法院。

判决书由审判人员、书记员署名，加盖人民法院印章。

第一百三十九条 人民法院审理案件，其中一部分事实已经清楚，可以就该部分先行判决。

第一百四十条 裁定适用于下列范围：

- (一) 不予受理；
- (二) 对管辖权有异议的；
- (三) 驳回起诉；
- (四) 财产保全和先予执行；
- (五) 准许或者不准许撤诉；
- (六) 中止或者终结诉讼；
- (七) 补正判决书中的笔误；
- (八) 中止或者终结执行；
- (九) 不予执行仲裁裁决；
- (十) 不予执行公证机关赋予强制执行效力的债权文书；
- (十一) 其他需要裁定解决的事项。

对前款第(一)、(二)、(三)项裁定，可以上诉。

裁定书由审判人员、书记员署名，加盖人民法院印章。口头裁定的，记入笔录。

第一百四十一条 最高人民法院的判决、裁定，以及依法不准上诉或者超过上诉期没有上诉的判决、裁定，是发生法律效力的判决、裁定。

### 第十二章 简易程序

第一百四十二条 基层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

第一百四十三条 对简单的民事案件，原告可以口头起诉。

当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

第一百四十四条 基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式随时传唤当事人、证人。

第一百四十五条 简单的民事案件由审判员一人独任审理，并不受本法第一百二十二条、第一百二十四条、第一百二十七条规定的限制。

第一百四十六条 人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。

#### 第十四章 第二审程序

第一百四十七条 当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

第一百四十八条 上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的名称及其主要负责人的姓名；原审人民法院名称、案件的编号和案由；上诉的请求和理由。

第一百四十九条 上诉状应当通过原审人民法院提出，并按照对方当事人或者代表人的人数提出副本。

当事人直接向第二审人民法院上诉的，第二审人民法院应当在五日内将上诉状移交原审人民法院。

第一百五十条 原审人民法院收到上诉状，应当在五日内将上诉状副本送达对方当事人，对方当事人在收到之日起十五日内提出答辩状。人民法院应当在收到答辩状之日起五日内将副本送达上诉人。对方当事人不提出答辩状的，不影响人民法院审理。

原审人民法院收到上诉状、答辩状，应当在五日内连同全部案卷和证据，报送第二审人民法院。

第一百五十一条 第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

第一百五十二条 第二审人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷和调查，询问当事人，在事实核对清楚后，合议庭认为不需要开庭审理的，也可以迳行判决、裁定。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

第一百五十三条 第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决认定事实清楚，适用法律正确的，判决驳回上诉，维持原判决；

（二）原判决适用法律错误的，依法改判；

（三）原判决认定事实错误，或者原判决认定事实不清，证据不足，裁定撤销原判决，发回原审人民法院重审，或者查清事实后改判；

（四）原判决违反法定程序，可能影响案件正确判决的，裁定撤销原判决，发回原审人民法院重审。

当事人对重审案件的判决、裁定，可以上诉。

第一百五十四条 第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使

用裁定。

第一百五十五条 第二审人民法院审理上诉案件，可以进行调解。调解达成协议，应当制作调解书，由审判人员、书记员署名，加盖人民法院印章。调解书送达后，原审人民法院的判决即视为撤销。

第一百五十六条 第二审人民法院判决宣告前，上诉人申请撤回上诉的，是否准许，由第二审人民法院裁定。

第一百五十七条 第二审人民法院审理上诉案件，除依照本章规定外，适用第一审普通程序。

第一百五十八条 第二审人民法院的判决、裁定，是终审的判决、裁定。

第一百五十九条 人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。

人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。

## 第十五章 特别程序

### 第一节 一般规定

第一百六十条 人民法院审理选民资格案件、宣告失踪或者宣告死亡案件、认定公民无民事行为能力或者限制民事行为能力案件和认定财产无主案件，适用本章规定。本章没有规定的，适用本法和有关法律的有关规定。

第一百六十一条 依照本程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

第一百六十二条 人民法院在依照本程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

第一百六十三条 人民法院适用特别程序审理的案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选民资格的案件除外。

### 第二节 选民资格案件

第一百六十四条 公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

第一百六十五条 人民法院受理选民资格案件后，必须在选举日前审结。

审理时，起诉人、选举委员会的代表和有关公民必须参加。

人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

### 第三节 宣告失踪、宣告死亡案件

第一百六十六条 公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。

申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十七条 公民下落不明满四年，或者因意外事故下落不明满二年，或者因意外事故下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。



申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十八条 人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事故下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。

公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

第一百六十九条 被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

#### 第四节 认定公民无民事行为能力、限制民事行为能力案件

第一百七十条 申请认定公民无民事行为能力或者限制民事行为能力，由其近亲属或者其他利害关系人向该公民住所地基层人民法院提出。

申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

第一百七十一条 人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力的公民进行鉴定。申请人已提供鉴定结论的，应当对鉴定结论进行审查。

第一百七十二条 人民法院审理认定公民无民事行为能力或者限制民事行为能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人作为代理人。该公民健康状况许可的，还应当询问本人的意见。

人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

第一百七十三条 人民法院根据被认定为无民事行为能力人、限制民事行为能力人或者他的监护人的申请，证实该公民无民事行为能力或者限制民事行为能力的原因已经消除的，应当作出新判决，撤销原判决。

#### 第五节 认定财产无主案件

第一百七十四条 申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。

申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

第一百七十五条 人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

第一百七十六条 判决认定财产无主后，原财产所有人或者继承人出现，在民法通则规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

### 第十六章 审判监督程序

第一百七十七条 各级人民法院院长对本院已经发生法律效力的判决、裁定，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定，上级人民法院对下级人民法院已经发生法律效力的判决、裁定，发现确有错误的，有权提审或者指令下级人民

法院再审。

第一百七十八条 当事人对已经发生法律效力判决、裁定，认为有错误的，可以向上一级人民法院申请再审，但不停止判决、裁定的执行。

第一百七十九条 当事人的申请符合下列情形之一的，人民法院应当再审：

- (一) 有新的证据，足以推翻原判决、裁定的；
- (二) 原判决、裁定认定的基本事实缺乏证据证明的；
- (三) 原判决、裁定认定事实的主要证据是伪造的；
- (四) 原判决、裁定认定事实的主要证据未经质证的；
- (五) 对审理案件需要的证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；
- (六) 原判决、裁定适用法律确有错误的；
- (七) 违反法律规定，管辖错误的；
- (八) 审判组织的组成不合法或者依法应当回避的审判人员没有回避的；
- (九) 无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；
- (十) 违反法律规定，剥夺当事人辩论权利的；
- (十一) 未经传票传唤，缺席判决的；
- (十二) 原判决、裁定遗漏或者超出诉讼请求的；
- (十三) 据以作出原判决、裁定的法律文书被撤销或者变更的。

对违反法定程序可能影响案件正确判决、裁定情形，或者审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，人民法院应当再审。

第一百八十条 当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

第一百八十一条 人民法院应当自收到再审申请书之日起三个月内审查，符合本法第一百七十九条规定情形之一的，裁定再审；不符合本法第一百七十九条规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

第一百八十二条 当事人对已经发生法律效力的调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

第一百八十三条 当事人对已经发生法律效力的解除婚姻关系的判决，不得申请再审。

第一百八十四条 当事人申请再审，应当在判决、裁定发生法律效力后二年内提出；二年后据以作出原判决、裁定的法律文书被撤销或者变更，以及发现审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，自知道或者应当知道之日起三个月内提出。

第一百八十五条 按照审判监督程序决定再审的案件，裁定中止原判决的执行。裁定由院长署名，加盖人民法院印章。

第一百八十六条 人民法院按照审判监督程序再审的案件，发生法律效力的判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力判决、裁定是由第二审法院作出的，按照第二审程序审理，所作的判决、裁定，是发生法律效力判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力判决、裁定。

人民法院审理再审案件，应当另行组成合议庭。

第一百八十七条 最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提请上级人民检察院向同级人民法院提出抗诉。

第一百八十八条 人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第一百七十九条第一款第（一）项至第（五）项规定情形之一的，可以交下一级人民法院再审。

第一百八十九条 人民检察院决定对人民法院的判决、裁定提出抗诉的，应当制作抗诉书。

第一百九十条 人民检察院提出抗诉的案件，人民法院再审时，应当通知人民检察院派员出席法庭。

## 第十七章 督促程序

第一百九十一条 债权人请求债务人给付金钱、有价证券，符合下列条件的，可以向有普

管辖的基层人民法院申请支付令：

(一) 债权人与债务人没有其他债务纠纷；

(二) 支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

第一百九十二条 债权人提出申请后，人民法院应当在五日内通知债权人是否受理。

第一百九十三条 人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。

债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。

债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

第一百九十四条 人民法院收到债务人提出的书面异议后，应当裁定终结督促程序，支付令自行失效，债权人可以起诉。

#### 第十八章 公示催告程序

第一百九十五条 按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

第一百九十六条 人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

第一百九十七条 支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。

公示催告期间，转让票据权利的行为无效。

第一百九十八条 利害关系人应当在公示催告期间向人民法院申报。

人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。

申请人或者申报人可以向人民法院起诉。

**第一百九十九条** 没有人申报的, 人民法院应当根据申请人的申请, 作出判决, 宣告票据无效。判决应当公告, 并通知支付人。自判决公告之日起, 申请人有权向支付人请求支付。

**第二百条** 利害关系人因正当理由不能在判决前向人民法院申报的, 自知道或者应当知道判决公告之日起一年内, 可以向作出判决的人民法院起诉。

按照规定可以背书转让的票据持有人, 因票据被盗、遗失或者灭失, 可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项, 适用本章规定。 申请人应当向人民法院递交申请书, 写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。 人民法院决定受理申请, 应当同时通知支付人停止支付, 并在三日内发出公告, 催促利害关系人申报权利。公示催告期间, 由人民法院根据情况决定, 但不得少于六十日。 支付人收到人民法院停止支付的通知, 应当停止支付, 至公示催告程序终结。 公示催告期间, 转让票据权利的行为无效。 利害关系人应当在公示催告期间向人民法院申报。 人民法院收到利害关系人的申报后, 应当裁定终结公示催告程序, 并通知申请人和支付人。 申请人或者申报人可以向人民法院起诉。 没有人申报的, 人民法院应当根据申请人的申请, 作出判决, 宣告票据无效。判决应当公告, 并通知支付人。自判决公告之日起, 申请人有权向支付人请求支付。 利害关系人因正当理由不能在判决前向人民法院申报的, 自知道或者应当知道判决公告之日起一年内, 可以向作出判决的人民法院起诉。

### 第三编 执行程序

#### 第十九章 一般规定

**第二百零一条** 发生法律效力的民事判决、裁定, 以及刑事判决、裁定中的财产部分, 由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。

法律规定由人民法院执行的其他法律文书, 由被执行人住所地或者被执行的财产所在地人民法院执行。

**第二百零二条** 当事人、利害关系人认为执行行为违反法律规定的, 可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的, 人民法院应当自收到书面异议之日起十五日内审查, 理由成立的, 裁定撤销或者改正; 理由不成立的, 裁定驳回。当事人、利害关系人对裁定不服的, 可以自裁定送达之日起十日内向上一级人民法院申请复议。

**第二百零三条** 人民法院自收到申请执行书之日起超过六个月未执行的, 申请执行人可以向上一级人民法院申请执行。上一级人民法院经审查, 可以责令原人民法院在一定期限内执行, 也可以决定由本院执行或者指令其他人民法院执行。

**第二百零四条** 执行过程中, 案外人对执行标的提出书面异议的, 人民法院应当自收到书面异议之日起十五日内审查, 理由成立的, 裁定中止对该标的的执行; 理由不成立的, 裁定驳回。案外人、当事人对裁定不服, 认为原判决、裁定错误的, 依照审判监督程序办理; 与

原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。

**第二百零五条** 执行工作由执行员进行。

采取强制执行措施时，执行员应当出示证件。执行完毕后，应当将执行情况制作笔录，由在场的有关人员签名或者盖章。

人民法院根据需要可以设立执行机构。

**第二百零六条** 被执行人或者被执行的财产在外地的，可以委托当地人民法院代为执行。受委托人民法院收到委托函件后，必须在十五日内开始执行，不得拒绝。执行完毕后，应当将执行结果及时函复委托人民法院；在三十日内如果还未执行完毕，也应当将执行情况函告委托人民法院。

受委托人民法院自收到委托函件之日起十五日内不执行的，委托人民法院可以请求受委托人民法院的上级人民法院指令受委托人民法院执行。

**第二百零七条** 在执行中，双方当事人自行和解达成协议的，执行员应当将协议内容记入笔录，由双方当事人签名或者盖章。

一方当事人不履行和解协议的，人民法院可以根据对方当事人的申请，恢复对原生效法律文书的执行。

**第二百零八条** 在执行中，被执行人向人民法院提供担保，并经申请执行人同意的，人民法院可以决定暂缓执行及暂缓执行的期限。被执行人逾期仍不履行的，人民法院有权执行被执行人的担保财产或者担保人的财产。

**第二百零九条** 作为被执行人的公民死亡的，以其遗产偿还债务。作为被执行人的法人或者其他组织终止的，由其权利义务承受人履行义务。

**第二百一十条** 执行完毕后，据以执行的判决、裁定和其他法律文书确有错误，被人民法院撤销的，对已被执行的财产，人民法院应当作出裁定，责令取得财产的人返还；拒不返还的，强制执行。

**第二百一十一条** 人民法院制作的调解书的执行，适用本编的规定。

## 第二十章 执行的申请和移送

**第二百一十二条** 发生法律效力的民事判决、裁定，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行，也可以由审判员移送执行员执行。

调解书和其他应当由人民法院执行的法律文书，当事人必须履行。一方拒绝履行的，对

方当事人可以向人民法院申请执行。

第二百一十三条 对依法设立的仲裁机构的裁决，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行。受申请的人民法院应当执行。

被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

- (一) 当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；
- (二) 裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；
- (三) 仲裁庭的组成或者仲裁的程序违反法定程序的；
- (四) 认定事实的主要证据不足的；
- (五) 适用法律确有错误的；
- (六) 仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

裁定书应当送达双方当事人和仲裁机构。

仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二百一十四条 对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。

公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

第二百一十五条 申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从规定的每次履行期间的最后一日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。

第二百一十六条 执行员接到申请执行书或者移交执行书，应当向被执行人发出执行通知，责令其在指定的期间履行，逾期不履行的，强制执行。

被执行人不履行法律文书确定的义务，并有可能隐匿、转移财产的，执行员可以立即采

取强制执行措施。

## 第二十一章 执行措施

**第二百一十七条** 被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。

**第二百一十八条** 被执行人未按执行通知履行法律文书确定的义务，人民法院有权向银行、信用合作社和其他有储蓄业务的单位查询被执行人的存款情况，有权冻结、划拨被执行人的存款，但查询、冻结、划拨存款不得超出被执行人应当履行义务的范围。

人民法院决定冻结、划拨存款，应当作出裁定，并发出协助执行通知书，银行、信用合作社和其他有储蓄业务的单位必须办理。

**第二百一十九条** 被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。

人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

**第二百二十条** 被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。

采取前款措施，人民法院应当作出裁定。

**第二百二十一条** 人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者财产所在地的基层组织应当派人参加。

对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。

**第二百二十二条** 被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。

**第二百二十三条** 财产被查封、扣押后，执行员应当责令被执行人在指定期间履行法律文书



书确定的义务。被执行人逾期不履行的，人民法院可以按照规定交有关单位拍卖或者变卖被查封、扣押的财产。国家禁止自由买卖的物品，交有关单位按照国家规定的价格收购。

**第二百二十四条** 被执行人不履行法律文书确定的义务，并隐匿财产的，人民法院有权发出搜查令，对被执行人及其住所或者财产隐匿地进行搜查。

采取前款措施，由院长签发搜查令。

**第二百二十五条** 法律文书指定交付的财物或者票证，由执行员传唤双方当事人当面交付，或者由执行员转交，并由被交付人签收。

有关单位持有该项财物或者票证的，应当根据人民法院的协助执行通知书转交，并由被交付人签收。

有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。

**第二百二十六条** 强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。

强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。

强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝接收而造成的损失，由被执行人承担。

**第二百二十七条** 在执行中，需要办理有关财产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。

**第二百二十八条** 对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人员完成，费用由被执行人承担。

**第二百二十九条** 被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

**第二百三十条** 人民法院采取本法第二百一十八条、第二百一十九条、第二百二十条规定的执行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

**第二百三十一条** 被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。

被执行人未按执行通知履行法律文书确定的义务,应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的,人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。被执行人未按执行通知履行法律文书确定的义务,人民法院有权向银行、信用合作社和其他有储蓄业务的单位查询被执行人的存款情况,有权冻结、划拨被执行人的存款,但查询、冻结、划拨存款不得超出被执行人应当履行义务的范围。人民法院决定冻结、划拨存款,应当作出裁定,并发出协助执行通知书,银行、信用合作社和其他有储蓄业务的单位必须办理。

被执行人未按执行通知履行法律文书确定的义务,人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。人民法院扣留、提取收入时,应当作出裁定,并发出协助执行通知书,被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

被执行人未按执行通知履行法律文书确定的义务,人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。采取前款措施,人民法院应当作出裁定。

人民法院查封、扣押财产时,被执行人是公民的,应当通知被执行人或者他的成年家属到场;被执行人是法人或者其他组织的,应当通知其法定代表人或者主要负责人到场。拒不到场的,不影响执行。被执行人是公民的,其工作单位或者财产所在地的基层组织应当派人参加。对被查封、扣押的财产,执行员必须造具清单,由在场人签名或者盖章后,交被执行人一份。被执行人是公民的,也可以交他的成年家属一份。

被查封的财产,执行员可以指定被执行人负责保管。因被执行人的过错造成的损失,由被执行人承担。财产被查封、扣押后,执行员应当责令被执行人在指定期间履行法律文书确定的义务。被执行人逾期不履行的,人民法院可以按照规定交有关单位拍卖或者变卖被查封、扣押的财产。国家禁止自由买卖的物品,交有关单位按照国家规定的价格收购。

被执行人不履行法律文书确定的义务,并隐匿财产的,人民法院有权发出搜查令,对被执行人及其住所或者财产隐匿地进行搜查。采取前款措施,由院长签发搜查令。法律文书指定交付的财物或者票证,由执行员传唤双方当事人当面交付,或者由执行员转交,并由被交付人签收。有关单位持有该项财物或者票证的,应当根据人民法院的协助执行通知书转交,并由被交付人签收。

有关公民持有该项财物或者票证的,人民法院通知其交出。拒不交出的,强制执行。强制迁出房屋或者强制退出土地,由院长签发公告,责令被执行人在指定期间履行。被执行人逾期不履行的,由执行员强制执行。

强制执行时,被执行人是公民的,应当通知被执行人或者他的成年家属到场;被执行人是法人或者其他组织的,应当通知其法定代表人或者主要负责人到场。拒不到场的,不影响执行。被执行人是公民的,其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录,由在场人签名或者盖章。强制迁出房屋被搬出的财物,由人民法院派人运至指定处所,交给被执行人。被执行人是公民的,也可以交给他的成年家属。因拒绝接收而造成的损失,由被执行人承担。

在执行中,需要办理有关财产权证照转移手续的,人民法院可以向有关单位发出协助执行通知书,有关单位必须办理。

对判决、裁定和其他法律文书指定的行为,被执行人未按执行通知履行的,人民法院可以强制执行或者委托有关单位或者其他人员完成,费用由被执行人承担。

被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的,应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的,应当支付迟延履行金。

人民法院采取本法第二百一十八条、第二百一十九条、第二百二十条规定的执行措施后,被执行人仍不能偿还债务的,应当继续履行义务。债权人发现被执行人有其他财产的,可以随时请求人民法院执行。

被执行人不履行法律文书确定的义务的,人民法院可以对其采取或者通知有关单位协助限制出境,在征信系统记录、通过媒体公布不履行义务信息以及

法律规定的其他措施。

## 第二十二章 执行中止和终结

第二百三十二条 有下列情形之一的，人民法院应当裁定中止执行：

- (一) 申请人表示可以延期执行的；
- (二) 案外人对执行标的提出确有理由的异议的；
- (三) 作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；
- (四) 作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；
- (五) 人民法院认为应当中止执行的其他情形。

中止的情形消失后，恢复执行。

第二百三十三条 有下列情形之一的，人民法院裁定终结执行：

- (一) 申请人撤销申请的；
- (二) 据以执行的法律文书被撤销的；
- (三) 作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；
- (四) 追索赡养费、扶养费、抚育费案件的权利人死亡的；
- (五) 作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；
- (六) 人民法院认为应当终结执行的其他情形。

第二百三十四条 中止和终结执行的裁定，送达当事人后立即生效。

有下列情形之一的，人民法院应当裁定中止执行：（一）申请人表示可以延期执行的；（二）案外人对执行标的提出确有理由的异议的；（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；（五）人民法院认为应当中止执行的其他情形。中止的情形消失后，恢复执行。有下列情形之一的，人民法院裁定终结执行：（一）申请人撤销申请的；（二）据以执行的法律文书被撤销的；（三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；（四）追索赡养费、扶养费、抚育费案件的权利人死亡的；（五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；（六）人民法院认为应当终结执行的其他情形。中止和终结执行的裁定，送达当事人后立即生效。

#### 第四编 涉外民事诉讼程序的特别规定

##### 第二十三章 一般原则

第二百三十五条 在中华人民共和国领域内进行涉外民事诉讼，适用本编规定。本编没有规定的，适用本法其他有关规定。

第二百三十六条 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定，但中华人民共和国声明保留的条款除外。

第二百三十七条 对享有外交特权与豁免的外国人、外国组织或者国际组织提起的民事诉讼，应当依照中华人民共和国有关法律和中华人民共和国缔结或者参加的国际条约的规定办理。

第二百三十八条 人民法院审理涉外民事案件，应当使用中华人民共和国通用的语言、文字。当事人要求提供翻译的，可以提供，费用由当事人承担。

第二百三十九条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，需要委托律师代理诉讼的，必须委托中华人民共和国的律师。

第二百四十条 在中华人民共和国领域内没有住所的外国人、无国籍人、外国企业和组织委托中华人民共和国律师或者其他代理人代理诉讼，从中华人民共和国领域外寄交或者托交的授权委托书，应当经所在国公证机关证明，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续后，才具有效力。

##### 第二十四章 管 辖

第二百四十一条 因合同纠纷或者其他财产权益纠纷，对在中华人民共和国领域内没有住所的被告提起的诉讼，如果合同在中华人民共和国领域内签订或者履行，或者诉讼标的物在中华人民共和国领域内，或者被告在中华人民共和国领域内有可供扣押的财产，或者被告在中华人民共和国领域内设有代表机构，可以由合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地或者代表机构住所地人民法院管辖。

第二百四十二条 涉外合同或者涉外财产权益纠纷的当事人，可以用书面协议选择与争议有实际联系的地点的法院管辖。选择中华人民共和国人民法院管辖的，不得违反本法关于级别管辖和专属管辖的规定。

第二百四十三条 涉外民事诉讼的被告对人民法院管辖不提出异议，并应诉答辩的，视为承认该人民法院为有管辖权的法院。

第二百四十四条 因在中华人民共和国履行中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同发生纠纷提起的诉讼，由中华人民共和国人民法院管辖。

##### 第二十五章 送达、期间

第二百四十五条 人民法院对在中华人民共和国领域内没有住所的当事人送达诉讼文书，可以采用下列方式：

（一）依照受送达人所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式送达；

（二）通过外交途径送达；

（三）对具有中华人民共和国国籍的受送达人，可以委托中华人民共和国驻受送达人所在国的使领馆代为送达；

（四）向受送达人委托的有权代其接受送达的诉讼代理人送达；

（五）向受送达人所在中华人民共和国领域内设立的代表机构或者有权接受送达的分支机构、业务代办人送达；

（六）受送达人所在国的法律允许邮寄送达的，可以邮寄送达，自邮寄之日起满六个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

（七）不能用上述方式送达的，公告送达，自公告之日起满六个月，即视为送达。

第二百四十六条 被告在中华人民共和国领域内没有住所的，人民法院应当将起诉状副本送达被告，并通知被告在收到起诉状副本后三十日内提出答辩状。被告申请延期的，是否准许，由人民法院决定。

第二百四十七条 在中华人民共和国领域内没有住所的当事人，不服第一审人民法院判决、裁定的，有权在判决书、裁定书送达之日起三十日内提起上诉。被上诉人在收到上诉状副本后，应当在三十日内提出答辩状。当事人不能在法定期间提起上诉或者提出答辩状，申请延期的，是否准许，由人民法院决定。

第二百四十八条 人民法院审理涉外民事案件的期间，不受本法第一百三十五条、第一百五十九条规定的限制。

## 第二十六章 财产保全

第二百四十九条 当事人依照本法第九十二条的规定可以向人民法院申请财产保全。

利害关系人依照本法第九十三条的规定可以在起诉前向人民法院申请财产保全。

第二百五十条 人民法院裁定准许诉前财产保全后，申请人应当在三十日内提起诉讼。逾

期不起诉的，人民法院应当解除财产保全。

**第二百五十一条** 人民法院裁定准许财产保全后，被申请人提供担保的，人民法院应当解除财产保全。

**第二百五十二条** 申请有错误的，申请人应当赔偿被申请人因财产保全所遭受的损失。

**第二百五十三条** 人民法院决定保全的财产需要监督的，应当通知有关单位负责监督，费用由被申请人承担。

**第二百五十四条** 人民法院解除保全的命令由执行员执行。

## 第二十七章 仲 裁

**第二百五十五条** 涉外经济贸易、运输和海事中发生的纠纷，当事人在合同中订有仲裁条款或者事后达成书面仲裁协议，提交中华人民共和国涉外仲裁机构或者其他仲裁机构仲裁的，当事人不得向人民法院起诉。

当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的，可以向人民法院起诉。

**第二百五十六条** 当事人申请采取财产保全的，中华人民共和国的涉外仲裁机构应当将当事人的申请，提交被申请人住所地或者财产所在地的中级人民法院裁定。

**第二百五十七条** 经中华人民共和国涉外仲裁机构裁决的，当事人不得向人民法院起诉。一方当事人不履行仲裁裁决的，对方当事人可以向被申请人住所地或者财产所在地的中级人民法院申请执行。

**第二百五十八条** 对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

(一) 当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

(二) 被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

(三) 仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

(四) 裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

第二百五十九条 仲裁裁决被人民法院裁定不予执行的,当事人可以根据双方达成的书面仲裁协议重新申请仲裁,也可以向人民法院起诉。

## 第二十八章 司法协助

第二百六十条 根据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,人民法院和外国法院可以相互请求,代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的,人民法院不予执行。

第二百六十一条 请求和提供司法协助,应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行;没有条约关系的,通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证,但不得违反中华人民共和国的法律,并不得采取强制措施。

除前款规定的情况外,未经中华人民共和国主管机关准许,任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

第二百六十二条 外国法院请求人民法院提供司法协助的请求书及其所附文件,应当附有中文译本或者国际条约规定的其他文字文本。

人民法院请求外国法院提供司法协助的请求书及其所附文件,应当附有该国文字译本或者国际条约规定的其他文字文本。

第二百六十三条 人民法院提供司法协助,依照中华人民共和国法律规定的程序进行。外国法院请求采用特殊方式的,也可以按照其请求的特殊方式进行,但请求采用的特殊方式不得违反中华人民共和国法律。

第二百六十四条 人民法院作出的发生法律效力判决、裁定,如果被被执行人或者其财产不在中华人民共和国领域内,当事人请求执行的,可以由当事人直接向有管辖权的外国法院申请承认和执行,也可以由人民法院依照中华人民共和国缔结或者参加的国际条约的规定,或者按照互惠原则,请求外国法院承认和执行。

中华人民共和国涉外仲裁机构作出的发生法律效力仲裁裁决,当事人请求执行的,如果被被执行人或者其财产不在中华人民共和国领域内,应当由当事人直接向有管辖权的外国法院申请承认和执行。

第二百六十五条 外国法院作出的发生法律效力判决、裁定,需要中华人民共和国人民法院承认和执行的,可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行,也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定,或

者按照互惠原则，请求人民法院承认和执行。

第二百六十六条 人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，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后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

第二百六十七条 国外仲裁机构的裁决，需要中华人民共和国人民法院承认和执行的，应当由当事人直接向被执行人住所地或者其财产所在地的中级人民法院申请，人民法院应当依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则办理。

第二百六十八条 本法自公布之日起施行，《中华人民共和国民事诉讼法（试行）》同时废止。



## ATTACHMENT 73

### Order of the president of the People's Republic of China

(No.31)

The Arbitration Law of the People's Republic of China, which was adopted at the 9th session of the Standing Committee of the Eighth National People's Congress on August 31, 1994, is hereby promulgated and shall come into force on September 1, 1995.

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

August 31, 1994

Arbitration Law of the People's Republic of China

Adopted by the 9th Meeting of the Standing Committee of the eighth National People's Congress on August 31, 1994 And promulgated by the Decree No.31 of the president of the People's Republic of China on August 31, 1994

#### Chapter I General Provisions

Article 1 The law is formulated with a view to ensure fair and timely arbitration of economic disputes, reliable protection to legitimate rights and interests of parties concerned and a healthy development of the socialist market economy.

Article 2 Contractual disputes between citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration.

Article 3 The following disputes cannot be put to arbitration:

1. Disputes arising from marriage, adoption, guardianship, bringing up of children and inheritance.
2. Disputes that have been stipulated by law to be settled by administrative organs.

Article 4 In settling disputes through arbitration, an agreement to engage in arbitration should first of all be reached by parties concerned upon free will. Without such an agreement, the arbitration commission shall refuse to accept the application for arbitration by any one single party.

Article 5 Whereas the parties concerned have reached an agreement for arbitration, the people's court shall not accept the suit brought to the court by any one single party involved, except in case where the agreement for arbitration is invalid.

Article 6 The members of the arbitration commission shall be chosen by the parties concerned.

Arbitration shall not be subject to the jurisdiction of administrative departments at any level and region.

Article 7 Arbitration shall be made based on true facts and relative laws to give out a fair and reasonable settlement for parties concerned.

Article 8 Arbitration shall be conducted independently according to law, free from interference of administrative organs, social groups or individuals.

Article 9 The arbitration award is final. After the award is given, the arbitration commission or the people's court shall not accept the re- application of the suit concerning the same dispute by any of the parties concerned.

Whereas the award cancelled or put in void under a rule by the people's court, the parties concerned for the dispute may reach another agreement for arbitration and apply for arbitration or bring a suit in the people's court.

#### Chapter II Arbitration Commission and Arbitration Association

Article 10 An arbitration commission may be set up in the domicile of the people's governments of municipalities directly under the Central Government (hereinafter referred to as "municipalities"), provinces and autonomous regions or in other places according to needs. It shall not be set up according to administrative levels.

An arbitration commission shall be set up by the relevant departments and chambers of commerce under the coordination of the people's governments of the cities prescribed in the preceding paragraph.

The establishment of an arbitration commission shall be registered with the judicial administrative departments of provinces, autonomous regions and municipalities.

Article 11 An arbitration commission shall meet the following requirements:

1. It shall have its own name, residence and statute.
2. It shall have necessary property.
3. It shall have its own members.
4. It shall have appointed arbitrators.

The statute of an arbitration commission shall be formulated according to this law.

Article 12 An arbitration commission shall be composed of a chairman, two to four vice-chairmen and 7 to 11 members.

The chairman, vice-chairmen and members of an arbitration commission shall be experts in law and economy and trade with practical work experience. Of the composition of an arbitration commission, experts in law, economy and trade shall be no less than two-thirds.

Article 13 Members of an arbitration commission shall be appointed from among the people who are fair and justice.

An arbitrator shall meet one of the following requirements:

1. At least eight years of work experience in arbitration.
2. At least eight years of experience as a lawyer.
3. At least eight years of experience as a judge.

4. Engaging in law research and teaching, with a senior academic title.

An arbitration commission shall prepare the list of arbitrators according to different specialities.

Article 14 An arbitration commission shall be independent of any administrative organ, without any subordinate relationship with administrative organs. Neither would there be any subordinate relations thereof.

Article 15 The China Arbitration Association is an institutional legal person with all the separate arbitration commissions as its members. The statute of the China Arbitration Association shall be formulated by the national congress of the association.

The China Arbitration Association is a self-disciplinary organization for arbitration commissions to supervise over the latter and their members and arbitrators therein.

The China Arbitration Association shall formulate arbitration rules according to this law and the civil procedure law.

### Chapter III Agreement for Arbitration

Article 16 An agreement for arbitration shall include the arbitration clauses stipulated in the contracts or other written agreements for arbitration reached before or after a dispute occurs.

An arbitration agreement shall contain the following:

1. The expression of application for arbitration.
2. Matters for arbitration.
3. The arbitration commission chosen.

Article 17 An agreement for arbitration shall be invalid in one of the following cases:

1. The matters agreed for arbitration exceed the scope of arbitration provided by law.
2. Agreements concluded by people being incapable or restricted in civil acts.
3. An agreement forced upon a party by the other party by means of coercion.

Article 18 Whereas an agreement for arbitration fails to specify or specify clearly matters concerning arbitration or the choice of arbitration commission, parties concerned may conclude a supplementary agreement. If a supplementary agreement cannot be reached, the agreement for arbitration is invalid.

Article 19 The effect of an agreement for arbitration shall stand independently and shall not be affected by the alteration, dissolution, termination or invalidity of a contract.

An arbitration tribunal has the right to establish the validity of a contract.

Article 20 Whereas parties concerned have doubt on the validity of an agreement for arbitration, a request can be made to the arbitration commission for a decision or to the people's court for a ruling. If one party requests the arbitration commission for a decision while the other

party requests the people's court for a ruling, the people's court shall pass a ruling.

A doubt to the effectiveness of an arbitration agreement, should be raised before the first hearing at the arbitration tribunal.

#### Chapter IV Arbitration Procedure

##### Section I Application and Acceptance

Article 21 The parties concerned should meet the following requirements in applying for arbitration:

1. There is an agreement for arbitration.
2. There are specific requests for arbitration and facts and reasons.
3. The matters to be put to arbitration shall fall into the limits of the authority of the arbitration commission.

Article 22 In applying for arbitration, the parties concerned shall submit the agreement and the application for arbitration and their copies.

Article 23 The application for arbitration shall specify the following matters:

1. Name, sex, age, profession, work unit and residence of parties concerned; the name, residence of legal persons or other organizations and the name and position of the legal representatives or principal leading members.
2. The claimants's claim and the facts and evidence on which the claim is based.
3. Evidence and sources of evidence and name and residence of witnesses.

Article 24 An arbitration commission shall accept the application within five days after the application is received if it deems the application conforming to requirements and notify the parties concerned. If it deems the application unconformable to requirements, it shall notify the parties concerned in writing and state the reasons.

Article 25 After an arbitration commission has accepted an arbitration application, it shall deliver the arbitration rules and the list of the panel of arbitrators to the claimant within the time limit prescribed in the arbitration rules and send the copies of the arbitration application and the arbitration rules and the list of the panel of arbitrators to the respondent.

After the respondent has received the copy of the application for arbitration, the aforesaid respondent shall file a counter-claim with the arbitration commission. After the arbitration commission has received the counter-claim of the respondent, it shall deliver the counter-claim to the claimant within the time limit set in the arbitration rules. If a respondent fails to submit a counter-claim, it does not affect the arbitration proceedings.

Article 26 When parties concerned have reached an agreement for arbitration but one party brings a suit in the people's court without notifying the court that there is an agreement for arbitration and, after the people's court has accepted the case, the other party submits the agreement for arbitration before the opening of the arbitration tribunal, the people's court shall

reject the suit, except in the case that the agreement for arbitration is invalid. If the other party fails to raise objection to the acceptance of the case by the court before first hearing, it shall be regarded as having forfeited the agreement for arbitration and the people's court shall continue the hearing.

Article 27 A claimant may give up or alter its claims. The respondent may acknowledge or refute the claims and has the right to raise counter-claims.

Article 28 Whereas due to the acts of the other party or other reasons, the arbitration award cannot be or is hard to be executed, the parties concerned may apply for putting the property under custody.

Whereas a claimant has applied for a custody to the property, the arbitration commission shall, according to the relevant provisions of the Civil Procedure Law, submit the application of the claimant to the people's court.

Whereas there are errors in the application, the claimant shall compensate to the respondent for the losses arising from the custody to the property.

Article 29 The parties concerned or legal attorneys may entrust lawyers or other attorneys to handle matters relating to arbitration. In the case where lawyers or other attorneys are entrusted with the handling of arbitration matters, the attorneys shall produce a power of attorney to the arbitration commission.

#### Section II Composition of Arbitration Tribunal

Article 30 An arbitration tribunal may be composed of three arbitrators or one arbitrator. In the case of three arbitrators, there should be a chief arbitrator.

Article 31 Whereas the parties concerned agree that the arbitration tribunal is composed of three arbitrators, each of them shall choose one arbitrator or entrust the appointment to the chairman of the arbitration commission, with the third arbitrator jointly chosen by the parties concerned or appointed by the chairman of the arbitration commission jointly entrusted by the two parties. The third arbitrator shall be the chief arbitrator.

Whereas the parties concerned agree to have the arbitration tribunal composed of one arbitrator, the two parties shall jointly choose the arbitrator or entrust the choice of the arbitrator to the chairman of the arbitration commission.

Article 32 Whereas the parties concerned fail to decide on the composition of the arbitration tribunal or fail to choose arbitrators within the time limit prescribed in the arbitration rules, the chairman of the arbitration commission shall make the decision.

Article 33 After the formation of an arbitration tribunal, the arbitration commission shall notify in writing the composition of the arbitration tribunal matters.

Article 34 An arbitrator shall be withdrawn and the parties concerned have the right to request withdrawal, whereas:

1. The arbitrator is a party involved in the case or a blood relation or relative of the parties concerned or their attorneys.

2. the arbitrator has vital personal interests in the case.
3. the arbitrator has other relations with the parties or their attorneys involved in the case that might effect the fair ruling of the case.
4. the arbitrator meets the parties concerned or their attorneys in private or has accepted gifts or attended banquets hosted by the parties concerned or their attorneys.

Article 35 In requesting for withdrawal, the parties concerned shall state reasons before the first hearing of the tribunal. If the reasons are known only after the first hearing, they may be stated before the end of the last hearing.

Article 36 The withdrawal of an arbitrator shall be decided upon by the chairman of the arbitration commission. Whereas the chairman of the arbitration commission serves as an arbitrator, the withdrawal shall be decided upon collectively by the arbitration commission.

Article 37 Whereas an arbitrator is withdrawn or unable to perform his duty due to other reasons, another arbitrator shall be chosen or appointed according to the relevant provisions of this law.

Whereas re-selection or re-appointment of an arbitrator is made due to withdrawal, the parties concerned may apply for the re-start of the arbitration proceedings, but the final decision shall be made by the arbitration tribunal. The arbitration tribunal may also make its own decision as to whether or not the arbitration proceedings will restart.

Article 38 Whereas a case provided for in 4. of Article 34 of this law is found with an arbitration and the case is very serious or a case provided for in 6. of Article 58 of this law is found with an arbitrator, the arbitrator shall bear the legal responsibility according to law and the arbitration commission shall remove him from the panel of arbitrators.

### Section III Hearing and Ruling

Article 39 An arbitration tribunal shall hold oral hearings to hear a case.

Whereas the parties concerned agree not to hold oral hearings, the arbitration tribunal may give the award based on the arbitration application, claims and counter-claims and other documents.

Article 40 The arbitration tribunal may not hear a case in open sessions. But when parties concerned agree to have the case heard in open sessions, the hearing may be held openly, except cases that involve State secrets.

Article 41 The arbitration commission shall notify the parties concerned the date of hearing within the time limit prescribed in the arbitration rules. With justifiable reasons, a party concerned may request the postponement of the hearing within the time limit set in the arbitration rules. Whether or not the hearing is postponed shall be decided upon by the arbitration tribunal.

Article 42 Whereas a claimant is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may be regarded as a withdrawal of claims.

Whereas a respondent is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may give the award by default.

Article 43 The parties concerned shall provide evidence to support their respective claims.

Whereas an arbitration tribunal deems it necessary to collect evidence, it may collect it on its own initiative.

Article 44 Whereas an arbitration tribunal deems it necessary to have the specialized issues appraised, it may submit them to the appraisal department chosen by the parties concerned by agreement or to the appraisal department designated by the arbitration tribunal.

At the request of the parties concerned or of the arbitration tribunal, the appraisal department shall send appraisers to the hearing. Parties concerned may, with the permission of the arbitration tribunal, raise questions to the appraisers.

Article 45 Evidence shall be produced during the course of hearing and the parties concerned may question or substantiate their evidence.

Article 46 Whereas evidences are vulnerable to be destroyed or missing and would be heard to be recovered, the parties concerned may apply to put the evidences on custody: When a party applies for custody of evidences, the arbitration commission shall submit the evidences of the party concerned to the people's court at the place where the evidences are obtained.

Article 47 The parties concerned have the right to debate during the process of hearing. At the end of the debate, the chief arbitrator or the sole arbitrator shall ask the parties concerned for the final statement.

Article 48 The arbitration tribunal shall record the hearings in writing. Whereas the parties concerned or other people involved in the arbitration find something in their statements left out in the recording or recorded incorrectly, they have the right to apply for correction. Whereas corrections are not made, the application shall be recorded.

The written records of the hearings shall be signed or affixed with seals by the arbitrators, minute keepers, the parties concerned and other people participating in the arbitration.

Article 49 After the parties have applied for arbitration, they may reach reconciliation on their own initiative. Whereas a reconciliation agreement has been reached, a request may be made to the arbitration tribunal for an award based on the reconciliation agreement or the application for arbitration may be withdrawn.

Article 50 Whereas the parties concerned have gone back on their word after they have reached a reconciliation agreement, they may apply for arbitration according to the arbitration agreement.

Article 51 The arbitration tribunal may reconcile a case before passing the award. Whereas the parties concerned accept the reconciliation effort of their own accord, the arbitration tribunal may conduct the reconciliation. Should the reconciliation fail, the arbitration tribunal shall pass the ruling in time.

Whereas an agreement is reached through reconciliation, the arbitration tribunal shall compile the reconciliation document or make an award based on the results of the agreement. The document of reconciliation and the arbitral award are equally binding legally.

Article 52 The document of reconciliation shall specify the arbitration claims and the result of the agreement between the parties concerned. The document of reconciliation shall be signed by the arbitrator and affixed with the seal of the arbitration commission before being delivered to the parties concerned.

The document of reconciliation becomes legally binding immediately upon received by parties concerned.

If any party concerned has gone back on his word after receiving the document of reconciliation, the arbitration tribunal shall make a timely ruling.

Article 53 An arbitral award shall be decided by the majority of the arbitrators and the views of the minority can be written down in the record. Whereas a majority vote cannot be reached, the award shall be decided based on the opinion of the chief arbitrator.

Article 54 The arbitral award shall specify the arbitration claims, facts in disputes, reasons for the award, result of the award, arbitration expenses and date of the award given. Whereas parties concerned object to the specification of the facts in dispute and reasons for the ruling, such specification and reasons may be omitted. The arbitral award shall be signed by arbitrators and affixed with the seals of the arbitration commission. An arbitrator holding differences of views may sign or may not sign the award.

Article 55 In arbitrating disputes, the arbitration tribunal may pass the ruling on part of the facts that have already been made clear.

Article 56 An arbitration tribunal should correct the errors involving context or computation and add things that have been omitted in the rulings in the arbitral award. The parties concerned may apply for correction with the arbitration tribunal within 30 days after the receipt of the award.

Article 57 The arbitral award takes legal effect upon its issuing.

#### Chapter V Application for Cancelling Arbitral Ruling

Article 58 If parties concerned have evidences to substantiate one of the following, they may apply for the cancellation of arbitral award with the intermediate people's court at the place where the arbitration commission resides.

1. There is no agreement for arbitration.
2. The matters ruled are out the scope of the agreement for arbitration or the limits of authority of an arbitration commission.
3. The composition of the arbitration tribunal or the arbitration proceedings violate the legal proceedings.
4. The evidences on which the ruling is based are forged.
5. Things that have an impact on the impartiality of ruling have been discovered concealed by



the opposite party.

6. Arbitrators have accepted bribes, resorted to deception for personal gains or perverted the law in the ruling.

The people's court shall form a collegial bench to verify the case. Whereas one of the aforesaid cases should be found, arbitral award should be ordered to be cancelled by the court.

Whereas the people's court establishes that an arbitral award goes against the public interests, the award should be cancelled by the court.

Article 59 An application filed by the parties concerned for the cancellation of an arbitral award should be sent within six months starting from the date of receipt of the award.

Article 60 The people's court should rule to cancel the award or reject the application within two months after the application for cancellation of an award is received.

Article 61 After the people's court has accepted an application for the cancellation of an arbitral award and deems it necessary for the arbitration tribunal to make a new award, it shall notify the arbitration tribunal for a new ruling within a certain limit of time and order the termination of the cancellation procedure. In the case when the arbitration tribunal refuses a new ruling, the people's court shall rule that the cancellation procedure be restored.

#### Chapter VI Enforcement

Article 62 The parties concerned shall execute the arbitral award. If one of the parties refuses to execute the award, the other party may apply for enforcement with the people's court according to the relevant provisions of the Civil Procedure Law. The people's court with which the application is filed should enforce it.

Article 63 If the respondent has produced evidences to substantiate one of the following cases provided for in the second paragraph of Article 217 of the Civil Procedure Law, the award shall not be enforced after the verification by the collegiate bench of the people's court.

Article 64 Whereas one party applies for an enforcement while the other applies for a cancellation of a award, the people's court shall order the termination of the performance of the award.

Whereas the people's court has ordered the cancellation of an award, it should also order the termination of performance of the award. Whereas an application for the cancellation of an award is rejected, the people's court shall order the restoration of the performance of the award.

#### Chapter VII Special Provision on Arbitration Involving Foreign Interests

Article 65 The provisions in this chapter apply to arbitration of disputes arising from foreign economic cooperation and trade, transportation and maritime matters. Matters not covered by this chapter shall be handled according to other relevant provisions of this law.

Article 66 Foreign arbitration commissions may be formed by the China International Chamber of Commerce.

A foreign arbitration commission is composed of a chairman, a number of vice-chairmen and members.

The chairman, vice-chairmen and members of a foreign arbitration commission shall be appointed by the China International Chamber of Commerce.

Article 67 Members of a foreign arbitration commission may appoint arbitrators from among foreign nationals with specialized knowledge in law, economy and trade, science and technology.

Article 68 Whereas the parties involved in a foreign arbitration case apply for the custody of evidences, the foreign arbitration commission shall submit the application to the intermediate people's court at places where the evidences are produced.

Article 69 The foreign arbitration tribunal may write down its hearings on records or summary of records. The records shall be signed or affixed with the seals of the parties concerned and other people participating in the arbitration.

Article 70 Whereas the claimant has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the People's court shall form a collegiate bench to verify the facts and order the cancellation of the award.

Article 71 Whereas the respondent has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the people's court shall form a collegiate bench to verify the facts and order the non-performance of the award.

Article 72 Whereas a party involved in a foreign arbitration case applies for the enforcement of the award that has taken legal effect, the party shall apply directly with a foreign law court with the jurisdiction for recognition and enforcement if the party that should implement the award or its property is not in the territory of the People's Republic of China.

Article 73 The rules for foreign arbitration shall be formulated by the China International Chamber of Commerce according to this law and the relevant provisions of the Civil Procedure Law.

#### Chapter VIII Supplementary Provisions

Article 74 Whereas there is a limited effective period for the arbitration stipulated in the law, the limit shall apply. Whereas there is not a limited effective period for the arbitration stipulated by the law, the provisions about limits for proceedings shall apply.

Article 75 Before the China Arbitration Association has formulated arbitration rules, arbitration commissions may formulate interim rules for arbitration according to this law and the relevant provisions of the Civil Procedure Law.

Article 76 Parties concerned shall pay arbitration fees according to provisions.

The schedule of arbitration fees shall be submitted for approval by the pricing administrative department.

Article 77 The arbitration of labor disputes and disputes arising from the farm work contract inside the collective agricultural organizations shall be formulated separately.

Article 78 Whereas the relevant arbitration regulations formulated before the enforcement of this law come into conflict with the provisions of this law, the provisions of this law shall prevail.

Article 79 The arbitration organization set up in cities where the people's governments of the municipalities, provinces and autonomous regions are located and other cities which have districts shall be reorganized according to the relevant provisions of this law. Those not reorganized shall be terminated in one year's time starting from the date of the implementation of this law.

Other arbitration organizations set up before the implementation of this law and are not in conformity to the provisions of this law shall be terminated starting from the date of the implementation of this law.

Article 80 The law shall enter into force as of September 1, 1995.

Attachment: Relevant Provisions of the Civil Procedure Law

Article 217 Whereas the party against whom the application is made provides evidences which have proved that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order not to perform the arbitration award:

1. The parties have not stipulated clauses on arbitration in the contracts, or have not subsequently reached a written agreement for arbitration;
2. Matters proposed for arbitration are out of scope of the agreement for arbitration or the limits of authority of the arbitration agency;
3. The composition of the arbitration division or the procedure for arbitration is not in conformity with the legal procedure;
4. The main evidences are not sufficient to substantiate the facts;
5. There are errors in the cited law; or
6. The arbitrators committed acts of malpractice for personal benefits and perverted the law in the arbitration of the case.

Article 260 Whereas the person against whom the application is made provides evidences which prove that the arbitration award made by the foreign affairs arbitration agency of the People's Republic of China involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order to stop the execution of the award:

1. The parties concerned have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement for arbitration;
2. The person against whom the application is made is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the said person fails to state its opinions due to reasons for which he is not held responsible;

3. The composition of the arbitration division or the procedure for arbitration is not in conformity with the rules of arbitration; or

4. Matters for arbitration are out of the scope of the agreement for arbitration or the limits of authority of the arbitration agency.

中华人民共和国主席令

(第 31 号)

《中华人民共和国仲裁法》已由中华人民共和国第八届全国人民代表大会常务委员会第九次会议于 1994 年 8 月 31 日通过, 现予公布, 自 1995 年 9 月 1 日起施行。

中华人民共和国主席 江泽民

1994 年 8 月 31 日

### 中华人民共和国仲裁法

(1994 年 8 月 31 日第八届全国人民代表

大会常务委员会第九次会议通过)

#### 第一章 总则

第一条 【立法目的】为保证公正、及时地仲裁经济纠纷, 保护当事人的合法权益, 保障社会主义市场经济健康发展, 制定本法。

第二条 【适用范围】平等主体的公民、法人和其他组织之间发生的合同纠纷和其他财产权益纠纷, 可以仲裁。

第三条 【适用范围的例外】下列纠纷不能仲裁:

(一) 婚姻、收养、监护、扶养、继承纠纷;

(二) 依法应当由行政机关处理的行政争议。

第四条 【自愿仲裁原则】当事人采用仲裁方式解决纠纷, 应当双方自愿, 达成仲裁协议。没有仲裁协议, 一方申请仲裁的, 仲裁委员会不予受理。

第五条 【或裁或审原则】当事人达成仲裁协议, 一方向人民法院起诉的, 人民法院不予受理, 但仲裁协议无效的除外。

第六条 【仲裁机构的选定】仲裁委员会应当由当事人协议选定。

仲裁不实行级别管辖和地域管辖。

第七条 【依据事实和法律仲裁原则】仲裁应当根据事实, 符合法律规定, 公平合理地解决纠纷。

第八条 【独立仲裁原则】仲裁依法独立进行, 不受行政机关、社会团体和个人的干涉。

第九条 【一裁终局制】仲裁实行一裁终局的制度。裁决作出后, 当事人就同一纠纷再申请仲裁或者向人民法院起诉的, 仲裁委员会或者人民法院不予受理。

裁决被人民法院依法裁定撤销或者不予执行的, 当事人就该纠纷可以根据双方重新达成的仲裁协议申请仲裁, 也可以向人民法院起诉。

## 第二章 仲裁委员会和仲裁协会

第十条 【仲裁委员会的设置】仲裁委员会可以在直辖市和省、自治区人民政府所在地的市设立，也可以根据需要在其他设区的市设立，不按行政区划层层设立。

仲裁委员会由前款规定的市的人民政府组织有关部门和商会统一组建。

设立仲裁委员会，应当经省、自治区、直辖市的司法行政部门登记。

第十一条 【仲裁委员会的设立条件】仲裁委员会应当具备下列条件：

- (一) 有自己的名称、住所和章程；
- (二) 有必要的财产；
- (三) 有该委员会的组成人员；
- (四) 有聘任的仲裁员。

仲裁委员会的章程应当依照本法制定。

第十二条 【仲裁委员会的组成成员】仲裁委员会由主任一人、副主任二至四人和委员七至十一人组成。

仲裁委员会的主任、副主任和委员由法律、经济贸易专家和有实际工作经验的人员担任。仲裁委员会的组成人员中，法律、经济贸易专家不得少于三分之二。

第十三条 【仲裁员的条件】仲裁委员会应当从公道正派的人员中聘任仲裁员。

仲裁员应当符合下列条件之一：

- (一) 从事仲裁工作满八年的；
- (二) 从事律师工作满八年的；
- (三) 曾任审判员满八年的；
- (四) 从事法律研究、教学工作并具有高级职称的；
- (五) 具有法律知识、从事经济贸易等专业工作并具有高级职称或者具有同等专业水平的。

仲裁委员会按照不同专业设仲裁员名册。

第十四条 【仲裁委员会的独立性】仲裁委员会独立于行政机关，与行政机关没有隶属关系。仲裁委员会之间也没有隶属关系。

第十五条 【中国仲裁协会】中国仲裁协会是社会团体法人。仲裁委员会是中国仲裁协会的会员。中国仲裁协会的章程由全国会员大会制定。

中国仲裁协会是仲裁委员会的自律性组织，根据章程对仲裁委员会及其组成人员、仲裁员的违纪行为进行监督。

中国仲裁协会依照本法和民事诉讼法的有关规定制定仲裁规则。

## 第三章 仲裁协议

**第十六条 【仲裁协议的形式和内容】**仲裁协议包括合同中订立的仲裁条款和以其他书面方式在纠纷发生前或者纠纷发生后达成的请求仲裁的协议。

仲裁协议应当具有下列内容：

- (一) 请求仲裁的意思表示；
- (二) 仲裁事项；
- (三) 选定的仲裁委员会。

**第十七条 【仲裁协议的无效】**有下列情形之一的，仲裁协议无效：

- (一) 约定的仲裁事项超出法律规定的仲裁范围的；
- (二) 无民事行为能力人或者限制民事行为能力人订立的仲裁协议；
- (三) 一方采取胁迫手段，迫使对方订立仲裁协议的。

**第十八条 【内容不明确的仲裁协议的处理】**仲裁协议对仲裁事项或者仲裁委员会没有约定或者约定不明确的，当事人可以补充协议；达不成补充协议的，仲裁协议无效。

**第十九条 【仲裁条款效力的独立性】**仲裁协议独立存在，合同的变更、解除、终止或者无效，不影响仲裁协议的效力。

仲裁庭有权确认合同的效力。

**第二十条 【仲裁协议异议的处理】**当事人对仲裁协议的效力有异议的，可以请求仲裁委员会作出决定或者请求人民法院作出裁定。一方请求仲裁委员会作出决定，另一方请求人民法院作出裁定的，由人民法院裁定。

当事人对仲裁协议的效力有异议，应当在仲裁庭首次开庭前提出。

#### 第四章 仲裁程序

##### 第一节 申请和受理

**第二十一条 【申请仲裁的条件】**当事人申请仲裁应当符合下列条件：

- (一) 有仲裁协议；
- (二) 有具体的仲裁请求和事实、理由；
- (三) 属于仲裁委员会的受理范围。

**第二十二条 【申请仲裁的文件】**当事人申请仲裁，应当向仲裁委员会递交仲裁协议、仲裁申请书及副本。

**第二十三条 【仲裁申请书内容】**仲裁申请书应当载明下列事项：

- (一) 当事人的姓名、性别、年龄、职业、工作单位和住所，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务；
- (二) 仲裁请求和所根据的事实、理由；
- (三) 证据和证据来源、证人姓名和住所。

**第二十四条 【仲裁申请的受理与不受理】**仲裁委员会收到仲裁申请书之日起五日内,认为符合受理条件的,应当受理,并通知当事人;认为不符合受理条件的,应当书面通知当事人不予受理,并说明理由。

**第二十五条 【受理后的准备工作】**仲裁委员会受理仲裁申请后,应当在仲裁规则规定的期限内将仲裁规则和仲裁员名册送达申请人,并将仲裁申请书副本和仲裁规则、仲裁员名册送达被申请人。

被申请人收到仲裁申请书副本后,应当在仲裁规则规定的期限内向仲裁委员会提交答辩书。仲裁委员会收到答辩书后,应当在仲裁规则规定的期限内将答辩书副本送达申请人。被申请人未提交答辩书的,不影响仲裁程序的进行。

**第二十六条 【仲裁当事人起诉的处理】**当事人达成仲裁协议,一方向人民法院起诉未声明有仲裁协议,人民法院受理后,另一方在首次开庭前提交仲裁协议的,人民法院应当驳回起诉,但仲裁协议无效的除外;另一方在首次开庭前未对人民法院受理该案提出异议的,视为放弃仲裁协议,人民法院应当继续审理。

**第二十七条 【仲裁请求变动】**申请人可以放弃或者变更仲裁请求。被申请人可以承认或者反驳仲裁请求,有权提出反请求。

**第二十八条 【财产保全】**一方当事人因另一方当事人的行为或者其他原因,可能使裁决不能执行或者难以执行的,可以申请财产保全。

当事人申请财产保全的,仲裁委员会应当将当事人的申请依照民事诉讼法的有关规定提交人民法院。

申请有错误的,申请人应当赔偿被申请人因财产保全所遭受的损失。

**第二十九条 【仲裁代理】**当事人、法定代理人可以委托律师和其他代理人进行仲裁活动。委托律师和其他代理人进行仲裁活动的,应当向仲裁委员会提交授权委托书。

## 第二节 仲裁庭的组成

**第三十条 【仲裁庭的组成】**仲裁庭可以由三名仲裁员或者一名仲裁员组成。由三名仲裁员组成的,设首席仲裁员。

**第三十一条 【仲裁员的选任】**当事人约定由三名仲裁员组成仲裁庭的,应当各自选定或者各自委托仲裁委员会主任指定一名仲裁员,第三名仲裁员由当事人共同选定或者共同委托仲裁委员会主任指定。第三名仲裁员是首席仲裁员。

当事人约定由一名仲裁员成立仲裁庭的,应当由当事人共同选定或者共同委托仲裁委员会主任指定仲裁员。

**第三十二条 【仲裁员的指定】**当事人没有在仲裁规则规定的期限内约定仲裁庭的组成方式或者选定仲裁员的,由仲裁委员会主任指定。

**第三十三条 【仲裁庭组成情况的通知】**仲裁庭组成后,仲裁委员会应当将仲裁庭的组成情况书面通知当事人。

**第三十四条 【回避的适用范围】**仲裁员有下列情形之一的,必须回避,当事人也有权提出回避申请:



- (一) 是本案当事人或者当事人、代理人的近亲属；
- (二) 与本案有利害关系；
- (三) 与本案当事人、代理人有其他关系，可能影响公正仲裁的；
- (四) 私自会见当事人、代理人，或者接受当事人、代理人的请客送礼的。

**第三十五条 【当事人申请回避】**当事人提出回避申请，应当说明理由，在首次开庭前提出。回避事由在首次开庭后知道的，可以在最后一次开庭终结前提出。

**第三十六条 【回避的决定】**仲裁员是否回避，由仲裁委员会主任决定；仲裁委员会主任担任仲裁员时，由仲裁委员会集体决定。

**第三十七条 【仲裁员的重新确定】**仲裁员因回避或者其他原因不能履行职责的，应当依照本法规定重新选定或者指定仲裁员。

因回避而重新选定或者指定仲裁员后，当事人可以请求已进行的仲裁程序重新进行，是否准许，由仲裁庭决定；仲裁庭也可以自行决定已进行的仲裁程序是否重新进行。

**第三十八条 【仲裁员的除名】**仲裁员有本法第二十四条第四项规定的情形，情节严重的，或者有本法第五十八条第六项规定的情形的，应当依法承担法律责任，仲裁委员会应当将其除名。

## 第二节 开庭和裁决

**第三十九条 【仲裁审理的方式】**仲裁应当开庭进行。当事人协议不开庭的，仲裁庭可以根据仲裁申请书、答辩书以及其他材料作出裁决。

**第四十条 【仲裁不公开原则】**仲裁不公开进行。当事人协议公开的，可以公开进行，但涉及国家秘密的除外。

**第四十一条 【开庭通知与延期审理】**仲裁委员会应当在仲裁规则规定的期限内将开庭日期通知双方当事人。当事人有正当理由的，可以在仲裁规则规定的期限内请求延期开庭。是否延期，由仲裁庭决定。

**第四十二条 【视为撤回申请和缺席判决】**申请人经书面通知，无正当理由不到庭或者未经仲裁庭许可中途退庭的，可以视为撤回仲裁申请。

被申请人经书面通知，无正当理由不到庭或者未经仲裁庭许可中途退庭的，可以缺席裁决。

**第四十二条 【举证责任】**当事人应当对自己的主张提供证据。

仲裁庭认为有必要收集的证据，可以自行收集。

**第四十四条 【专门性问题的鉴定】**仲裁庭对专门性问题认为需要鉴定的，可以交由当事人约定的鉴定部门鉴定，也可以由仲裁庭指定的鉴定部门鉴定。

根据当事人的请求或者仲裁庭的要求，鉴定部门应当派鉴定人参加开庭。当事人经仲裁庭许可，可以向鉴定人提问。

**第四十五条 【证据出示和质证】**证据应当在开庭时出示，当事人可以质证。

**第四十六条 【证据保全】**在证据可能灭失或者以后难以取得的情况下，当事人可以申请证据保全。当事人申请证据保全的，仲裁委员会应当将当事人的申请提交证据所在地的基层人民法院。

**第四十七条 【当事人的辩论】**当事人在仲裁过程中有权进行辩论。辩论终结时，首席仲裁员或者独任仲裁员应当征询当事人的最后意见。

**第四十八条 【仲裁笔录】**仲裁庭应当将开庭情况记入笔录。当事人和其他仲裁参与人认为对自己陈述的记录有遗漏或者差错的，有权申请补正。如果不予补正，应当记录该申请。

笔录由仲裁员、记录人员、当事人和其他仲裁参与人签名或者盖章。

**第四十九条 【仲裁和解】**当事人申请仲裁后，可以自行和解。达成和解协议的，可以请求仲裁庭根据和解协议作出裁决书，也可以撤回仲裁申请。

**第五十条 【和解后反悔的处理】**当事人达成和解协议，撤回仲裁申请后反悔的，可以根据仲裁协议申请仲裁。

**第五十一条 【仲裁调解】**仲裁庭在作出裁决前，可以先行调解。当事人自愿调解的，仲裁庭应当调解。调解不成的，应当及时作出裁决。

调解达成协议的，仲裁庭应当制作调解书或者根据协议的结果制作裁决书。调解书与裁决书具有同等法律效力。

**第五十二条 【仲裁调解书】**调解书应当写明仲裁请求和当事人协议的结果。调解书由仲裁员签名，加盖仲裁委员会印章，送达双方当事人。

调解书经双方当事人签收后，即发生法律效力。

在调解书签收前当事人反悔的，仲裁庭应当及时作出裁决。

**第五十三条 【仲裁裁决的作出】**裁决应当按照多数仲裁员的意见作出，少数仲裁员的不同意见可以记入笔录。仲裁庭不能形成多数意见时，裁决应当按照首席仲裁员的意见作出。

**第五十四条 【裁决书的内容】**裁决书应当写明仲裁请求、争议事实、裁决理由、裁决结果、仲裁费用的负担和裁决日期。当事人协议不愿写明争议事实和裁决理由的，可以不写。裁决书由仲裁员签名，加盖仲裁委员会印章。对裁决持不同意见的仲裁员，可以签名，也可以不签名。

**第五十五条 【先行裁决】**仲裁庭仲裁纠纷时，其中一部分事实已经清楚，可以就该部分先行裁决。

**第五十六条 【裁决书的补正】**对裁决书中的文字、计算错误或者仲裁庭已经裁决但在裁决书中遗漏的事项，仲裁庭应当补正；当事人自收到裁决书之日起二十日内，可以请求仲裁庭补正。

**第五十七条 【裁决书的生效】**裁决书自作出之日起发生法律效力。

## 第五章 申请撤销裁决

**第五十八条 【申请撤销裁决条件】**当事人提出证据证明裁决有下列情形之一的，可以向仲裁委员会所在地的中级人民法院申请撤销裁决：

- (一) 没有仲裁协议的;
- (二) 裁决的事项不属于仲裁协议的范围或者仲裁委员会无权仲裁的;
- (三) 仲裁庭的组成或者仲裁的程序违反法定程序的;
- (四) 裁决所根据的证据是伪造的;
- (五) 对方当事人隐瞒了足以影响公正裁决的证据的;
- (六) 仲裁员在仲裁该案时有索贿受贿, 徇私舞弊, 枉法裁决行为的。

人民法院经组成合议庭审查核实裁决有前款规定情形之一的, 应当裁定撤销。

人民法院认定该裁决违背社会公共利益的, 应当裁定撤销。

**第五十九条 【申请撤销裁决的期限】**当事人申请撤销裁决的, 应当自收到裁决书之日起六个月内提出。

**第六十条 【撤销与否的期限】**人民法院应当在受理撤销裁决申请之日起两个月内作出撤销裁决或者驳回申请的裁定。

**第六十一条 【申请撤销裁决的后果】**人民法院受理撤销裁决的申请后, 认为可以由仲裁庭重新仲裁的, 通知仲裁庭在一定期限内重新仲裁, 并裁定中止撤销程序。仲裁庭拒绝重新仲裁的, 人民法院应当裁定恢复撤销程序。

## 第六章 执行

**第六十二条 【仲裁裁决的执行】**当事人应当履行裁决。一方当事人不履行的, 另一方当事人可以依照民事诉讼法的有关规定向人民法院申请执行。受申请的人民法院应当执行。

**第六十三条 【仲裁裁决不予执行】**被申请人提出证据证明裁决有民事诉讼法第二百一十七条第二款规定的情形之一的, 经人民法院组成合议庭审查核实, 裁定不予执行。

**第六十四条 【裁决中止、终结与恢复执行】**一方当事人申请执行裁决, 另一方当事人申请撤销裁决的, 人民法院应当裁定中止执行。

人民法院裁定撤销裁决的, 应当裁定终结执行。撤销裁决的申请被裁定驳回的, 人民法院应当裁定恢复执行。

## 第七章 涉外仲裁的特别规定

**第六十五条 【涉外仲裁的范围】**涉外经济贸易、运输和海事中发生的纠纷的仲裁, 适用本章规定。本章没有规定的, 适用本法其他有关规定。

**第六十六条 【涉外仲裁委员会的设立】**涉外仲裁委员会可以由中国国际商会组织设立。

涉外仲裁委员会由主任一人、副主任若干人和委员若干人组成。

涉外仲裁委员会的主任、副主任和委员可以由中国国际商会聘任。

**第六十七条 【涉外仲裁委员会仲裁员聘任】**涉外仲裁委员会可以从具有法律、经济贸易、科学技术等专门知识的外籍人士中聘任仲裁员。

**第六十八条 【涉外仲裁的证据保全】**涉外仲裁的当事人申请证据保全的, 涉外仲裁委

员会应当将当事人的申请提交证据所在地的中级人民法院。

第六十九条 【涉外仲裁的开庭笔录】涉外仲裁的仲裁庭可以将开庭情况记入笔录，或者作出笔录要点，笔录要点可以由当事人和其他仲裁参与人签字或者盖章。

第七十条 【涉外仲裁裁决的撤销】当事人提出证据证明涉外仲裁裁决有民事诉讼法第二百六十条第一款规定的情形之一的，经人民法院组成合议庭审查核实，裁定撤销。

第七十一条 【裁决的不予执行】被申请人提出证据证明涉外仲裁裁决有民事诉讼法第二百六十条第一款规定的情形之一的，经人民法院组成合议庭审查核实，裁定不予执行。

第七十二条 【仲裁裁决在外国的承认和执行】涉外仲裁委员会作出的发生法律效力的仲裁裁决，当事人请求执行的，如果被执行人或者其财产不在中华人民共和国领域内，应当由当事人直接向有管辖权的外国法院申请承认和执行。

第七十三条 【涉外仲裁规则】涉外仲裁规则可以由中国国际商会依照本法和民事诉讼法的有关规定制定。

## 第八章 附则

第七十四条 【仲裁时效】法律对仲裁时效有规定的，适用该规定。法律对仲裁时效没有规定的，适用诉讼时效的规定。

第七十五条 【涉外仲裁规则制定】中国仲裁协会制定仲裁规则前，仲裁委员会依照本法和民事诉讼法的有关规定可以制定仲裁暂行规则。

第七十六条 【仲裁费用】当事人应当按照规定交纳仲裁费用。

收取仲裁费用的办法，应当报物价管理部门核准。

第七十七条 【不适应本法两类合同】劳动争议和农业集体经济组织内部的农业承包合同纠纷的仲裁，另行规定。

第七十八条 【本法实行前有关仲裁规定的效力】本法施行前制定的有关仲裁的规定与本法的规定相抵触的，以本法为准。

第七十九条 【新旧仲裁机构的衔接过渡】本法施行前在直辖市、省、自治区人民政府所在地的市和其他设区的市设立的仲裁机构，应当依照本法的有关规定重新组建；未重新组建的，自本法施行之日起届满一年时终止。

本法施行前设立的不符合本法规定的其他仲裁机构，自本法施行之日起终止。

第八十条 【生效日期】本法自1995年9月1日起施行。

附： 民事诉讼法有关条款

第二百一十七条 被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

(二) 裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的;

(三) 仲裁庭的组成或者仲裁的程序违反法定程序的;

(四) 认定事实的主要证据不足的;

(五) 适用法律确有错误的;

(六) 仲裁员在仲裁该案时有贪污受贿, 徇私舞弊, 枉法裁决行为的。

第二百六十条 对中华人民共和国涉外仲裁机构作出的裁决, 被申请人提出证据证明仲裁裁决有下列情形之一的, 经人民法院组成合议庭审查核实, 裁定不予执行:

(一) 当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的;

(二) 被申请人没有得到指定仲裁员或者进行仲裁程序的通知, 或者由于其他不属于被申请人负责的原因未能陈述意见的;

(三) 仲裁庭的组成或者仲裁的程序与仲裁规则不符的;

(四) 裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

## ACCOUNTING STANDARDS FOR BUSINESS ENTERPRISES

### 企业会计准则

#### 衔接办法

39. 对于本准则施行之日以前企业已经发生的租赁业务，其会计处理与本准则第24条和第25条的规定不同的，应予追溯调整，其余的不作追溯调整；对于本准则施行之日以后发生的租赁业务，则应当按照本准则的规定进行会计处理。

#### 附 则

40. 本准则自2001年1月1日起施行。

# Accounting Standard for Business Enterprises: Basic Standard

## Accounting Standards for Business Enterprises

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### The People's Republic of China Accounting Standard for Business Enterprises: Basic Standard

#### Chapter I General Provisions

Article 1. In accordance with "The Accounting Law of the People's Republic of China", this Standard is formulated to meet the needs of developing a socialist market economy in our country, to standardize accounting practice and to ensure the quality of accounting information.

Article 2. This Standard is applicable to all enterprises established within the territory of the People's Republic of China. Chinese enterprises established outside the territory of the People's Republic of China (hereinafter referred to as "enterprises abroad") are required to prepare and disclose their financial reports to appropriate domestic regulatory authorities in accordance with this Standard.

Article 3. Accounting systems of enterprises are required to comply with this Standard.

Article 4. An enterprise shall accurately account for all its transactions actually taken place in order to provide reports of reliable quality on the economic and financial activities of the enterprise itself.

Article 5. Accounting and financial reports should proceed on the basis that the enterprise is a continuing entity and will remain in operation into the foreseeable future.

Article 6. An enterprise shall account for its transactions and prepare its financial statements in distinct accounting periods. Accounting periods may be a fiscal year, a quarter, or a month, commencing on first days thereof according to the Gregorian calendar.

Article 7. The Renminbi is the bookkeeping base currency of an enterprise. A foreign currency may be used as the bookkeeping base currency for enterprises which conduct transactions mainly in foreign currency. However, in preparing financial statements, foreign currency transactions are to be converted into Renminbi. This latter requirement applies to enterprises abroad when reporting financial and economic results to concerned domestic organizations.



Article 8. The debit and credit double entry bookkeeping technique is to be used for recording all accounting transactions.

Article 9. Accounting records and financial reports are to be compiled using the Chinese language. Minority or foreign languages may be used concurrently with the Chinese language by enterprises in autonomous areas of minority nationalities, or by enterprises with foreign investment, and by foreign enterprises.

## Chapter I General Principles

Article 10. The accounting records and financial reports must be based on financial and economic transactions as they actually take place, in order to objectively reflect the financial position and operating results of an enterprise.

Article 11. Accounting information must be designed to meet the requirements of national macro-economy control, the needs of all concerned external users to understand an enterprise's financial position and operating results, and the needs of management of enterprises to strengthen their financial management and administration.

Article 12. Accounting records and financial statements shall be prepared according to stipulated accounting methods, and accounting information of enterprises must be comparable and convenient to be analyzed.

Article 13. Accounting methods used shall be consistent from one period to the other and shall not be arbitrarily changed. Changes and reasons for changes, if necessary, and their impact on an enterprise's financial position and operating results, shall be reported in notes to the financial statements.

Article 14. Accounting and financial reports preparation must be conducted in a timely manner.

Article 15. Accounting records and financial reports shall be prepared in a clear, concise manner to facilitate understanding, examination and use.

Article 16. The accrual basis of accounting is to be adopted.

Article 17. Revenue shall be matched with related costs and expenses in accounting.

Article 18. Principle of prudence should be followed in reasonably determining the possible loss and expense.

Article 19. The values of all assets are to be recorded at historical costs at the time of acquisition. The amount recorded in books of account shall not be adjusted

even though a fluctuation in their value may occur, except when State laws or regulations require specific treatment or adjustments.

Article 20. A clear distinction shall be drawn between revenue expenditures and capital expenditures. Expenditure shall be regarded as revenue expenditure where the benefit to the enterprise is only related to the current fiscal year; and as capital expenditure where the benefits to the enterprise last for several fiscal years.

Article 21. Financial reports must reflect comprehensively the financial position and operating results of an enterprise. Transactions relating to major economic activities are to be identified, appropriately classified, and accounted for, and separately reported in financial statements.

## Chapter II Assets

Article 22. Assets are economic resources, which are measurable by money value, and which are owned or controlled by an enterprise, including all property, rights as a creditor to others, and other rights.

Article 23. For accounting treatment, assets are normally divided into current assets, long-term investments, fixed assets, intangible assets, deferred assets and other assets.

Article 24. Current assets refer to those assets which will be realized or consumed within one year of their acquisition, or within an operating cycle longer than a year. They include cash, cash deposits, short-term investments, accounts receivable, prepayments, and inventories, etc.

Article 25. Cash and all kinds of deposits shall be accounted for according to the actual amount of receipt and payment.

Article 26. Short-term investments refer to various of marketable securities, which can be realized at any time and will be held less than a year, as well as other investment with a life of no longer than a year.

Marketable securities shall be accounted for according to historical cost as obtained.

Income received or receivable from marketable securities in current period and the difference between the receipt obtained from securities sold and book cost shall be all accounted for as current profit or loss.

Marketable securities shall be shown in book balance in accounting statements.

Article 27. Receivables and prepayments include: notes receivable, accounts receivable, other receivables, accounts prepaid and prepaid expenses, etc.

Receivables and prepayments shall be accounted for according to actual amount.

Provision for bad debts may be set up on accounts receivable. The provision for bad debts shall be shown as a deduction item of accounts receivable in the financial statement.

All receivables and prepayments shall be cleared and collected on time, and shall be checked with related parties periodically. Any accounts receivable, proved to be definitely uncollectible according to state regulations, shall be recognised as bad debts and written off against provision for bad debts or charged to current profit or loss, if such provision is not set up.

Prepaid expenses shall be amortized according to period benefiting, and the balance shall be shown separately in accounting statement.

Article 28. Inventories refer to merchandise, finished goods, semifinished goods, goods in process, and all kinds of materials, fuels, containers, low-value and perishable articles and so on that stocked for the purpose of sale, production or consumption during the production operational process.

All inventories shall be accounted for at historical cost as obtained. Those enterprises keeping books at planned cost or norm cost in daily accounting shall account the cost variances and adjust planned cost (or norm cost) into historical cost periodically.

When inventories issuing, enterprises may account them under the following methods: first-in first-out, weighted average, moving average, specific identification, last-in first-out, etc.

All inventories shall be taken stock periodically. If any shortage, shortage and out-of-date, deterioration and damage that need to be scrapped shall be disposed within the year and accounted into current profit or loss.

All the inventories shall be disclosed at historical cost in accounting statement.

Article 29. Long-term investment refers to the investment impossible or not intended to be realized within a year, including shares investment, bonds investment and other investments.

In accordance with different situation, shares investment and other investments shall be accounted for by cost method or equity method respectively.

Bonds investment shall be accounted for according to actual amount paid. The interest accrued gained in the actually paid amount shall be accounted for separately.

Where bonds are acquired at a premium or discount, the difference between the cost and the face value of the bonds shall be amortized over the periods to maturity of the bonds.

Interest accrued during the period of bonds investment and the difference between the amount of principal and interest received on bonds sold and their book cost and interest accrued but not yet received shall be accounted for as current profit and loss.

Shares investment, bonds investment and other investments shall be shown separately in accounting statements at book balance.

Bonds investment matured within a year shall be shown in the accounting statements separately under the caption of current assets.

Article 30. Fixed assets refer to the assets whose useful life is over one year, unit value is above the prescribed criteria and whose original physical form remains during the process of utilization, including building and structures, machinery and equipment, transportation equipment, tools and implement, etc.

Fixed assets shall be accounted for at historical cost as obtained. Interest of loan and other related expenses for acquiring fixed assets, and the exchange difference from conversion of foreign currency loan, if incurred before the assets not having been put into operation or after been put into operation but before the final account for completed project is made, shall be accounted as fixed assets value; if incurred after that, shall be accounted for as current profit or loss.

Fixed assets coming from donations shall be accounted through evaluation with reference to market price, wear and tear degree or determined the value with relevant evidence provided by contributors. Expenses incurred on receiving those donated fixed assets, shall be accounted for as the fixed assets value.

Fixed assets financed by leasing shall be accounted with reference of the way,

fixed assets are accounted and shall be explained in notes to the accounting statements.

Depreciation on the fixed assets shall be accounted according to state regulations. On the basis of the original cost, estimated residual value, the useful life of the fixed assets or estimated working capacity, depreciation on the fixed assets shall be accounted for on the straight line method or the working capacity (or output) method. If approved or conforming to relevant regulations, accelerated depreciation method may be adopted.

Fixed assets' original value, accumulated depreciation and its net value shall be shown separately in accounting statement.

The actual expenditures incurred in the purpose of acquiring or technical reforming the fixed assets before available to the users, shall be shown separately as construction in progress in accounting statement.

The fixed assets must be taken inventory periodically. The net profit or loss incurred in discard and disposal, and also overage, shortage of fixed assets shall be accounted as current profit and loss.

**Article 31.** Intangible assets refer to assets that will be used by an enterprise for a long term without material state, including patents, nonpatented technology, trademark, copyrights, right to use sites, and goodwill, etc.

Intangible assets obtained through purchase shall be accounted for at actual cost. Intangible assets received from investors shall be accounted for at the assessed value recognised or the amount specified in the contract. Self-developed intangible assets shall be accounted at actual cost in the development process.

All intangible assets shall be averagedly amortized periodically over the period benefited from such expenditures and be shown with unamortized balance in accounting statement.

**Article 32.** Deferred assets refer to all the expenses that could not be accounted as current profit or loss totally but should be periodically amortized in future years, including organization expenses, expenditures incurred in major repair and improvement of the rented in fixed assets etc.

The expenses incurred in an enterprise during its preparation period shall be accounted for as organization expenses except those accumulated into related property or material value. The organization expensy shall be averagedly

amortized in a certain period of years after the operation starts.

Expenditures incurred on major repair and improvement of the rented in fixed assets shall be averagedly amortized by years in the period of leasing.

All deferred assets shall be shown separately in accounting statements by its balance not yet amortized.

**Article 33.** Other assets refer to the long-term assets except all items mentioned above.

## Chapter IV Liabilities

**Article 34.** A liability is debt borne by an enterprise, measurable by money value, which will be paid to a creditor using assets, or services.

**Article 35.** Liabilities are generally classified into current liabilities and long-term liabilities.

**Article 36.** Current liabilities refer to the debts which should be paid off within a year or an operating cycle longer than a year, including short-term loans payable, notes payable, accounts payable, advances from customers, accrued payroll, taxes payable, profits payable, dividends payable, other payables, provision for expenses, etc.

All current liabilities shall be accounted for at actual amount incurred. Liabilities incurred but the amount needed to be estimated shall be accounted for at a reasonable estimate, and then adjusted after actual amount was given.

Balance of current liabilities shall be shown by item in accounting statements.

**Article 37.** Long-term liabilities refer to the debts which will be redeemed after a year or an operating cycle longer than a year, including long-term loans payable, bonds payable, long-term accounts payable, etc.

Long-term loans payable include the loans borrowed from financial institutions and other units. It shall be accounted independently according to the different characters of the loan and at the amount actually incurred.

Bonds shall be accounted for at par value. When bonds are issued in premium or discount, the difference between the amount actually obtained and the par value shall be accounted independently, and be written off periodically by increasing or decreasing interest expenses of every period until bonds mature.

Long-term accounts payable include accounts payable for importing equipments, accounts payable for fixed assets financed by leasing. Long-term accounts payable shall be accounted at actual amounts.

Long-term liabilities shall be shown by item of long-term loans, bonds payable, long-term accounts payable in accounting statements.

Long-term liabilities to be matured and payable within a year shall be shown as a separate item under the caption of current liabilities.

## Chapter V Owners' Equity

Article 38. Owners' equity refers to the interest of the investors remaining in the net assets of an enterprise, including capital of the enterprise invested in by investors, capital reserve, surplus reserve, and undistributed profit retained in the enterprise etc..

Article 39. Invested Capital is the capital fund actually invested in the enterprise by its investors, whether it be in form of cash, physical goods or other assets for the operation of the enterprise.

Invested Capital shall be accounted for at the amount actually invested.

Amount of shares issued by a corporation shall be accounted for as capital stock at the face value of the shares issued.

Special appropriation allocated by the government to an enterprise shall be accounted for as government investment unless otherwise provided.

Article 40. Capital reserve includes premium on capital stock, legal increment of property value through revaluation and value of donated assets accepted, etc..

Article 41. Surplus reserve refers to the reserve fund set up from profit according to relevant government regulations.

Surplus reserve shall be accounted for at the amount actually set up.

Article 42. Undistributed profit refers to the profit reserved for future distribution or not distributed yet.

Article 43. Invested capital, capital reserve, surplus reserve and undistributed profit shall be shown by items in accounting statement. Deficit not yet made up, if any, shall be shown as a deduction item of owners' equity.

## Chapter VI Revenue

Article 44. Revenue refers to the financial inflows to an enterprise as a result of the sale of goods and services, and other business activities of the enterprise, including basic operating revenue and other operating revenue.

Article 45. Enterprises shall rationally recognise revenue and account for the revenue on time.

Enterprises generally recognise revenue when merchandise shipped, service provided as well as money collected or rights collecting money obtained.

Revenue of long-term project contract (including labor service) shall be reasonably recognised, in general, according to the completed progress method or the completed contract method.

Article 46. Return of sales, sales allowances and sales discount shall be accounted for as deduction item of operating revenue.

## Chapter VII Expenses

Article 47. Expenses refer to the outlays incurred by an enterprise in the course of production and operation.

Article 48. Expenses directly incurred by an enterprise in production and service provision, including direct labor, direct materials, purchase price of commodities and other direct expenses shall be charged directly into the cost of production or operation; indirect expenses incurred in production and provision of service by an enterprise is to be allocated into the cost of production and operation, according to certain criteria of allocation.

Article 49. General and administrative expenses incurred by enterprise's administrative sectors for organizing and managing production and operation, financial expenses, purchase expenses on commodities purchased for sale, and sales expenses for selling commodities and providing service, shall be directly accounted for as periodic expense in the current profit and loss.

Article 50. The expenses paid in current period but attributable to the current and future periods shall be distributed and accounted for in current and future periods. The expenses attributable to the current period but not yet paid in current period shall be recognised as accrued expenses and charged to cost of the

current period.

Article 51. Enterprises shall generally calculate production cost every month.

Costing methods shall be decided by the enterprise itself according to the characteristics of its production and operation. Type of production management and requirements of cost management. Once it is decided, no change can be made arbitrarily.

Article 52. Enterprises shall calculate expenses and costs on actual amounts incurred. Those adopting the norm costing, or planned costing in accounting for daily calculation shall reasonably calculate the cost variances, and adjust them into historical cost at the end of the month while preparing accounting statements.

Article 53. Enterprises shall convert the cost of commodities sold and service provided into operating cost accurately and timely, then account current profit and loss together with periodic expenses.

## Chapter V Profit and Loss

Article 54. Profit is the operating results of an enterprise in an accounting period, including operating profit, net investment profit and net non-operating income.

Operating profit is the balance of operating revenue after deducting operating cost, periodic expenses and all turnover taxes, surtax and fees.

Net investment profit is the balance of income on external investment after deducting investment loss.

Net non-operating income is the balance of non-operating income after deducting non-operating expenses. Non-operating income and expenses have no direct relating with the production operations of an enterprise.

Article 55. Loss incurred by an enterprise shall be made up according to the stipulated procedure.

Article 56. Items that constitute the profits and the distribution of profits shall be shown separately in the financial statement. A distribution of profit plan which is not yet approved at time of publication of a financial statement is to be identified in notes to the financial statement.

## Chapter IX Financial Reports

Article 57. Financial reports are the written documents summarizing and reflecting the financial position and operating results of an enterprise, including a balance sheet, an income statement, a statement of changes in financial position (or a cash flow statement) together with supporting schedules, notes to the financial statements, and explanatory statements on financial condition.

Article 58. A balance sheet is an accounting statement that reflects the financial position of an enterprise at a specific date.

Items of the balance sheet should be grouped according to the categories of assets, liabilities and owners' equity, and shall be shown item by item.

Article 59. An income statement is an accounting statement that reflects the operating results of an enterprise within an accounting period, as well as their distribution.

Items of the income statement should be arranged according to the formation and distribution of profit, and shall be shown item by item.

Items of profit distribution part of the income statement may be shown separately in a statement of profit distribution.

Article 60. A statement of changes in financial position is an accounting statement that reflects comprehensively the sources and application of working capital and its changes during an accounting period.

Items of the statement of changes in financial position are divided into two groups: sources of working capital and application of working capital. The difference between the total sources and total applications is the net increase (or decrease) of the working capital. Sources of working capital are subdivided into profit sources and other sources; applications of working capital are also subdivided into: profit distribution and other applications, all shall be shown item by item.

An enterprise may also prepare a cash flow statement to reflect the changes in its financial position.

A cash flow statement is an accounting statement that reflects the condition of cash receipts and cash disbursements of an enterprise during a certain accounting period.

# Accounting Standard for Business Enterprises: Disclosure of Related Party Relationships and Transactions

## Accounting Standards for Business Enterprises

Article 61. Financial statements should include comparative financial information for the corresponding previous accounting period. When so required, if the classification and contents of statement items of the previous accounting period are different from that of the current period, such items should be adjusted in conformity with that of the current period.

Article 62. Accounting statements should be prepared from the records of account books, completely recorded and correctly checked and other relative information. It is required that they must be true and correct in figures, complete in contents and issued on time.

Article 63. Consolidated financial statements shall be prepared by the enterprise (acts as a parent company) which owns 50% or more of the total capital of the enterprise it invested (acts as subsidiary) or otherwise owns the right of control over the invested enterprise. Financial statements of an invested enterprise of special line of business not suitable for consolidation, may not be consolidated, but should be submitted together with the consolidated financial statements of the parent company.

Article 64. Notes to the financial statements are explanatory to related items in the financial statement of the enterprise concerned so as to meet the needs to understand the contents of the statements. This should include mainly:

- (a) the accounting methods adopted for the current and previous accounting periods;
- (b) changes in accounting treatments between the current and prior periods, including the reasons for, and impact on the financial performance and status of the enterprise of such changes;
- (c) description of unusual items;
- (d) detailed information relating to major items listed in the accounting statements; and
- (e) any other explanations necessary to provide users with a clear view and understanding of the financial statements.

## Chapter X Supplementary Provisions

Article 65. The explanation of this Standard is the charge of the Ministry of Finance.

Article 66. This Standard will be effective as from 1 July, 1993.

中华人民共和国财政部令

第 33 号

根据《国务院关于〈企业财务通则〉、〈企业会计准则〉的批复》(国函[1992]178号)

的规定,财政部对《企业会计准则》(财政部令第5号)进行了修订,修订后的《企业会计准则

则--基本准则》已经部务会议讨论通过,现予公布,自2007年1月1日起施行。

财政部部长 金人庆

二〇〇六年二月十五日

企业会计准则--基本准则

## 第一章 总则

第一条 为了规范企业会计确认、计量和报告行为,保证会计信息质量,根据《中华人民共和

国会会计法》和其他有关法律、行政法规,制定本准则。

第二条 本准则适用于在中华人民共和国境内设立的企业(包括公司,下同)

第三条 企业会计准则包括基本准则和具体准则,具体准则的制定应当遵循本准则。

第四条 企业应当编制财务会计报告(又称财务报告,下同)财务会计报告的目标是向财务会计报告使用者提供与企业财务状况、经营成果和现金流量等有关的会计信息,反映企业管理层受托责任履行情况,有助于财务会计报告使用者做出经济决策。

财务会计报告使用者包括投资者、债权人、政府及其有关部门和社会公众等。

第五条 企业应当对其本身发生的交易或者事项进行会计确认、计量和报告。

第六条 企业会计确认、计量和报告应当以持续经营为前提。

第七条 企业应当划分会计期间,分期结算账目和编制财务会计报告。

会计期间分为年度和中期。中期是指短于一个完整的会计年度的报告期间。

第八条 企业会计应当以货币计量。

第九条 企业应当以权责发生制为基础进行会计确认、计量和报告。

第十条 企业应当按照交易或者事项的经济特征确定会计要素。会计要素包括资产、负债、所有者权益、收入、费用和利润。

第十一条 企业应当采用借贷记账法记账。

第二章 会计信息质量要求

第十二条 企业应当以实际发生的交易或者事项为依据进行会计确认、计量和报告，如实反映

符合确认和计量要求的各项会计要素及其他相关信息，保证会计信息真实可靠、内容完整。

第十三条 企业提供的会计信息应当与财务会计报告使用者的经济决策需要相关，有助于财

务

会计报告使用者对企业过去、现在或者未来的情况做出评价或者预测。

第十四条 企业提供的会计信息应当清晰明了，便于财务会计报告使用者理解和使用。

第十五条 企业提供的会计信息应当具有可比性。

同一企业不同时期发生的相同或者相似的交易或者事项，应当采用一致的会计政策，不得随意变更。确需变更的，应当在附注中说明。

不同企业发生的相同或者相似的交易或者事项，应当采用规定的会计政策，确保会计信息口径一致、相互可比。

第十六条 企业应当按照交易或者事项的经济实质进行会计确认、计量和报告，不应仅以交易

或者事项的法律形式为依据。

第十七条 企业提供的会计信息应当反映与企业财务状况、经营成果和现金流量等有关的所有

重要交易或者事项。

第十八条 企业对交易或者事项进行会计确认、计量和报告应当保持应有的谨慎，不应高估资

产或者收益、低估负债或者费用。

第十九条 企业对于已经发生的交易或者事项，应当及时进行会计确认、计量和报告，不得提

前或者延后。

### 第三章 资产

第二十条 资产是指企业过去的交易或者事项形成的、由企业拥有或者控制的、预期会给企业

带来经济利益的资源。

前款所指的企业过去的交易或者事项包括购买、生产、建造行为或其他交易或者事项。

预期在未来发生的交易或者事项不形成资产。

由企业拥有或者控制，是指企业享有某项资源的所有权，或者虽然不享有某项资源的所有权，但该资源能被企业所控制。



预期会给企业带来经济利益，是指直接或者间接导致现金和现金等价物流入企业的潜力。

第二十一条 符合本准则第二十条规定的资产定义的资源，在同时满足以下条件时，确认为资产：

产：

（一）与该资源有关的经济利益很可能流入企业；

（二）该资源的成本或者价值能够可靠地计量。

第二十二条 符合资产定义和资产确认条件的项目，应当列入资产负债表；符合资产定义、但不

符合资产确认条件的项目，不应当列入资产负债表。

#### 第四章 负债

第二十三条 负债是指企业过去的交易或者事项形成的、预期会导致经济利益流出企业的现时

义务。

现时义务是指企业在现行条件下已承担的义务。未来发生的交易或者事项形成的义务，

不属于现时义务，不应当确认为负债。

第二十四条 符合本准则第二十三条规定的负债定义的义务，在同时满足以下条件时，确认为

负债：

（一）与该义务有关的经济利益很可能流出企业；

（二）未来流出的经济利益的金额能够可靠地计量。

第二十五条 符合负债定义和负债确认条件的项目，应当列入资产负债表；符合负债定义、但

不符合负债确认条件的项目，不应当列入资产负债表。

#### 第五章 所有者权益

第二十六条 所有者权益是指企业资产扣除负债后由所有者享有的剩余权益。

公司的所有者权益又称为股东权益。

第二十七条 所有者权益的来源包括所有者投入的资本、直接计入所有者权益的利得和损失、留存收益等。

直接计入所有者权益的利得和损失，是指不应计入当期损益、会导致所有者权益发生增减变动的、与所有者投入资本或者向所有者分配利润无关的利得或者损失。

利得是指由企业非日常活动所形成的、会导致所有者权益增加的、与所有者投入资本无关的经济利益的流入。

损失是指由企业非日常活动所发生的、会导致所有者权益减少的、与向所有者分配利润无关的经济利益的流出。

第二十八条 所有者权益金额取决于资产和负债的计量。

第二十九条 所有者权益项目应当列入资产负债表。

## 第六章 收入

第三十条 收入是指企业在日常活动中形成的、会导致所有者权益增加的、与所有者投入资本

无关的经济利益的总流入。

第三十一条 收入只有在经济利益很可能流入从而导致企业资产增加或者负债减少、且经济利

益的流入额能够可靠计量时才能予以确认。

第三十二条 符合收入定义和收入确认条件的项目，应当列入利润表。

## 第七章 费用

第三十三条 费用是指企业在日常活动中发生的、会导致所有者权益减少的、与向所有者分配

利润无关的经济利益的总流出。

第三十四条 费用只有在经济利益很可能流出从而导致企业资产减少或者负债增加、且经济利

益的流出额能够可靠计量时才能予以确认。

第三十五条 企业为生产产品、提供劳务等发生的可归属于产品成本、劳务成本等的费用，应

当在确认产品销售收入、劳务收入等时，将已销售产品、已提供劳务的成本等计入当期损益。

企业发生的支出不产生经济利益的，或者即使能够产生经济利益但不符合或者不再符合资产确认条件的，应当在发生时确认为费用，计入当期损益。

企业发生的交易或者事项导致其承担了一项负债而又不确认为一项资产的，应当在发生时确认为费用，计入当期损益。

第三十六条 符合费用定义和费用确认条件的项目，应当列入利润表。

## 第八章 利润

第三十七条 利润是指企业在一定会计期间的经营成果。利润包括收入减去费用后的净额、直接

计入当期利润的利得和损失等。

第三十八条 直接计入当期利润的利得和损失，是指应当计入当期损益、会导致所有者权益发

生增减变动的、与所有者投入资本或者向所有者分配利润无关的利得或者损失。

第三十九条 利润金额取决于收入和费用、直接计入当期利润的利得和损失金额的计量。

第四十条 利润项目应当列入利润表。

#### 第九章 会计计量

第四十一条 企业在将符合确认条件的会计要素登记入账并列报于会计报表及其附注（又称财

务报表，下同）时，应当按照规定的会计计量属性进行计量，确定其金额。

第四十二条 会计计量属性主要包括：

（一）历史成本。在历史成本计量下，资产按照购置时支付的现金或者现金等价物的金额，或者按照购置资产时所付出的对价的公允价值计量。负债按照因承担现时义务而实际收到的款项或者资产的金额，或者承担现时义务的合同金额，或者按照日常活动中为偿还负债预期需要支付的现金或者现金等价物的金额计量。

（二）重置成本。在重置成本计量下，资产按照现在购买相同或者相似资产所需支付的现金或者现金等价物的金额计量。负债按照现在偿付该项债务所需支付的现金或者现金等价物的金额计量。

（三）可变现净值。在可变现净值计量下，资产按照其正常对外销售所能收到现金或者现金等价物的金额扣减该资产至完工时估计将要发生的成本、估计的销售费用以及相关税费后的金额计量。

（四）现值。在现值计量下，资产按照预计从其持续使用和最终处置中所产生的未来净现金流入量的折现金额计量。负债按照预计期限内需要偿还的未来净现金流出量的折现金额计量。

（五）公允价值。在公允价值计量下，资产和负债按照在公平交易中，熟悉情况的交易双方自愿进行资产交换或者债务清偿的金额计量。

第四十三条 企业在对会计要素进行计量时，一般应当采用历史成本，采用重置成本、可变现

净值、现值、公允价值计量的，应当保证所确定的会计要素金额能够取得并可靠计量。

## 第十章 财务会计报告

第四十四条 财务会计报告是指企业对外提供的反映企业某一特定日期的财务状况和某一会计

期间的经营成果、现金流量等会计信息的文件。

财务会计报告包括会计报表及其附注和其他应当在财务会计报告中披露的相关信息和资料。会计报表至少应当包括资产负债表、利润表、现金流量表等报表。

小企业编制的会计报表可以不包括现金流量表。

第四十五条 资产负债表是指反映企业在某一特定日期的财务状况的会计报表。

第四十六条 利润表是指反映企业在一定会计期间的经营成果的会计报表。

第四十七条 现金流量表是指反映企业在一定会计期间的现金和现金等价物流入和流出的会计

报表。

第四十八条 附注是指对在会计报表中列示项目所作的进一步说明，以及对未能在这些报表中

列示项目的说明等。

## 第十一章 附则

第四十九条 本准则由财政部负责解释。

第五十条 本准则自 2007 年 1 月 1 日起施行。

Trademark Law of the People's Republic of China(the 2nd amended edition)

Order No. 59 [2001] of president

October 27, 2001

(Adopted at the 24th meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982, Amended according to the Decision on Amending the Trademark Law of the People's Republic of China at the 34th Session of the Standing Committee of the 7th National People's Congress on February 22, 1983 for the first time, Amended according to the Decision on Amending the Trademark Law of the People's Republic of China at the 24th Session of the Standing Committee of the 9th National People's Congress on October 27, 2001 for the second time)

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#### Chapter I General Provisions

Article 1 This Law is formulated for the purpose of improving the administration of trademarks, protecting the right to exclusive use of trademarks and encouraging producers and operators to guarantee the quality of their goods and services and maintain the reputation of their trademarks, so as to protect the interests of consumers and of producers and operators, and to promote the development of the socialist market economy.

Article 2 The Trademark Office of the administrative department for industry and commerce under the State Council shall be in charge of the trademark registration and administration throughout the country.

The administrative department for industry and commerce under the State Council shall establish a Trademark Review and Adjudication Board to be responsible for handling trademark disputes.

Article 3 Registered trademarks are those that have been approved and registered by the Trademark Office, including commodity trademarks, service trademarks, collective marks, and certification marks; trademark registrants shall be entitled to the right to exclusive use of their trademarks and shall be protected by law.

Collective marks used in this Law shall refer to the marks that are registered in the name of

groups, associations or other organizations and that are provided to the members of the said organizations for business activity use, thus to indicate the membership of the users in the said organizations.

Certification marks used in this Law shall refer to the marks that are controlled by the organizations with supervising power over some kind of commodities or services yet are used by the units or individuals apart from the said organizations on their commodities or services, thus to certify the origins, raw materials, manufacturing methods, quality or other specific characteristics of the said commodities or services.

The special matters concerning the registration and administration of collective marks and certification marks shall be provided for by the department for industry and commerce under the State Council.

Article 4 Any natural person, legal person or other organization that needs to acquire the right to exclusive use of a trademark for the commodities it produces, manufactures, processes, selects or markets shall file an application for commodity trademark registration with the Trademark Office.

Any natural person, legal person or other organization that needs to acquire the right to exclusive use of a trademark for the service items it provides shall file an application for service trademark registration with the Trademark Office.

The provisions of this Law relating to commodity trademarks shall be applicable to the service trademarks.

Article 5 Two or more natural persons, legal persons or other organizations may jointly apply to the Trademark Office for the registration of the same trademark, and enjoy and exercise the right to exclusive use of that trademark jointly.

Article 6 With respect to the commodities that the state has designated as requiring the use of a registered trademark, an application for trademark registration must be filed; the commodities may not be sold on the market before the registration is granted.

Article 7 The user of a trademark shall be responsible for the quality of the commodities on which the trademark is used. The administrative departments for industry and commerce at all levels shall, by means of trademark administration, stop any practices that deceive the consumers.

Article 8 An application for trademark registration may be filed for any visible mark including word, design, letter, number, 3D (three-dimension) mark or color combination, or the combination of the elements above mentioned, that can distinguish the commodities of the natural person, legal person or other organization from those of others.

Article 9 The trademark for which an application for registration is filed shall have distinctive characteristics easy to identify, and may not conflict with the legal rights acquired by others in priority.

A trademark registrant has the right to mark the words "Registered trademark" or a sign indicating that the trademark is registered.

Article 10 The following marks may not be used as trademarks:

1)those identical with or similar to the national name, national flag, national emblem, military flag or medals of the People's Republic of China, as well as those identical with the names of the specific sites or the names and designs of the symbol buildings of the places where the central government agencies are located;

2)those identical with or similar to the national name, national flag, national emblem or military flag of any foreign country, except with the consent of the government of that country;

3)those identical with or similar to the name, flag, or emblem of any intergovernmental international organization, except with the consent of that organization and those unlikely to mislead the public;

4)those identical with or similar to the official marks, inspection marks that indicate the controlling or providing guarantee, except with authorization;

5)those identical with or similar to the name or symbol of the Red Cross or the Red Crescent;

6)those having the nature of discrimination against any nationality;

7)those constituting exaggerated advertising and are deceitful; and

8)those detrimental to socialist morality or customs, or having other harmful influences.

The place names of the administrative districts at the level of county or above or the foreign place names known by the public may not be used as trademarks. However, the place names that have other meanings and those used as part of a collective mark or certification mark are exceptional; the registered trademarks that use place names shall continue to be valid.

Article 11The following marks may not be registered as trademarks:

1)those only having the generic names, designs and models of the commodities concerned;

2)those simply directly indicating the quality, main raw materials, functions, use, weight, quantity or other characteristics of the commodities concerned; and

3)those lacking distinctive characteristics.

If the marks listed in the preceding paragraph have, through usage, obtained distinctive characteristics and can be easily identified, they may be registered as trademarks.

Article 12In case of application for trademark registration on 3D marks, the registration shall not be granted if the figures are generated simply by the nature of the commodities, the commodity figures are needed for technical effects or the figures make the commodities become substantially valuable.

Article 13If a trademark, for which an application for registration is filed, of the same or similar commodity is the copy, imitation or translation of a well-known trademark of others which hasn't been registered in China, and misleads the public and leads to possible damage to the interests of the registrant of that well-known trademark, it shall not be registered and shall be prohibited from use.

If a trademark, for which an application for registration is filed, of a different or dissimilar

commodity is the copy, imitation or translation of a well-known trademark of others which has been registered in China, and misleads the public and leads to possible damage to the interests of the registrant of that well-known trademark, it shall not be registered and shall be prohibited from use.

Article 14 The following factors shall be taken into consideration in the determination of well-known trademarks:

- 1) how well is that trademark known by the relevant public;
- 2) the period during which that trademark has been in use;
- 3) the period, extent and geographic scope of any publicity of that trademark;
- 4) the record of protection of that trademark as a well-known trademark; and
- 5) other factors for which that trademark is well-known.

Article 15 If an agent or a representative registers the trademark of the principal or the represented in his/her own name without authorization, the trademark shall not be registered and shall be prohibited from use upon the opposition raised by the principal or the represented.

Article 16 If a trademark contains the geographic mark of the commodities while the commodities don't come from the region indicated by that mark, and thus misleads the public, the trademark shall not be registered and shall be prohibited from use; however, those that have been registered in good faith shall continue to be valid.

The geographic mark mentioned in the preceding paragraph refers to the mark that indicates the region the commodities come from. And the specific quality, reputation or other characteristics of the said commodities are determined mainly by the natural factors or human cultural factors of that region.

Article 17 Where a foreigner or a foreign enterprise applies for trademark registration in China, the matter shall be handled in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

Article 18 Where a foreigner or a foreign enterprise applies for trademark registration or deals with other trademark matters in China, it shall entrust an organization certified by the Chinese Government as having the qualification for trademark agency to act on its behalf.

## Chapter II Application for Trademark Registration

Article 19 An applicant for trademark registration shall report, in accordance with the prescribed classification of commodities, the class of the commodities and the designation of the commodities on which the trademark is to be used.

Article 20 If an applicant intends to apply for the registration of the same trademark on the commodities in different classes, it shall submit separate applications for registration in accordance with the classification of commodities.

Article 21 If a registered trademark needs to be used on other commodities of the same class, a



new application for registration shall be filed.

Article 22 If the mark of a registered trademark needs to be changed, a new application for registration shall be filed.

Article 23 If a change needs to be made in the name, address or any other registered matter concerning the registrant of a registered trademark, an application to make the change shall be filed.

Article 24 If an applicant applies for the trademark registration of the same trademark for the commodities of the same class within 6 months from the day on which it filed the application for trademark registration of its trademark in a foreign country, it may enjoy the right of priority in accordance with the agreement concluded between that foreign country and China or the international treaty to which both countries are parties, or according to the principle of mutual acknowledgement of the right of priority.

The applicant that requests the right of priority in accordance with the preceding paragraph shall file a written declaration when filing the application for trademark registration, and shall submit a copy of the documents of application for trademark registration it firstly filed within 3 months; those failing to file the written declaration or failing to submit the copy of the documents of application for trademark registration within the prescribed time limit shall be regarded as having not requested for the right of priority.

Article 25 If a trademark is used for the first time on the commodities displayed at any international exhibition sponsored or acknowledged by the Chinese Government, the applicant for registration of that trademark may enjoy the right of priority for 6 months from the day on which the said commodities are displayed.

The applicant requesting for the right of priority in accordance with the preceding paragraph shall file a written declaration when filing the application for trademark registration, and shall submit the name of the exhibition in which its commodities are displayed, the evidence proving that the said trademark is used on the displayed commodities, the date of exhibition and other certification documents; those failing to file the written declaration or those failing to submit the certification documents within the prescribed time limit shall be regarded as having not requested for the right of priority.

Article 26 The matters reported and the materials provided for the application for trademark registration shall be authentic, accurate and complete.

### Chapter III Examination and Approval of Trademark Registration

Article 27 When an application has been made to register a trademark that is in conformity with the relevant provisions of this Law, the Trademark Office shall make a preliminary examination and approval of that trademark and shall publicly announce it.

Article 28 If an application has been made to register a trademark that is not in conformity with the relevant provisions of this Law or that is identical with or similar to another person's trademark which has already been registered or given preliminary examination and approval for use on the same kind of commodities or similar commodities, the Trademark Office shall reject

the current application and shall not publicly announce that trademark.

Article 29 If two or more trademark registration applicants apply for registration of identical or similar trademarks for the same kind of commodities or similar commodities, the trademark whose registration was first applied for shall be given preliminary examination and approval and shall be publicly announced; if the applications are filed on the same day, the trademark which was first used shall be given preliminary examination and approval and shall be publicly announced, and the applications of the others shall be rejected and shall not be publicly announced.

Article 30 Any person may file an opposition to a trademark which has been given preliminary examination and approval within three months from the day it was publicly announced. If no opposition is filed after the period of public announcement expires, registration shall be granted, a trademark registration certificate shall be issued and the trademark shall be publicly announced.

Article 31 Anyone applying for trademark registration may not damage the existing rights of others obtained by priority, neither may it register, in advance, the trademark that has been used by others and has become influential.

Article 32 When an application for trademark registration has been rejected and the trademark is not to be publicly announced, the Trademark Office shall notify the trademark registration applicant in writing. If the trademark registration applicant refuses to accept the rejection, it may apply to the Trademark Review and Adjudication Board for a re-examination within 15 days from the day on which the notification is received, and the Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing.

If the a party doesn't agree with the decision of the Trademark Review and Adjudication Board, it may file an action to the people's court within 30 days from the day on which the notification is received.

Article 33 If an opposition is filed against a trademark which has been given preliminary examination and approval and has been publicly announced, the Trademark Office shall hear the statements of the facts and reasons made by the opponent and the person against whom the opposition is filed and shall, after investigation and verification, make a ruling. If a party disagrees with the decision, it may apply to the Trademark Review and Adjudication Board for a re-examination within 15 days from the day on which the notification of decision is received, and the Trademark Review and Adjudication Board shall make a ruling and notify, in writing, the opponent and the person against whom the opposition is filed.

If a party doesn't agree with the ruling of the Trademark Review and Adjudication Board, it may bring a suit before a people's court within 30 days from the day on which the notification is received. The people's court shall notify the opposite party to the trademark re-examination proceedings to join in the case as the third party.

Article 34 If neither party has filed an application for re-examination of the ruling made by the Trademark Office or if neither party has brought a suit before the people's court against the ruling made by the Trademark Review and Adjudication Board within the prescribed period, the ruling

shall take effect.

If it is ruled that the opposition can't stand, the registration shall be granted, a certificate of trademark registration shall be issued and the trademark shall be announced publicly; if it is ruled that the opposition is upheld, no registration shall be granted.

If the registration is granted because it is ruled that the opposition can't stand, the time that the trademark registration applicant obtains the right to exclusive use of the trademark shall be counted from the day on which the three-month period of preliminary examination and approval announcement expires.

Article 35 The application for trademark registration and the application for trademark re-examination shall be examined promptly.

Article 36 If the trademark registration applicant or the registrant has found that there are obvious mistakes in the trademark application documents or registration documents, it may apply for corrections. The Trademark Office shall, according to law, make corrections within the limits of its powers and shall notify the parties.

The corrections of mistakes referred to in the preceding paragraph shall not involve the substantial contents of the trademark application documents or registration documents.

#### Chapter IV Renewal, Assignment and Licensing of Registered Trademarks

Article 37 The period of validity of a registered trademark shall be ten years, counted from the day the registration is approved.

Article 38 If a registrant needs to continue to use the registered trademark after the period of validity expires, an application for renewal of registration shall be made within six months before the expiration. If the registrant fails to make such an application within that period, an extension period of six months may be granted. If no application has been filed before the extension period expires, the registered trademark shall be cancelled.

The period of validity for each renewal of registration shall be ten years.

After a renewal of registration has been approved, it shall be publicly announced.

Article 39 When a registered trademark is to be assigned, the assignor and the assignee shall sign the agreement of assignment, and shall jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the commodities on which the registered trademark is to be used.

After the assignment of a registered trademark has been approved, it shall be publicly announced. The assignee shall be entitled to the right of exclusive use of the trademark from the day of public announcement.

Article 40 A trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor shall supervise the quality of the commodities on which the licensee uses the licensor's registered trademark, and the licensee shall guarantee the quality of the commodities on which the registered trademark is to be used.

The one licensed to use the registered trademark of another person must indicate the name of the licensee and the origin of the commodities on the commodities on which that registered trademark is used.

The trademark licensing contract shall be submitted to the Trademark Office for the archivist purpose.

#### Chapter V Determination of Disputes Concerning Registered Marks

Article 41 If a trademark that has been registered violates the provisions of Article 10, Article 11, and Article 12 of this Law, or the registration of the trademark is obtained by deceitful means or other illicit means, the Trademark Office shall cancel that registered trademark; and other units or individuals may request the Trademark Review and Adjudication Board to cancel that registered trademark.

If a trademark that has been registered violates the provisions of Article 13, Article 15, Article 16 and Article 31 of this Law, the owner or the interested persons of the trademark may, within 5 years from the day on which the trademark is registered, request the Trademark Review and Adjudication Board to revoke that registered trademark. And the owner of a well-known trademark shall not be subject to the limit of 5 years to request the revocation of bad-faith registration.

Apart from the circumstances prescribed in the two preceding paragraphs, if there is any dispute over a registered trademark, an application may be filed with the Trademark Review and Adjudication Board for a ruling within 5 years from the day on which that trademark was registered upon approval.

The Trademark Review and Adjudication Board shall notify the parties concerned after receiving the application for ruling and request them to reply within a specified period.

Article 42 If an opposition was filed and a ruling already made prior to the approval of the registration of a trademark, the same facts and reasons may not be used in another application for a ruling.

Article 43 After the Trademark Review and Adjudication Board has made the ruling of maintaining or revoking a registered trademark in dispute, it shall notify the parties concerned in writing.

If a party refuses to accept the ruling of the Trademark Review and Adjudication Board, it may bring a suit before a people's court within 30 days from the day the notification is received. The people's court shall notify the opposite party of the trademark ruling proceedings to join in the case as the third party.

#### Chapter VI Administration of the Use of Trademarks

Article 44 In the event of any of the following acts concerning the use of a registered trademark, the Trademark Office shall order rectification of the situation within a specified period or shall revoke the registered trademark:

- 1) if the registered trademark is altered without authorization;
- 2) if the registrant's name, address or any other registered matters concerning the registered

trademark is changed without authorization;

3)if the registered trademark is assigned without authorization; and

4)if the registered trademark has not been used for three consecutive years.

Article 45If a registered trademark is used on crudely manufactured commodities that are passed off as being of high quality, and thus deceives the consumers, the administrative departments for industry and commerce at various levels shall, according to the circumstances, order rectification of the situation within a specified period and may, in addition, circulate a notice on the matter or impose a fine, or the Trademark Office may revoke the registered trademark.

Article 46If a registered trademark is revoked or is not renewed after its period of validity expires, the Trademark Office shall not approve any application for the registration of a trademark identical with or similar to the said trademark within one year from the day of the revocation or cancellation.

Article 47In the event of a violation of the provisions of Article 5 of this Law, the local administrative department for industry and commerce shall order the violator to file an application for registration within a specified period and may, in addition, impose a fine.

Article 48In the event of any of the following acts concerning the use of an unregistered trademark, the local administrative department for industry and commerce shall stop the use of the trademark, order rectification of the situation within a specified period and may, in addition, circulate a notice on the matter or impose a fine:

1)if the trademark is falsely represented as being a registered one;

2)if the trademark violates the provisions of Article 8 of this Law; or

3)if the trademark is used on crudely manufactured commodities that are passed off as being of high quality, thus deceiving consumers.

Article 49If a party disagrees with the decision of the Trademark Office to revoke a registered trademark, it may apply for a re-examination within 15 days from the day of receiving the notification of the revocation, and the Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing.

If the party disagrees with the decision of the Trademark Review and Adjudication Board, it may bring a suit before a people's court within 30 days since the day of receiving the notification.

Article 50If a party disagrees with the decision of the administrative department for industry and commerce to impose a fine on him according to the provisions of Articles 45, 47 and 48 of this Law, it may bring a suit before a people's court within 15 days since the day of receiving the notification of the decision. If, at the expiration of such a period, the party has neither brought a suit nor complied with the decision, the relevant administrative department for industry and commerce shall apply to the people's court for compulsory enforcement of its decision.

#### Chapter VII Protection of the Right to Exclusive Use of a Registered Trademark

Article 51The right to exclusive use of a registered trademark shall be limited to trademarks which

have been approved for registration and to commodities on which the use of a trademark has been approved.

Article 52 Any of the following acts shall be an infringement upon the right to exclusive use of a registered trademark:

- 1) using a trademark which is identical with or similar to the registered trademark on the same kind of commodities or similar commodities without a license from the registrant of that trademark;
- 2) selling the commodities that infringe upon the right to exclusive use of a registered trademark;
- 3) forging, manufacturing without authorization the marks of a registered trademark of others, or selling the marks of a registered trademark forged or manufactured without authorization;
- 4) changing a registered trademark and putting the commodities with the changed trademark into the market without the consent of the registrant of that trademark; and
- 5) causing other damage to the right to exclusive use of a registered trademark of another person.

Article 53 In the event of any of the acts, listed in Article 52 of this Law, infringing upon the right to exclusive use of a registered trademark, and a dispute arises accordingly, the parties shall negotiate to settle it; if any party refuses to negotiate or the negotiation has failed, the registrant of that trademark or the interested persons may bring a suit before a people's court, either may they request the administrative department for industry and commerce to handle the matter. If the administrative department for industry and commerce concluded that an infringement is constituted, it may order immediate stop of the infringement, and may confiscate or destroy the infringing commodities and the tools especially used for the manufacturing of infringing commodities and the forging of marks of the registered trademark, and may impose a fine in addition. If a party disagrees with this handling decision, it may bring a suit before a people's court within 15 days from the day of receiving the notification of handlings according to the Administrative Procedure Law of the People's Republic of China; if, at the expiration of such a period, the infringer has neither brought a lawsuit nor performed the decision after the period expires, the administrative department may apply to the people's court for compulsory enforcement of its order.

The administrative department for industry and commerce handling the case may, upon the request of a party, conduct mediation over the amount of compensation for the infringement of the right to exclusive use of the trademark; if the mediation has failed, the party may bring a suit before a people's court according to the Civil Procedure Law of the People's Republic of China.

Article 54 The administrative department for industry and commerce shall have the right to investigate into and punish the acts infringing upon the right to exclusive use of a registered trademark; if a crime is suspected to be constituted, the case shall be promptly transferred to the judicial departments for handling according to law.

Article 55 The administrative departments for industry and commerce at the level of county or above may exercise the following powers when investigating into and punishing the acts that are suspected to infringe upon the right to exclusive use of a registered trademark of others based on

the evidence for suspicion of illegal acts or the report made by other people:

- 1)inquiring the parties concerned, investigating the information relating to the infringement of the right to exclusive use of a registered trademark of others;
- 2)consulting and copying the contracts, vouchers, account books and other relevant materials relating to the infringing activities of the party;
- 3)conducting on-spot examination of the places where the party is suspected to have committed the acts infringing upon the right to exclusive use of a registered trademark of others; and
- 4)examining the articles relating to the infringing activities; and may seal up or seize the articles proved by evidence to have infringed upon the right to exclusive use of a registered trademark of others.

The parties shall assist and cooperate with the administrative departments for industry and commerce in exercising the powers prescribed in the preceding paragraph, and may not refuse or impede them.

Article 56The amount of compensation for infringing upon the right to exclusive use of a trademark shall be the proceeds obtained from the infringement during the period of infringement, or the losses suffered by the infringed due to the infringement during the period of being infringed, including the reasonable expenses paid by the infringed to stop the infringing acts.

If it is difficult to determine the proceeds obtained from the infringement referred to in the preceding paragraph, or it is difficult to determine the losses suffered by the infringed due to the infringement, the people's court shall determine a compensation of 500,000 Yuan or below according to the circumstances of the infringing acts.

If any person sells the commodities that have, not knowing the facts, infringed upon the right to exclusive right of a trademark and is able to prove that it has obtained those commodities legally and to specify the provider, it shall not bear the liability for compensation.

Article 57If the registrant of a trademark or an interested person has the evidence to prove that another person is conducting or is going to conduct the acts infringing upon its right to the exclusive use of a registered trademark, and if the acts are not stopped promptly, irreparable damages will occur to its legal rights and interests, it may apply to a people's court for a order of measures for stopping relevant acts and for attachment.

The provisions of Article 93 to Article 96, and of Article 99 of the Civil Procedure Law of the People's Republic of China shall be applicable to the handling of the applications mentioned in the preceding paragraph by a people's court.

Article 58In order to stop the infringing acts, the registrant of a trademark or the interested person may apply to a people's court for preservation of evidence before filing the suit under the circumstances that the evidence may get lost or will be hard to acquire afterwards.

The people's court shall make the ruling within 48 hours after accepting the application; if it is ruled to take the measures for preservation, the ruling shall be executed immediately.

The people's court may order the applicant to provide security, and shall reject the application if the applicant fails to provide security.

If the applicant hasn't filed the suit within 15 days after the people's court took the measures for preservation, the people's court shall discharge the measures for preservation.

Article 59 Any person who uses on the same kind of commodities the trademark identical with a registered trademark without the permission of the registrant of that trademark and constitutes a crime, in addition to compensating for the losses suffered by the infringed, shall be investigated into for the criminal responsibilities according to law.

Any person who forges or manufactures without authorization the marks of a registered trademark of another person, or sells the marks of a registered trademark forged or manufactured without authorization, in addition to compensating for the losses suffered by the infringed, shall be investigated for the criminal responsibilities according to law.

Any person who knowingly sells the goods using the counterfeited registered trademark and constitutes a crime, in addition to compensating for the losses suffered by the infringed, shall be investigated into for criminal responsibilities according to law.

Article 60 The functionaries of state organs engaged in the registration, administration and review of trademarks must handle the cases justly, be incorruptible and self-disciplined, be devoted to their duties and serve in a courteous and honest way.

The functionaries of the Trademark Office, the Trademark Review and Adjudication Board and the state organs engaged in the registration, administration and review of trademarks may not undertake the activities of trademark agency and commodity production and operation.

Article 61 The administrative departments for industry and commerce shall establish and improve the internal supervision system, and supervise and inspect the enforcement of laws and regulations, and the observance of disciplines of the functionaries of state organs responsible for the registration, administration and review of trademarks.

Article 62 If the functionaries of state organs engaged in the registration, administration and review of trademarks neglect their duties, abuse their powers, practice favoritism, handle the matters of trademark registration, administration and review against the law, accept money and goods from the parties, seek improper profits and constitute crimes, they shall be investigated into for criminal responsibilities according to law; and administrative punishment shall be given if a crime hasn't been constituted.

#### Chapter VIII Supplementary Provisions

Article 63 Applicants for trademark registration and the handling of other trademark matters shall pay a fee, the specific standards of which shall be prescribed separately.

Article 64 This Law shall go into effect as of March 1, 1983. On that same day, the Regulations on Trademark Administration promulgated by the State Council on April 10, 1963 shall simultaneously be repealed, and any other provisions concerning trademark administration that conflict with this Law shall be invalidated.



Trademarks registered before this Law goes into effect shall continue to be valid.

The Standing Committee of the National People's Congress 2001-10-27

中华人民共和国商标法（2001 修正）

（1982 年 8 月 23 日第五届全国人民代表大会常务委员会第二十四次会议通过 根据 1993 年 2 月 22 日第七届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国商标法〉的决定》第一次修正 根据 2001 年 10 月 27 日第九届全国人民代表大会常务委员会第二十四次会议《关于修改〈中华人民共和国商标法〉的决定》第二次修正）

第一章 总则

第一条 为了加强商标管理，保护商标专用权，促使生产、经营者保证商品和服务质量，维护商标信誉，以保障消费者和生产、经营者的利益，促进社会主义市场经济的发展，特制定本法。

第二条 国务院工商行政管理部门商标局主管全国商标注册和管理的工作。

国务院工商行政管理部门设立商标评审委员会，负责处理商标争议事宜。

第三条 经商标局核准注册的商标为注册商标，包括商品商标、服务商标和集体商标、证明商标；商标注册人享有商标专用权，受法律保护。

本法所称集体商标，是指以团体、协会或者其他组织名义注册，供该组织成员在商事活动中使用，以表明使用者在该组织中的成员资格的标志。

本法所称证明商标，是指由对某种商品或者服务具有监督能力的组织所控制，而由该组织以外的单位或者个人使用于其商品或者服务，用以证明该商品或者服务的原产地、原料、制造方法、质量或者其他特定品质的标志。

集体商标、证明商标注册和管理的特殊事项，由国务院工商行政管理部门规定。

第四条 自然人、法人或者其他组织对其生产、制造、加工、拣选或者经销的商品，需要取得商标专用权的，应当向商标局申请商品商标注册。

自然人、法人或者其他组织对其提供的服务项目，需要取得商标专用权的，应当向商标局申请服务商标注册。

本法有关商品商标的规定，适用于服务商标。

第五条 两个以上的自然人、法人或者其他组织可以共同向商标局申请注册同一商标，共同享有和行使该商标专用权。

第六条 国家规定必须使用注册商标的商品，必须申请商标注册，未经核准注册的，不得在市场销售。

第七条 商标使用人应当对其使用商标的商品质量负责。各级工商行政管理部门应当通

过商标管理，制止欺骗消费者的行为。

第八条 任何能够将自然人、法人或者其他组织的商品与他人的商品区别开的可视性标志，包括文字、图形、字母、数字、三维标志和颜色组合，以及上述要素的组合，均可以作为商标申请注册。

第九条 申请注册的商标，应当有显著特征，便于识别，并不得与他人已在先取得的合法权利相冲突。

商标注册人有权标明“注册商标”或者注册标记。

第十条 下列标志不得作为商标使用：

（一）同中华人民共和国的国家名称、国旗、国徽、军旗、勋章相同或者近似的，以及同中央国家机关所在地特定地点的名称或者标志性建筑物的名称、图形相同的；

（二）同外国的国家名称、国旗、国徽、军旗相同或者近似的，但该国政府同意的除外；

（三）同政府间国际组织的名称、旗帜、徽记相同或者近似的，但经该组织同意或者不易误导公众的除外；

（四）与表明实施控制、予以保证的官方标志、检验印记相同或者近似的，但经授权的除外；

（五）同“红十字”、“红新月”的名称、标志相同或者近似的；

（六）带有民族歧视性的；

（七）夸大宣传并带有欺骗性的；

（八）有害于社会主义道德风尚或者有其他不良影响的。

县级以上行政区划的地名或者公众知晓的外国地名，不得作为商标。但是，地名具有其他含义或者作为集体商标、证明商标组成部分的除外；已经注册的使用地名的商标继续有效。

第十一条 下列标志不得作为商标注册：

（一）仅有本商品的通用名称、图形、型号的；

（二）仅仅直接表示商品的质量、主要原料、功能、用途、重量、数量及其他特点的；

（三）缺乏显著特征的。

前款所列标志经过使用取得显著特征，并便于识别的，可以作为商标注册。

第十二条 以三维标志申请注册商标的，仅由商品自身的性质产生的形状、为获得技术效果而需有的商品形状或者使商品具有实质性价值的形状，不得注册。

第十三条 就相同或者类似商品申请注册的商标是复制、摹仿或者翻译他人未在中国注册的驰名商标，容易导致混淆的，不予注册并禁止使用。

就不相同或者不类似商品申请注册的商标是复制、摹仿或者翻译他人已经在中国注册的驰名商标，误导公众，致使该驰名商标注册人的利益可能受到损害的，不予注册并禁止使用。

第十四条 认定驰名商标应当考虑下列因素：

- (一) 相关公众对该商标的知晓程度；
- (二) 该商标使用的持续时间；
- (三) 该商标的任何宣传工作的持续时间、程度和地理范围；
- (四) 该商标作为驰名商标受保护的记录；
- (五) 该商标驰名的其他因素。

第十五条 未经授权，代理人或者代表人以自己的名义将被代理人或者被代表人的商标进行注册，被代理人或者被代表人提出异议的，不予注册并禁止使用。

第十六条 商标中有商品的地理标志，而该商品并非来源于该标志所标示的地区，误导公众的，不予注册并禁止使用；但是，已经善意取得注册的继续有效。

前款所称地理标志，是指标示某商品来源于某地区，该商品的特定质量、信誉或者其他特征，主要由该地区的自然因素或者人文因素所决定的标志。

第十七条 外国人或者外国企业在中国申请商标注册的，应当按其所属国和中华人民共和国签订的协议或者共同参加的国际条约办理，或者按对等原则办理。

第十八条 外国人或者外国企业在中国申请商标注册和办理其他商标事宜的，应当委托国家认可的具有商标代理资格的组织代理。

## 第二章 商标注册的申请

第十九条 申请商标注册的，应当按规定的商品分类表填报使用商标的商品类别和商品名称。

第二十条 商标注册申请人在不同类别的商品上申请注册同一商标的，应当按商品分类表提出注册申请。

第二十一条 注册商标需要在同一类的其他商品上使用的，应当另行提出注册申请。

第二十二条 注册商标需要改变其标志的，应当重新提出注册申请。

第二十三条 注册商标需要变更注册人的名义、地址或者其他注册事项的，应当提出变更申请。

第二十四条 商标注册申请人自其商标在外国第一次提出商标注册申请之日起六个月内，又在中国就相同商品以同一商标提出商标注册申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者按照相互承认优先权的原则，可以享有优先权。

依照前款要求优先权的，应当在提出商标注册申请的时候提出书面声明，并且在三个月内提交第一次提出的商标注册申请文件的副本；未提出书面声明或者逾期未提交商标注册申请文件副本的，视为未要求优先权。

第二十五条 商标在中国政府主办的或者承认的国际展览会展出的商品上首次使用的，自该商品展出之日起六个月内，该商标的注册申请人可以享有优先权。

依照前款要求优先权的，应当在提出商标注册申请的时候提出书面声明，并且在三个月内提交展出其商品的展览会名称、在展出商品上使用该商标的证据、展出日期等证明文件；未提出书面声明或者逾期未提交证明文件的，视为未要求优先权。

第二十六条 为申请商标注册所申报的事项和所提供的材料应当真实、准确、完整。

### 第三章 商标注册的审查和核准

第二十七条 申请注册的商标，凡符合本法有关规定的，由商标局初步审定，予以公告。

第二十八条 申请注册的商标，凡不符合本法有关规定或者同他人在同一种商品或者类似商品上已经注册的或者初步审定的商标相同或者近似的，由商标局驳回申请，不予公告。

第二十九条 两个或者两个以上的商标注册申请人，在同一种商品或者类似商品上，以相同或者近似的商标申请注册的，初步审定并公告申请在先的商标；同一天申请的，初步审定并公告使用在先的商标，驳回其他人的申请，不予公告。

第三十条 对初步审定的商标，自公告之日起三个月内，任何人都可以提出异议。公告期满无异议的，予以核准注册，发给商标注册证，并予公告。

第三十一条 申请商标注册不得损害他人现有的在先权利，也不得以不正当手段抢先注册他人已经使用并有一定影响的商标。

第三十二条 对驳回申请、不予公告的商标，商标局应当书面通知商标注册申请人。商标注册申请人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审，由商标评审委员会做出决定，并书面通知申请人。

当事人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。

第三十三条 对初步审定、予以公告的商标提出异议的，商标局应当听取异议人和被异议人陈述事实和理由，经调查核实后，做出裁定。当事人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审，由商标评审委员会做出裁定，并书面通知异议人和被异议人。

当事人对商标评审委员会的裁定不服的，可以自收到通知之日起三十日内向人民法院起诉。人民法院应当通知商标复审程序的对方当事人作为第三人参加诉讼。

第三十四条 当事人在法定期限内对商标局做出的裁定不申请复审或者对商标评审委员会做出的裁定不向人民法院起诉的，裁定生效。

经裁定异议不能成立的，予以核准注册，发给商标注册证，并予公告；经裁定异议成立的，不予核准注册。

经裁定异议不能成立而核准注册的，商标注册申请人取得商标专用权的时间自初审公告三个月期满之日起计算。

第三十五条 对商标注册申请和商标复审申请应当及时进行审查。

第三十六条 商标注册申请人或者注册人发现商标申请文件或者注册文件有明显错误的，可以申请更正。商标局依法在其职权范围内作出更正，并通知当事人。

前款所称更正错误不涉及商标申请文件或者注册文件的实质性内容。

#### 第四章 注册商标的续展、转让和使用许可

第三十七条 注册商标的有效期为十年，自核准注册之日起计算。

第三十八条 注册商标有效期满，需要继续使用的，应当在期满前六个月内申请续展注册；在此期间未能提出申请的，可以给予六个月的宽展期。宽展期满仍未提出申请的，注销其注册商标。

每次续展注册的有效期为十年。

续展注册经核准后，予以公告。

第三十九条 转让注册商标的，转让人和受让人应当签订转让协议，并共同向商标局提出申请。受让人应当保证使用该注册商标的商品质量。

转让注册商标经核准后，予以公告。受让人自公告之日起享有商标专用权。

第四十条 商标注册人可以通过签订商标使用许可合同，许可他人使用其注册商标。许可人应当监督被许可人使用其注册商标的商品质量。被许可人应当保证使用该注册商标的商品质量。

经许可使用他人注册商标的，必须在使用该注册商标的商品上标明被许可人的名称和商品产地。

商标使用许可合同应当报商标局备案。

#### 第五章 注册商标争议的裁定

第四十一条 已经注册的商标，违反本法第十条、第十一条、第十二条规定的，或者是以欺骗手段或者其他不正当手段取得注册的，由商标局撤销该注册商标；其他单位或者个人可以请求商标评审委员会裁定撤销该注册商标。

已经注册的商标，违反本法第十三条、第十五条、第十六条、第三十一条规定的，自商标注册之日起五年内，商标所有人或者利害关系人可以请求商标评审委员会裁定撤销该注册商标。对恶意注册的，驰名商标所有人不受五年的时间限制。

除前两款规定的情形外，对已经注册的商标有争议的，可以自该商标经核准注册之日起五年内，向商标评审委员会申请裁定。

商标评审委员会收到裁定申请后，应当通知有关当事人，并限期提出答辩。

第四十二条 对核准注册前已经提出异议并经裁定的商标，不得再以相同的事实和理由申请裁定。

第四十三条 商标评审委员会做出维持或者撤销注册商标的裁定后，应当书面通知有关当事人。

当事人对商标评审委员会的裁定不服的，可以自收到通知之日起三十日内向人民法院起

诉。人民法院应当通知商标裁定程序的对方当事人作为第三人参加诉讼。第六章 商标使用的管理

第四十四条 使用注册商标，有下列行为之一的，由商标局责令限期改正或者撤销其注册商标：

- (一)自行改变注册商标的；
- (二)自行改变注册商标的注册人名义、地址或者其他注册事项的；
- (三)自行转让注册商标的；
- (四)连续三年停止使用的。

第四十五条 使用注册商标，其商品粗制滥造，以次充好，欺骗消费者的，由各级工商行政管理部门分别不同情况，责令限期改正，并可以予以通报或者处以罚款，或者由商标局撤销其注册商标。

第四十六条 注册商标被撤销的或者期满不再续展的，自撤销或者注销之日起一年内，商标局对与该商标相同或者近似的商标注册申请，不予核准。

第四十七条 违反本法第六条规定的，由地方工商行政管理部门责令限期申请注册，可以并处罚款。

第四十八条 使用未注册商标，有下列行为之一的，由地方工商行政管理部门予以制止，限期改正，并可以予以通报或者处以罚款：

- (一)冒充注册商标的；
- (二)违反本法第十条规定的；
- (三)粗制滥造，以次充好，欺骗消费者的。

第四十九条 对商标局撤销注册商标的决定，当事人不服的，可以自收到通知之日起十五日内向商标评审委员会申请复审，由商标评审委员会做出决定，并书面通知申请人。

当事人对商标评审委员会的决定不服的，可以自收到通知之日起三十日内向人民法院起诉。

第五十条 对工商行政管理部门根据本法第四十五条、第四十七条、第四十八条的规定做出的罚款决定，当事人不服的，可以自收到通知之日起十五日内，向人民法院起诉；期满不起诉又不履行的，由有关工商行政管理部门申请人民法院强制执行。

## 第七章 注册商标专用权的保护

第五十一条 注册商标的专用权，以核准注册的商标和核定使用的商品为限。

第五十二条 有下列行为之一的，均属侵犯注册商标专用权：

(一)未经商标注册人的许可，在同一种商品或者类似商品上使用与其注册商标相同或者近似的商标的；

- (二) 销售侵犯注册商标专用权的商品的;
- (三) 伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识的;
- (四) 未经商标注册人同意, 更换其注册商标并将该更换商标的商品又投入市场的;
- (五) 给他人的注册商标专用权造成其他损害的。

第五十三条 有本法第五十二条所列侵犯注册商标专用权行为之一, 引起纠纷的, 由当事人协商解决; 不愿协商或者协商不成的, 商标注册人或者利害关系人可以向人民法院起诉, 也可以请求工商行政管理部门处理。工商行政管理部门处理时, 认定侵权行为成立的, 责令立即停止侵权行为, 没收、销毁侵权商品和专门用于制造侵权商品、伪造注册商标标识的工具, 并可处以罚款。当事人对处理决定不服的, 可以自收到处理通知之日起十五日内依照《中华人民共和国民事诉讼法》向人民法院起诉; 侵权人期满不起诉又不履行的, 工商行政管理部门可以申请人民法院强制执行。进行处理的工商行政管理部门根据当事人的请求, 可以就侵犯商标专用权的赔偿数额进行调解; 调解不成的, 当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

第五十四条 对侵犯注册商标专用权的行为, 工商行政管理部门有权依法查处; 涉嫌犯罪的, 应当及时移送司法机关依法处理。

第五十五条 县级以上工商行政管理部门根据已经取得的违法嫌疑证据或者举报, 对涉嫌侵犯他人注册商标专用权的行为进行查处时, 可以行使下列职权:

- (一) 询问有关当事人, 调查与侵犯他人注册商标专用权有关的情况;
- (二) 查阅、复制当事人与侵权活动有关的合同、发票、账簿以及其他有关资料;
- (三) 对当事人涉嫌从事侵犯他人注册商标专用权活动的场所实施现场检查;
- (四) 检查与侵权活动有关的物品; 对有证据证明是侵犯他人注册商标专用权的物品, 可以查封或者扣押。

工商行政管理部门依法行使前款规定的职权时, 当事人应当予以协助、配合, 不得拒绝、阻挠。

第五十六条 侵犯商标专用权的赔偿数额, 为侵权人在侵权期间因侵权所获得的利益, 或者被侵权人在被侵权期间因被侵权所受到的损失, 包括被侵权人为制止侵权行为所支付的合理开支。

前款所称侵权人因侵权所得利益, 或者被侵权人因被侵权所受损失难以确定的, 由人民法院根据侵权行为的情节判决给予五十万元以下的赔偿。

销售不知道是侵犯注册商标专用权的商品, 能证明该商品是自己合法取得的并说明提供者的, 不承担赔偿责任。

第五十七条 商标注册人或者利害关系人有证据证明他人正在实施或者即将实施侵犯其注册商标专用权的行为, 如不及时制止, 将会使其合法权益受到难以弥补的损害的, 可以在起诉前向人民法院申请采取责令停止有关行为和财产保全的措施。

人民法院处理前款申请, 适用《中华人民共和国民事诉讼法》第九十三条至第九十六条和第九十九条的规定。



第五十八条 为制止侵权行为，在证据可能灭失或者以后难以取得的情况下，商标注册人或者利害关系人可以在起诉前向人民法院申请保全证据。

人民法院接受申请后，必须在四十八小时内做出裁定；裁定采取保全措施的，应当立即开始执行。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。

申请人在人民法院采取保全措施后十五日内不起诉的，人民法院应当解除保全措施。

第五十九条 未经商标注册人许可，在同一种商品上使用与其注册商标相同的商标，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

伪造、擅自制造他人注册商标标识或者销售伪造、擅自制造的注册商标标识，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

销售明知是假冒注册商标的商品，构成犯罪的，除赔偿被侵权人的损失外，依法追究刑事责任。

第六十条 从事商标注册、管理和复审工作的国家机关工作人员必须秉公执法，廉洁自律，忠于职守，文明服务。

商标局、商标评审委员会以及从事商标注册、管理和复审工作的国家机关工作人员不得从事商标代理业务和商品生产经营活动。

第六十一条 工商行政管理部门应当建立健全内部监督制度，对负责商标注册、管理和复审工作的国家机关工作人员执行法律、行政法规和遵守纪律的情况，进行监督检查。

第六十二条 从事商标注册、管理和复审工作的国家机关工作人员玩忽职守、滥用职权、徇私舞弊，违法办理商标注册、管理和复审事项，收受当事人财物，牟取不正当利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

## 第八章 附则

第六十三条 申请商标注册和办理其他商标事宜的，应当缴纳费用，具体收费标准另定。

第六十四条 本法自1983年3月1日起施行。1963年4月10日国务院公布的《商标管理条例》同时废止；其他有关商标管理的规定，凡与本法抵触的，同时失效。

本法施行前已经注册的商标继续有效。

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

No. 8

The Decision of the Standing Committee of the National People's Congress on the Revision of the Patent Law of the People's Republic of China, which was passed at the 6th Session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on December 27, 2008, is hereby promulgated. It shall enter into force on October 1, 2009.

President of the People's Republic of China Hu Jintao

December 27, 2008

Patent Law of the People's Republic of China (Revised in 2008)

(Adopted at the 4th Session of the Standing Committee of the 6th National People's Congress on March 12, 1984; amended by the Decision Regarding the Revision of the Patent Law of the People's Republic of China, adopted at the 27th Session of the Standing Committee of the 7th National People's Congress on September 4, 1992; amended for the second time by the Decision Regarding the Revision of the Patent Law of the People's Republic of China, adopted at the 17th Session of the Standing Committee of the 9th National People's Congress on August 25, 2000; and amended for the third time by the Decision Regarding the Revision of the Patent Law of the People's Republic of China, adopted at the 6th Session of the Standing Committee of the 11th National People's Congress on December 27, 2008)

Chapter 1 General Provisions

Article 1 This Law is formulated to protect the legitimate rights and interests of patentees, encourage inventions-creations, foster the application of inventions-creations, improve the innovative ability and facilitate scientific and technical progress and social and economic development.

Article 2 The inventions-creations herein refer to inventions, utility models and designs.

Inventions refer to new technical plans for products and methods or improvement thereof.

Utility models refer to new technical plans of practical utility for the shape and/or structure of products.

Designs refer to new designs of aesthetic feeling and suitability to industrial application for the shape and/or pattern of products as well as the color and shape and pattern of products.

Article 3 The Patent Administrative Organ under the State Council is responsible for the patent work nationwide, receives and examines patent applications and grants patent rights for inventions-creations that conform to the provisions of this Law.

The authorities for patent work under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are responsible for the patent administration work within their jurisdictions.

Article 4 Where an invention-creation for which a patent is applied relates to the security or other vital interests of the State and is required to be kept secret, the application shall be handled in accordance with the relevant provisions of the State

Article 5 No patent right shall be granted for any invention-creation that is contrary to the laws of the State or social morality or that is detrimental to public interest.

No patent right shall be granted for any invention-creation that is made on the basis of the generic resources which are obtained or utilized in violation of laws and administrative regulations.

Article 6 An invention-creation, made by a person in execution of the tasks of the entity to which he belongs, or made by him by mainly using the material and technical means of the entity is a service invention. For a service invention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee.

For a non-service invention-creation, the right to apply for a patent belongs to the inventor or designer. After the application is approved, the inventor or designer shall be the patentee.

For an invention-creation made by a person by using the material and technical means of the entity to which he belongs, and where the entity and the inventor or designer has entered into an agreement under which there is provision on who has right to apply for a patent and to whom the patent right belongs, the provisions of the agreement shall prevail.

Article 7 No entity or individual shall prevent the inventor or designer from filing an application for a patent for a non-service invention-creation.

Article 8 For an invention-creation jointly made by two or more entities or individuals, or made by an entity or individual in execution of a commission for another entity or individual, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity or individual which made or jointly made the invention-creation. After the application is approved, the entity or individual that applied for it shall be the patentee.

Article 9 Only one patent right may be granted for the identical invention-creation. However, where the same applicant applies for the utility model patent and invention-creation patent for the same invention-creation in the same day, if the utility model patent which was obtained firstly has not terminated and the applicant declares to give up this utility model patent, the invention-creation patent may be granted to the applicant.

Where two applicants or more file applications for the patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first.

Article 10 The right to apply for a patent and the patent right may be assigned.

For any assignment, by a Chinese entity or individual, of the right to apply for a patent, or of the patent right, to a foreigner, a foreign enterprise or other foreign organization, the entity or

individual concerned shall go through the procedures for such assignment in accordance with the relevant laws and administrative regulations.

Where the right to apply for a patent or the patent right is assigned, the parties must conclude a written contract and should register it with the patent administrative organ under the State Council. The patent administrative organ shall announce the registration. The assignment will come into force upon the date of registration.

Article 11 After the grant of the patent right for an invention or utility model, except as otherwise provided herein, no entity or individual may, without the authorization of the patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product; or use the patented process or use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

After the grant of the patent right for a design, no entity or individual may, without the authorization of the patentee, exploit the design, that is, make, sell or import the product incorporating its or his patented design, for production or business purposes.

Article 12 Any entity or individual exploiting the patent of another shall conclude with the patentee a written license contract for exploitation and pay the patentee a fee for the exploitation of the patent. The licensee has no right to authorize any entity or individual, other than that referred to in the contract for exploitation, to exploit the patent.

Article 13 After the publication of the application for a patent for invention, the applicant may require the entity or individual exploiting the invention to pay an appropriate fee.

Article 14 For any patent for invention belonging to state-owned enterprises or entities, which is of great significance to national or public interests, the competent departments under the State Council as well as the people's governments of provinces, autonomous regions or municipalities directly under the Central Government have the power to decide, after approved by the State Council, the said patented invention be spread and exploited within the prescribed scope and to allow designated entities to exploit it. The entities that exploit it shall, according to the prescriptions of the State, pay exploitation fees to the patentee.

Article 15 Where the joint owners of the right to apply for a patent or a patent right have an agreement between them, the agreement shall prevail. Otherwise, the joint owners may individually exploit the patent or authorize others to exploit the patent by means of general

license. Where others are authorized to exploit the patent, the fees collected shall be shared by the joint owners.

Except for the above-mentioned situations, the consent of all of the joint owners shall be obtained for the exploitation of a joint-owned right to apply for a patent or a patent right.

Article 16 The entity that is granted the patent right shall award to the inventor or designer of a service invention-creation a reward and, upon the exploitation of the patented invention-creation, shall award to the inventor or designer an appropriate remuneration based on the extent of exploitation and application and the economic benefits yielded.

Article 17 The inventor or designer has the right to be named as such in the patent document.

The patentee has the right to affix a patent mark on the patented product or on the packing of that product.

Article 18 Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China files an application for a patent in China, the application shall be treated in accordance with any agreement concluded between the country to which the applicant belongs and China or any international treaty to which both countries are party or in accordance with this Law on the basis of the principle of reciprocity.

Article 19 Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to, in China, he or it shall appoint a patent agency duly established to act as his or its agent.

Where any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may appoint a patent agency duly established to act as its or his agent.

The patent agencies should abide by the laws and administrative regulations and should deal with patent applications and other patent matters according to the commissions of the clients. Except for those applications that have been published or announced, the agencies should bear the responsibility for keeping confidential the content of its clients' inventions-creations. The administrative regulations for administering the patent agencies shall be formulated by the State

Council.

Article 20 Where any entity or individual intends to file an application in a foreign country for a patent for its or his invention-creation made in China, it or he shall report to the patent administrative organ under the State Council for a secret inspection. The procedures and time limit for the secret inspection shall be subject to the provisions provided by the State Council.

Any Chinese entity or individual may, according to the international treaties concerned to which China is a party, file an international application for patent for its or his invention-creation. The applicant for the international application should abide by the provisions of the preceding paragraph.

The patent administrative organ under the State Council shall handle the international application for patent in line with the international treaty to which China is a party, this Law and the administrative regulations concerned made by the State Council.

For any invention or utility model for which the patent has been applied in a foreign country in violation of the provisions as stipulated in Paragraph 1 herein, if the application for the patent for it in China is filed, no patent right shall be granted.

Article 21 The patent administrative organ under the State Council and the patent reexamination board subordinated to it shall handle patent applications and requests concerned according to law and in the spirit of objectiveness, justice, precision and punctuality.

The patent administrative organ under the State Council shall release complete and accurate patent information in a timely manner, and publish patent communiqués periodically.

Until the publication or announcement of the application for a patent, staff members of the patent administrative organ and other personnel involved have the duty to keep its content confidential.

## Chapter 2 Requirements for Grant of Patent

Article 22 Any invention or utility model for which patent right may be granted must be of novelty, inventiveness and practical applicability.

Novelty means neither the invention or utility model belongs to any existing technique, nor any entity or individual filed previously with the patent administrative organ under the State Council an application for the identical invention or utility model and it was recorded in any published patent application document or announced patent document after the date of application.

Inventiveness means that, as compared with the existing technique, the invention has prominent substantive features and represents a notable progress and the utility model has substantive features and represents progress.

Practical applicability means that the invention or utility model can be made or used and can produce effective results.

The existing techniques herein refer to the techniques known to the public at both home and abroad before the date of application.

Article 23 Neither the design for which a patent right may be granted belongs to existing designs, nor any entity or individual has filed with the patent administrative organ under the State Council an application for the identical design before the date of application and it was recorded in any announced patent document after the date of application.

The design for which a patent right may be granted shall be obviously different from any existing design or any combination of existing design features.

The design for which a patent right may be granted shall not collide with any legitimate rights obtained by others before the date of application.

The existing design herein refers to the designs known to the public at both home and abroad before the date of application.

Article 24 An invention-creation for which a patent is applied for does not lose its novelty where, within six months before the date of application, one of the following events occurred:

- (1) Where it was first exhibited at an international exhibition sponsored or recognized by the



Chinese Government;

- (2) Where it was first made public at a prescribed academic or technological meeting; or
- (3) Where it was disclosed by any person without the consent of the applicant.

Article 25 For any of the following items, no patent right shall be granted:

- (1) Scientific discoveries;
- (2) Rules and methods for mental activities;
- (3) Methods for the diagnosis or the treatment of diseases;
- (4) Animal and plant varieties;
- (5) Substances obtained by means of nuclear transformation; and
- (6) Designs for the pattern or/and color on printed matters mainly used as marks.

For processes used in producing products referred to in items (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

### Chapter 3 Application for Patent

Article 26 Where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted.

The request shall state the title of the invention or utility model, the name of the inventor, the name and the address of the applicant and other related matters.

The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model.

The claims shall be supported by the description and shall state the extent of the patent protection asked for.

For any invention-creation based on generic resources, an applicant shall state the direct source and the origin of the said generic resources in its/his patent application documents; if it/he cannot tell the origin, reasons shall be given.

Article 27 Where an application for a patent for design is filed, a request, drawings or photographs of the design as well as a brief description of the design shall be submitted.

The drawings or photographs submitted by the applicant shall clearly show the design incorporated in a product for which patent protection is requested.

Article 28 The date on which the patent administrative organ under the State Council receives the application shall be the date of application. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of application.

Article 29 Where, within twelve months from the date on which any applicant first filed in a foreign country an application for a patent for invention or utility model, or within six months from the date on which any applicant first filed in a foreign country an application for a patent for design, he or it files in China an application for a patent for the same subject matter, he or it may, in accordance with any agreement concluded between the said foreign country and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.

Where, within twelve months from the date on which any applicant first filed in China an application for a patent for invention or utility model, he or it files with the patent administrative organ under the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority.

Article 30 Any applicant who claims the right of priority shall make a written declaration when

the application is filed, and submit, within three months, a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the patent application document, the claim to the right of priority shall be deemed not to have been made.

Article 31 An application for a patent for invention or utility model shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application.

An application for a patent for design shall be limited to one design. Two or more similar designs for a product or two or more designs which are incorporated in products belonging to the same class and are sold or used in sets may be filed as one application.

Article 32 An applicant may withdraw his or its application for a patent at any time before the patent right is granted.

Article 33 An applicant may amend his or its application for a patent, but the amendment to the application for a patent for invention or utility model may not go beyond the scope of the disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

#### Chapter 4 Examination and Approval of Application for Patent

Article 34 Where, after receiving an application for a patent for invention, the patent administrative organ under the State Council, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly after the expiration of eighteen months from the date of application. Upon the request of the applicant, the patent administrative organ under the State Council may publish the application earlier.

Article 35 Upon the request of the applicant for a patent for invention, made at any time within three years from the date of application, the patent administrative organ under the State Council will proceed to examine the application as to its substance. If, without any justified reason, the applicant fails to meet the time limit for requesting examination as to substance, the application shall be deemed to have been withdrawn.

The patent administrative organ under the State Council may, on its own initiative, proceed to examine any application for a patent for invention as to its substance when it deems it necessary.

Article 36 When an applicant for a patent for invention requests examination as to substance, he or it shall furnish reference materials concerning the invention before the date of application.

For an application for a patent for invention that has been already filed in a foreign country, the patent administrative organ under the State Council may ask the applicant to furnish within a prescribed time limit documents concerning any search made for the purpose of examining that application or concerning the results of any examination made in that country. If, without any justified reason, the said documents are not furnished within the prescribed time limit, the application shall be deemed to have been withdrawn.

Article 37 Where the patent administrative organ under the State Council, after it has made the examination as to substance of the application for a patent for invention, finds that the application is not in conformity with the provisions of this Law, it shall notify the applicant and request him or it to submit, within a specified time limit, his or its observations or to amend the application. If, without any justified reason, the time limit for making response is not met, the application shall be deemed to have been withdrawn.

Article 38 Where, after the applicant has made the observations or amendments, the patent administrative organ under the State Council finds that the application for a patent for invention is still not in conformity with the provisions of this Law, the application shall be rejected.

Article 39 Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention, the patent administrative organ under the State Council shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it. The patent right for invention shall come into force upon the date of the announcement.

Article 40 Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the patent administrative organ under the State Council shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or design shall come into effect upon the date of the announcement.

Article 41 The patent administrative organ under the State Council shall set up a Patent

Reexamination Board. Where an applicant is not satisfied with the decision of the patent administrative organ under the State Council rejecting his application for patent, such applicant may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant for patent.

Where the applicant for patent who made the request for reexamination is not satisfied with the decision of the Patent Reexamination Board, he or it may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

#### Chapter 5 Duration, Cessation and Invalidation of Patent Right

Article 42 The duration of patent right for inventions shall be twenty years, and the duration of patent right for utility models and patent right for designs shall be ten years, counted from the date of application.

Article 43 The patentee shall pay an annual fee beginning with the year in which the patent right was granted.

Article 44 In any of the following cases, the patent right shall cease before the expiration of its duration:

- (1) Where an annual fee is not paid as prescribed; or
- (2) Where the patentee abandons his or its patent right by a written declaration.

Any cessation of the patent right shall be registered and announced by the patent administrative organ under the State Council.

Article 45 Where, starting from the date of the announcement of the grant of the patent right by the patent administrative organ under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid.

Article 46 The Patent Reexamination Board shall timely examine the request for invalidation of the patent right, make a decision and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the patent administrative organ under the State Council.

Where any party is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court. The people's court shall notify the opponent party of the party which has requested for the invalidation procedure to be represented the proceedings as the third party.

Article 47 Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning.

The decision of invalidation shall have no retroactive effect on any judgment or conciliation document on patent infringement which has been pronounced and enforced by the people's court, on any decision concerning the handling of patent infringement which has been implemented or enforced, and on any contract of patent license and of assignment of patent right which have been performed, prior to the decision of invalidation; however, the damages caused to other persons in bad faith on the part of the patentee shall be compensated.

If, pursuant to the provisions of the preceding paragraph, no repayment of the damages for patent infringement, the fee for the exploitation of the patent or the price for the assignment of the patent right is obviously contrary to the principle of equity, such damages or fees shall be repaid wholly or partly.

#### Chapter 6 Compulsory License for Exploitation of Patent

Article 48 In any of the following situations, the patent administrative organ under the State Council may, upon the application of the entity or individual that is qualified to exploit an invention or utility model, grant a compulsory license to exploit the patent for invention or utility model:

(1) Where the patentee fails to exploit or fully exploit its/his patent without any justified reason within three years from the date on which the patent right was granted and within four years from the date on which the application for the patent was filed; or

(2) Where the patentee's exercise of it/his patent right is deemed as a monopoly practice according to law and the compulsory license is done for the purpose of eliminating or reducing the negative effects of such practice on competition.

Article 49 Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the patent administrative organ under the State Council may grant a compulsory license to exploit the patent for invention or utility model.

Article 50 For the purpose of public health, the patent administrative organ under the State Council may grant a compulsory license to produce and export the drugs with patent rights to the countries or regions as prescribed in the relevant international treaties to which China is a party.

Article 51 Where an invention or utility model for which the patent right was granted has major technical progress of prominent economic significance when compared with another invention or utility model for which the patent right has been granted earlier, and the exploitation of the later invention or utility model depends on the exploitation of the earlier one, the patent administrative department of the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Where, according to the preceding paragraph, a compulsory license is granted, the patent administrative department of the State Council may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

Article 52 Where an invention involved in a compulsory license is semiconductor technology, its application shall be confined to the purpose of public interests and the conditions as prescribed in Paragraph 2 of Article 48 of the Law.

Article 53 A compulsory license shall be applied mainly in the domestic market apart from those granted in accordance with Paragraph 2 of Article 48 and Article 50 of the Law.

Article 54 In accordance with Paragraph 1 of Article 48 and Article 51 of the Law, any entity or individual who applies for a compulsory license should offer evidences to prove that he asks for the permission of the patentee to use patent with rational conditions but fails to gain permission within rational time.

Article 55 The patent administrative organ under the State Council should timely inform the patentee and make registration and announcement to the public while making a decision on granting a compulsory license.

The decision on granting a compulsory license should be based on the scope and time prescribed on the ground of the compulsory license. Where the ground of a compulsory license is removed, the patent administrative organ under the State Council should on the request of the patentee make the decision on terminating a compulsory license in the wake of review.

Article 56 Any entity or individual that has been granted a compulsory license shall not enjoy the exclusive right to exploit or have the right to allow others to exploit.

Article 57 Any entity or individual that has been granted a compulsory license should pay rational royalty to the patentee or handle royalty in accordance with related international treaties acceded to by the People's Republic of China. Where royalty is paid, both parties involved shall agree on the amount; where both parties involved fail to reach an agreement, the patent administrative organ under the State Council shall be responsible to make a ruling.

Article 58 Where a patentee is discontent with the decision of the patent administrative organ under the State Council on exploit a compulsory license or a patent and any entity or individual that has been granted a compulsory license are discontent with the ruling of royalty on exploiting a compulsory license made by the patent administrative organ under the State Council, he may file a lawsuit to the people's court within three months upon receiving the notice.

#### Chapter VII Protection of Patent Right

Article 59 The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the claims.

The extent of protection of the patent right for design shall be determined by the product incorporating the patented design as shown in the drawings or photographs, and brief description may illuminate the patented design as shown in the drawings or photographs.

Article 60 In the event that a dispute arises out of any exploitation of a patent without permission of the patentee, that is, the infringement of a patent right, the parties shall settle the dispute through negotiation. If they are not willing to negotiate or fail to reach an agreement through negotiation, the patentee or any interested party may either bring a lawsuit to the people's court, or request the patent administrative department, for settlement. The patent administrative department may, if ascertaining at the time of settlement that there exists the infringement act, order the infringer to immediately stop the infringement act. The party dissatisfied may, within



15 days as of receipt of the notification, bring a lawsuit to the people's court in accordance with the "Administrative Litigation Law of the People's Republic of China". If the infringer neither brings a lawsuit within the time limit nor stops the infringement act, the patent administrative department may apply to the people's court for compulsory enforcement. The patent administrative department that settles the dispute may, upon request of the parties, hold a mediation regarding the compensation amount for infringement of the patent right. If no agreement can be reached through mediation, either party may bring a lawsuit to the people's court in accordance with the "Civil Litigation Law of the People's Republic of China".

Article 61 Where any dispute over infringement of a patent right is involved in a patent for invention for the manufacturing process of a new product, any entity or individual manufacturing the identical product shall provide proof on the difference of its own process used in the manufacture of its product from the patented process.

Where any dispute over infringement of a patent right is involved in a patent for utility model or patent right for design, the people's court or the patent administrative department may require the patentee or interested party to issue the patent appraisal report after retrieval, analysis and assessment to act as the proof for trial and handling the dispute over infringement of a patent right.

Article 62 Where the alleged infringer has the evidence to prove that the technology or design exploited by him is the existing technology or design in the dispute over infringement of a patent right, no infringement of a patent right is constituted.

Article 63 Whoever counterfeits the patent of others shall, in addition to bearing civil liabilities in accordance with the law, be ordered by the patent administrative department to make a correction and be announced thereby, its/his illegal proceeds, if any, shall be confiscated, and it/he may be fined up to four times the illegal proceeds. If there are no illegal proceeds, it/he may be fined up to RMB200,000. If any crime is constituted, it/he shall be subject to criminal liabilities in accordance with the law.

Article 64 The patent management sector may in accordance with the proofs accessible inquire relevant party involved to investigate the matters related to illegal acts while investigating and punishing the act of counterfeiting the patent of other; to conduct on-site inspection of the place where the party involved is suspected of illegal act; to consult and copy the contract, invoice, books and other materials related to allegedly illegal act; and to inspect the products related to allegedly illegal act and may seal up or detain the products of counterfeiting the patent of others proven by proofs.

The party involved should offer coordination while the patent management sector executes the aforesaid duties by law.

Article 65 The amount of compensation for infringement upon a patent right shall be determined on the basis of the actual losses suffered by the right-holder due to infringement. If the actual losses of the aggrieved party by the infringer are difficult to determine, they may be determined in the proceeds gained by the infringer. If the losses of the aggrieved party or the proceeds gained by the infringer are difficult to determine, they may be determined in a reasonable way with reference to the multiple of the royalties for this patent. The amount of compensation should also contain the reasonable expenditures of the right-holder for preventing the act of infringement.

Where the losses of the right-holder, the proceeds gained by the infringer and royalty are all difficult to determine, the people's court may in accordance with the type of patent, nature and details of infringement and other elements determine the compensation of more than RMB10,000 to less than RMB1m.

Article 66 Where the patentee or party involved has the evidence to prove that the act of infringement of patent being done or to be done by the third party will trigger fatal damage to its/his legal rights and interests if no timely prevention is made, it/he may apply to the people's court for the measures to order the third party to quit related act before filing a lawsuit.

An applicant should tender guarantee while filing an application; where no guarantee is offered, the application shall be rejected.

The people's court should make a ruling within 48 hours upon accepting the application. Where the time shall be extended in particular situation, it may extend another 48 hours. Where a ruling is made that related act is ordered to quit, it should be executed immediately. If the party involved is discontent with the ruling, it/he may apply for reconsideration; but the execution of ruling shall not be suspended during the reconsideration.

Where the applicant fails to file a lawsuit within fifteen days upon the day when the people's court takes measures to order the stop of related act, the people's court should remove the measures.

Where application is wrong, the applicant should compensate the losses of the respondent for suspending related act.

Article 67 To prevent the act of infringement of patent, the patentee or the party involved may apply to the people's court for conserving evidence in the situation where evidence may be destroyed or difficult to gain in future.

The people's court may order the applicant to offer guarantee while taking the conservatory measures; where the applicant does not offer guarantee, its application shall not be rejected.

The people's court should make a ruling within 48 hours upon accepting the application; where a ruling is made that the conservatory measures are taken, it should be executed immediately.

The applicant fails to file a lawsuit within fifteen days upon the day when the people's court take the conservatory measures, the people's court should remove the measures.

Article 68 Prescription for instituting legal proceedings concerning the infringement of patent right is two years counted from the date on which the patentee or any interested party obtains or should have obtained knowledge of the infringing act.

Where anyone uses an invention after the application for a patent for this invention is published but before the patent right is granted without paying adequate royalties, the statute of limitations for the patentee to claim the payment of such royalties shall be two years, commencing from the date when the patentee knows or ought to know that his invention is used by some else. However, if the patentee has known or ought to know this fact prior to the date when the patent right is granted, the statute of limitations shall commence from the date when the patent right is granted.

Article 69 None of the following shall be deemed an infringement of the patent right:

- (1) Anyone uses, promises the sale, sales or import of a patented product or product directly gained by means of patent after being sold by the patentee or the authorized entity or individual;
- (2) Anyone who has made the identical product or used the identical process or has made necessary preparations for making such a product or using such a process prior to the date of filing continues making such a product or using such a process only within the original scope;
- (3) Any foreign means of transport which temporarily passes through the territory, territorial

waters or territorial airspace of China uses the patent concerned in accordance with any agreement concluded between China and that country to which the foreign means of transport belongs, or in accordance with any international treaty to which both countries have acceded, or on the basis of the principle of reciprocity, for its own needs, in its devices and installations;

(4) Any person uses the patent concerned solely for the purposes of scientific research and experimentation; and

(5) Any person offers information needed in the administrative approval to manufacture, use and import patented drugs or patented medical equipment and specially manufacture and import patented drugs or patented medical equipment for him.

Article 70 Whoever uses, promises to sell or sells a patented product without knowing that the product was made and sold without permission of the patentee need not bear liabilities for compensation provided that it/he can prove that the product is obtained through legal avenues.

Article 71 Where any person, in violation of the provisions of Article 20 of this Law, unauthorizedly files in a foreign country an application for a patent that divulges an important secret of the State, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority concerned at the higher level. If the circumstances are serious, he shall be prosecuted for his criminal liability according to the law.

Article 72 Where any person usurps the right of an inventor or creator to apply for a patent for a non service invention-creation, or usurps any other right or interest of an inventor or creator, prescribed by this Law, he shall be subject to disciplinary sanction by the entity to which he belongs or by the competent authority at the higher level.

Article 73 No patent administrative department shall participate in the business activities such as recommending patented products to the public.

Where a patent administrative department violates the provisions of the preceding paragraph, it shall be ordered by its superior organ or its supervision organ to make a correction and clear up the ill effects. The illegal proceeds, if any, shall be confiscated. If the circumstance is serious, the person-in-charge held directly responsible and other persons held directly liable shall be given administrative sanctions in accordance with the law.

Article 74 Where any staff member of a state organ for patent administration or of any other relevant state organ neglects his duties, abuses his powers, practices favoritism for himself or his

relative, and a crime is constituted, he shall be subject to criminal liabilities in accordance with the law. If no crime is constituted, he shall be given administrative sanctions in accordance with the law.

#### Chapter VIII Supplementary Provisions

Article 75 Any application for a patent filed with, and any other proceedings before, the patent administrative department of the State Council shall be subject to the payment of a fee as prescribed.

Article 76 This Law shall come into force on April 1, 1985.

The Standing Committee of the National People's Congress 2008-12-27

# 中华人民共和国主席令

## 第 八 号

《全国人民代表大会常务委员会关于修改〈中华人民共和国专利法〉的决定》  
已由中华人民共和国第十一届全国人民代表大会常务委员会第六次会议于2008年12月27日通过，现予公布，自2009年10月1日起施行。

中华人民共和国主席 胡锦涛

2008年12月27日

# 中华人民共和国专利法

（1984年3月12日第六届全国人民代表大会常务委员会第四次会议通过 根据  
1992年9月4日第七届全国人民代表大会常务委员会第二十七次会议《关于修改〈中华人民共和国专利法〉的决定》第一次修正 根据2000年8月25日第九届全国人民代表大会常务委员会第十七次会议《关于修改〈中华人民共和国专利法〉的决定》第二次修正 根据2008年12月27日第十一届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国专利法〉的决定》第三次修正）

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### 第一章 总 则

**第一条** 为了保护专利权人的合法权益，鼓励发明创造，推动发明创造的应用，提高创新能力，促进科学技术进步和经济社会发展，制定本法。

**第二条** 本法所称的发明创造是指发明、实用新型和外观设计。

发明，是指对产品、方法或者其改进所提出的新的技术方案。

实用新型，是指对产品的形状、构造或者其结合所提出的适于实用的新的技术方案。

外观设计，是指对产品的形状、图案或者其结合以及色彩与形状、图案的结合所作出的富有美感并适于工业应用的新设计。

**第三条** 国务院专利行政部门负责管理全国的专利工作；统一受理和审查专利申请，依法授予专利权。

省、自治区、直辖市人民政府管理专利工作的部门负责本行政区域内的专利管理工作。

**第四条** 申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。

**第五条** 对违反法律、社会公德或者妨害公共利益的发明创造，不授予专利权。

对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，不授予专利权。

**第六条** 执行本单位的任务或者主要是利用本单位的物质技术条件所完成的发

明创造为职务发明创造。职务发明创造申请专利的权利属于该单位；申请被批准后，该单位为专利权人。

非职务发明创造，申请专利的权利属于发明人或者设计人；申请被批准后，发明人或者设计人为专利权人。

利用本单位的物质技术条件所完成的发明创造，单位与发明人或者设计人订有合同，对申请专利的权利和专利权的归属作出约定的，从其约定。

**第七条** 对发明人或者设计人的非职务发明创造专利申请，任何单位或者个人不得压制。

**第八条** 两个以上单位或者个人合作完成的发明创造、一个单位或者个人接受其他单位或者个人委托所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的单位或者个人；申请被批准后，申请的单位或者个人为专利权人。

**第九条** 同样的发明创造只能授予一项专利权。但是，同一申请人同日对同样的发明创造既申请实用新型专利又申请发明专利，先获得的实用新型专利权尚未终止，且申请人声明放弃该实用新型专利权的，可以授予发明专利权。

两个以上的申请人分别就同样的发明创造申请专利的，专利权授予最先申请的人。

**第十条** 专利申请权和专利权可以转让。

中国单位或者个人向外国人、外国企业或者外国其他组织转让专利申请权或者专利权的，应当依照有关法律、行政法规的规定办理手续。

转让专利申请权或者专利权的，当事人应当订立书面合同，并向国务院专利行政部门登记，由国务院专利行政部门予以公告。专利申请权或者专利权的转让自登记之日起生效。

**第十一条** 发明和实用新型专利权被授予后，除本法另有规定的以外，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、使用、许诺销售、销售、进口其专利产品，或者使用其专利方法以及使用、许诺销售、销售、



进口依照该专利方法直接获得的产品。

外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、许诺销售、销售、进口其外观设计专利产品。

**第十二条** 任何单位或者个人实施他人专利的，应当与专利权人订立实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。

**第十三条** 发明专利申请公布后，申请人可以要求实施其发明的单位或者个人支付适当的费用。

**第十四条** 国有企业事业单位的发明专利，对国家利益或者公共利益具有重大意义的，国务院有关主管部门和省、自治区、直辖市人民政府报经国务院批准，可以决定在批准的范围内推广应用，允许指定的单位实施，由实施单位按照国家规定向专利权人支付使用费。

**第十五条** 专利申请权或者专利权的共有人对权利的行使有约定的，从其约定。没有约定的，共有人可以单独实施或者以普通许可方式许可他人实施该专利；许可他人实施该专利的，收取的使用费应当在共有人之间分配。

除前款规定的情形外，行使共有的专利申请权或者专利权应当取得全体共有人的同意。

**第十六条** 被授予专利权的单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予合理的报酬。

**第十七条** 发明人或者设计人有权在专利文件中写明自己是发明人或者设计人。

专利权人有权在其专利产品或者该产品的包装上标明专利标识。

**第十八条** 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或

者依照互惠原则，根据本法办理。

**第十九条** 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托依法设立的专利代理机构办理。

中国单位或者个人在国内申请专利和办理其他专利事务的，可以委托依法设立的专利代理机构办理。

专利代理机构应当遵守法律、行政法规，按照被代理人的委托办理专利申请或者其他专利事务；对被代理人发明创造的内容，除专利申请已经公布或者公告的以外，负有保密责任。专利代理机构的具体管理办法由国务院规定。

**第二十条** 任何单位或者个人将在中国完成的发明或者实用新型向外国申请专利的，应当事先报经国务院专利行政部门进行保密审查。保密审查的程序、期限等按照国务院的规定执行。

中国单位或者个人可以根据中华人民共和国参加的有关国际条约提出专利国际申请。申请人提出专利国际申请的，应当遵守前款规定。

国务院专利行政部门依照中华人民共和国参加的有关国际条约、本法和国务院有关规定处理专利国际申请。

对违反本条第一款规定向外国申请专利的发明或者实用新型，在中国申请专利的，不授予专利权。

**第二十一条** 国务院专利行政部门及其专利复审委员会应当按照客观、公正、准确、及时的要求，依法处理有关专利的申请和请求。

国务院专利行政部门应当完整、准确、及时发布专利信息，定期出版专利公报。

在专利申请公布或者公告前，国务院专利行政部门的工作人员及有关人员对其内容负有保密责任。

## 第二章 授予专利权的条件

**第二十二条** 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。

新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。

创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。

实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。

本法所称现有技术，是指申请日以前在国内外为公众所知的技术。

**第二十三条** 授予专利权的外观设计，应当不属于现有设计；也没有任何单位或者个人就同样的外观设计在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公告的专利文件中。

授予专利权的外观设计与现有设计或者现有设计特征的组合相比，应当具有明显区别。

授予专利权的外观设计不得与他人在申请日以前已经取得的合法权利相冲突。

本法所称现有设计，是指申请日以前在国内外为公众所知的设计。

**第二十四条** 申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：

- (一) 在中国政府主办或者承认的国际展览会上首次展出的；
- (二) 在规定的学术会议或者技术会议上首次发表的；
- (三) 他人未经申请人同意而泄露其内容的。

**第二十五条** 对下列各项，不授予专利权：

- (一) 科学发现；
- (二) 智力活动的规则和方法；
- (三) 疾病的诊断和治疗方法；

(四)动物和植物品种：

(五)用原子核变换方法获得的物质：

(六)对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。

对前款第(四)项所列产品的生产方法，可以依照本法规定授予专利权。

### 第三章 专利的申请

**第二十六条** 申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。

请求书应当写明发明或者实用新型的名称，发明人的姓名，申请人姓名或者名称、地址，以及其他事项。

说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。

权利要求书应当以说明书为依据，清楚、简要地限定要求专利保护的范围。

依赖遗传资源完成的发明创造，申请人应当在专利申请文件中说明该遗传资源的直接来源和原始来源；申请人无法说明原始来源的，应当陈述理由。

**第二十七条** 申请外观设计专利的，应当提交请求书、该外观设计的图片或者照片以及对该外观设计的简要说明等文件。

申请人提交的有关图片或者照片应当清楚地显示要求专利保护的产品的外观设计。

**第二十八条** 国务院专利行政部门收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。

**第二十九条** 申请人自发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者自外观设计在外国第一次提出专利申请之日起六个月内，又在中国就相

同主题提出专利申请的，依照该外国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权。

申请人自发明或者实用新型在中国第一次提出专利申请之日起十二个月内，又向国务院专利行政部门就相同主题提出专利申请的，可以享有优先权。

**第三十条** 申请人要求优先权的，应当在申请的时候提出书面声明，并且在三个月内提交第一次提出的专利申请文件的副本；未提出书面声明或者逾期未提交专利申请文件副本的，视为未要求优先权。

**第三十一条** 一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。

一件外观设计专利申请应当限于一项外观设计。同一产品两项以上的相似外观设计，或者用于同一类别并且成套出售或者使用的产品的两项以上外观设计，可以作为一件申请提出。

**第三十二条** 申请人可以在被授予专利权之前随时撤回其专利申请。

**第三十三条** 申请人可以对其专利申请文件进行修改，但是，对发明和实用新型专利申请文件的修改不得超出原说明书和权利要求书记载的范围，对外观设计专利申请文件的修改不得超出原图片或者照片表示的范围。

#### 第四章 专利申请的审查和批准

**第三十四条** 国务院专利行政部门收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起满十八个月，即行公布。国务院专利行政部门可以根据申请人的请求早日公布其申请。

**第三十五条** 发明专利申请自申请日起三年内，国务院专利行政部门可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。

国务院专利行政部门认为必要的时候，可以自行对发明专利申请进行实质审

查。

**第三十六条** 发明专利的申请人请求实质审查的时候，应当提交在申请日前与其发明有关的参考资料。

发明专利已经在国外提出过申请的，国务院专利行政部门可以要求申请人在指定期限内提交该国为审查其申请进行检索的资料或者审查结果的资料；无正当理由逾期不提交的，该申请即被视为撤回。

**第三十七条** 国务院专利行政部门对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。

**第三十八条** 发明专利申请经申请人陈述意见或者进行修改后，国务院专利行政部门仍然认为不符合本法规定的，应当予以驳回。

**第三十九条** 发明专利申请经实质审查没有发现驳回理由的，由国务院专利行政部门作出授予发明专利权的决定，发给发明专利证书，同时予以登记和公告。发明专利权自公告之日起生效。

**第四十条** 实用新型和外观设计专利申请经初步审查没有发现驳回理由的，由国务院专利行政部门作出授予实用新型专利权或者外观设计专利权的决定，发给相应的专利证书，同时予以登记和公告。实用新型专利权和外观设计专利权自公告之日起生效。

**第四十一条** 国务院专利行政部门设立专利复审委员会。专利申请人对国务院专利行政部门驳回申请的决定不服的，可以自收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知专利申请人。

专利申请人对专利复审委员会的复审决定不服的，可以自收到通知之日起三个月内向人民法院起诉。

## 第五章 专利权的期限、终止和无效

**第四十二条** 发明专利权的期限为二十年，实用新型专利权和外观设计专利权的期限为十年，均自申请日起计算。

**第四十三条** 专利权人应当自被授予专利权的当年开始缴纳年费。

**第四十四条** 有下列情形之一的，专利权在期限届满前终止：

- (一) 没有按照规定缴纳年费的；
- (二) 专利权人以书面声明放弃其专利权的。

专利权在期限届满前终止的，由国务院专利行政部门登记和公告。

**第四十五条** 自国务院专利行政部门公告授予专利权之日起，任何单位或者个人认为该专利权的授予不符合本法有关规定的，可以请求专利复审委员会宣告该专利权无效。

**第四十六条** 专利复审委员会对宣告专利权无效的请求应当及时审查和作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由国务院专利行政部门登记和公告。

对专利复审委员会宣告专利权无效或者维持专利权的决定不服的，可以自收到通知之日起三个月内向人民法院起诉。人民法院应当通知无效宣告请求程序的对方当事人作为第三人参加诉讼。

**第四十七条** 宣告无效的专利权视为自始即不存在。

宣告专利权无效的决定，对在宣告专利权无效前人民法院作出并已执行的专利侵权的判决、调解书，已经履行或者强制执行的专利侵权纠纷处理决定，以及已经履行的专利实施许可合同和专利权转让合同，不具有追溯力。但是因专利权人的恶意给他人造成的损失，应当给予赔偿。

依照前款规定不返还专利侵权赔偿金、专利使用费、专利权转让费，明显违反公平原则的，应当全部或者部分返还。

## 第六章 专利实施的强制许可

**第四十八条** 有下列情形之一的，国务院专利行政部门根据具备实施条件的单位或者个人的申请，可以给予实施发明专利或者实用新型专利的强制许可：

（一）专利权人自专利权被授予之日起满三年，且自提出专利申请之日起满四年，无正当理由未实施或者未充分实施其专利的；

（二）专利权人行使专利权的行为被依法认定为垄断行为，为消除或者减少该行为对竞争产生的不利影响的。

**第四十九条** 在国家出现紧急状态或者非常情况时，或者为了公共利益的目的，国务院专利行政部门可以给予实施发明专利或者实用新型专利的强制许可。

**第五十条** 为了公共健康目的，对取得专利权的药品，国务院专利行政部门可以给予制造并将其出口到符合中华人民共和国参加的有关国际条约规定的国家或者地区的强制许可。

**第五十一条** 一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型具有显著经济意义的重大技术进步，其实施又有赖于前一发明或者实用新型的实施的，国务院专利行政部门根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。

在依照前款规定给予实施强制许可的情形下，国务院专利行政部门根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。

**第五十二条** 强制许可涉及的发明创造为半导体技术的，其实施限于公共利益的目的和本法第四十八条第（二）项规定的情形。

**第五十三条** 除依照本法第四十八条第（二）项、第五十条规定给予的强制许可外，强制许可的实施应当主要为了供应国内市场。

**第五十四条** 依照本法第四十八条第（一）项、第五十一条规定申请强制许可的单位或者个人应当提供证据，证明其以合理的条件请求专利权人许可其实施专利，但未能合理的时间内获得许可。

**第五十五条** 国务院专利行政部门作出的给予实施强制许可的决定，应当及时



通知专利权人，并予以登记和公告。

给予实施强制许可的决定，应当根据强制许可的理由规定实施的范围和时间。

强制许可的理由消除并不再发生时，国务院专利行政部门应当根据专利权人的请求，经审查后作出终止实施强制许可的决定。

**第五十六条** 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。

**第五十七条** 取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，或者依照中华人民共和国参加的有关国际条约的规定处理使用费问题。付给使用费的，其数额由双方协商；双方不能达成协议的，由国务院专利行政部门裁决。

**第五十八条** 专利权人对国务院专利行政部门关于实施强制许可的决定不服的，专利权人和取得实施强制许可的单位或者个人对国务院专利行政部门关于实施强制许可的使用费的裁决不服的，可以自收到通知之日起三个月内向人民法院起诉。

## 第七章 专利权的保护

**第五十九条** 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容。

外观设计专利权的保护范围以表示在图片或者照片中的该产品的外观设计为准，简要说明可以用于解释图片或者照片所表示的该产品的外观设计。

**第六十条** 未经专利权人许可，实施其专利，即侵犯其专利权，引起纠纷的，由当事人协商解决；不愿协商或者协商不成的，专利权人或者利害关系人可以向人民法院起诉，也可以请求管理专利工作的部门处理。管理专利工作的部门处理时，认定侵权行为成立的，可以责令侵权人立即停止侵权行为，当事人不服的，可以自收到处理通知之日起十五日内依照《中华人民共和国行政诉讼法》向人民法院起诉；侵权人期满不起诉又不停止侵权行为的，管理专利工作的部门可以申请人民法院强制执行。进行处理的管理专利工作的部门应当事人的请求，可以就侵犯专利权的赔偿数额进行调解；调解不

成的，当事人可以依照《中华人民共和国民事诉讼法》向人民法院起诉。

**第六十一条** 专利侵权纠纷涉及新产品制造方法的发明专利的，制造同样产品的单位或者个人应当提供其产品制造方法不同于专利方法的证明。

专利侵权纠纷涉及实用新型专利或者外观设计专利的，人民法院或者管理专利工作的部门可以要求专利权人或者利害关系人出具由国务院专利行政部门对相关实用新型或者外观设计进行检索、分析和评价后作出的专利权评价报告，作为审理、处理专利侵权纠纷的证据。

**第六十二条** 在专利侵权纠纷中，被控侵权人有证据证明其实施的技术或者设计属于现有技术或者现有设计的，不构成侵犯专利权。

**第六十三条** 假冒专利的，除依法承担民事责任外，由管理专利工作的部门责令改正并予公告，没收违法所得，可以并处违法所得四倍以下的罚款；没有违法所得的，可以处二十万元以下的罚款；构成犯罪的，依法追究刑事责任。

**第六十四条** 管理专利工作的部门根据已经取得的证据，对涉嫌假冒专利行为进行查处时，可以询问有关当事人，调查与涉嫌违法行为有关的情况；对当事人涉嫌违法行为的场所实施现场检查；查阅、复制与涉嫌违法行为有关的合同、发票、账簿以及其他有关资料；检查与涉嫌违法行为有关的产品，对有证据证明是假冒专利的产品，可以查封或者扣押。

管理专利工作的部门依法行使前款规定的职权时，当事人应当予以协助、配合，不得拒绝、阻挠。

**第六十五条** 侵犯专利权的赔偿数额按照权利人因被侵权所受到的实际损失确定；实际损失难以确定的，可以按照侵权人因侵权所获得的利益确定。权利人的损失或者侵权人获得的利益难以确定的，参照该专利许可使用费的倍数合理确定。赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。

权利人的损失、侵权人获得的利益和专利许可使用费均难以确定的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，确定给予一万元以上一百万元

以下的赔偿。

**第六十六条** 专利权人或者利害关系人有证据证明他人正在实施或者即将实施侵犯专利权的行为，如不及时制止将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取责令停止有关行为的措施。

申请人提出申请时，应当提供担保；不提供担保的，驳回申请。

人民法院应当自接受申请之时起四十八小时内作出裁定；有特殊情况需要延长的，可以延长四十八小时。裁定责令停止有关行为的，应当立即执行。当事人对裁定不服的，可以申请复议一次；复议期间不停止裁定的执行。

申请人自人民法院采取责令停止有关行为的措施之日起十五日内不起诉的，人民法院应当解除该措施。

申请有错误的，申请人应当赔偿被申请人因停止有关行为所遭受的损失。

**第六十七条** 为了制止专利侵权行为，在证据可能灭失或者以后难以取得的情况下，专利权人或者利害关系人可以在起诉前向人民法院申请保全证据。

人民法院采取保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。

人民法院应当自接受申请之时起四十八小时内作出裁定；裁定采取保全措施的，应当立即执行。

申请人自人民法院采取保全措施之日起十五日内不起诉的，人民法院应当解除该措施。

**第六十八条** 侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。

发明专利申请公布后至专利权授予前使用该发明未支付适当使用费的，专利权人要求支付使用费的诉讼时效为二年，自专利权人得知或者应当得知他人使用其发明之日起计算，但是，专利权人于专利权授予之日前即已得知或者应当得知的，自专利权授予之日起计算。

**第六十九条** 有下列情形之一的，不视为侵犯专利权：

（一）专利产品或者依照专利方法直接获得的产品，由专利权人或者经其许可的单位、个人售出后，使用、许诺销售、销售、进口该产品的；

（二）在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；

（三）临时通过中国领陆、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；

（四）专为科学研究和实验而使用有关专利的；

（五）为提供行政审批所需要的信息，制造、使用、进口专利药品或者专利医疗器械的，以及专门为其制造、进口专利药品或者专利医疗器械的。

**第七十条** 为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，能证明该产品合法来源的，不承担赔偿责任。

**第七十一条** 违反本法第二十条规定向外国申请专利，泄露国家秘密的，由所在单位或者上级主管机关给予行政处分；构成犯罪的，依法追究刑事责任。

**第七十二条** 侵夺发明人或者设计人的非职务发明创造专利申请权和本法规定的其他权益的，由所在单位或者上级主管机关给予行政处分。

**第七十三条** 管理专利工作的部门不得参与向社会推荐专利产品等经营活动。

管理专利工作的部门违反前款规定的，由其上级机关或者监察机关责令改正，消除影响，有违法收入的予以没收；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

**第七十四条** 从事专利管理工作的国家机关工作人员以及其他有关国家机关工作人员玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

第八章 附则

**第七十五条** 向国务院专利行政部门申请专利和办理其他手续，应当按照规定缴纳费用。

**第七十六条** 本法自1985年4月1日起施行。

**Labour Law of The People's Republic of China**

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Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution in order to protect the legitimate rights and interests of laborers, readjust labor relationship, establish and safeguard a labor system suited to the socialist market economy, and promote economic development and social progress.

Article 2 This Law applies to all enterprises and individual economic organizations (hereinafter referred to as employing units) within the boundary of the People's Republic of China and laborers who form a labor relationship therewith.

State organs, institutional organizations and societies as well as laborers who form a labor contract relationship therewith shall follow this Law.

Article 3 Laborers shall have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labor, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training in vocational skills, enjoy social insurance and welfare, and submit applications for settlement of labor disputes, and other rights relating to labor as stipulated by law.

Laborers shall fulfill their labor tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labor discipline and professional ethics.

Article 4 The employing units shall establish and perfect rules and regulations in accordance with the law so as to ensure that laborers enjoy the right to work and fulfill labor obligations.

Article 5 The State shall take various measures to promote employment, develop vocational education, lay down labor standards, regulate social incomes, perfect social insurance system, coordinate labor relationship, and gradually raise the living standard of laborers.

Article 6 The State shall advocate the participation of laborers in social voluntary labor and the development of their labor competitions and activities of forwarding rational proposals, encourage and protect the scientific research and technical renovation engaged by laborers, as well as their inventions and creations; and commend and award labor models and advanced workers.

Article 7 Laborers shall have the right to participate in and organize trade unions in accordance with the law.

Trade unions shall represent and safeguard the legitimate rights and interests of laborers, and independently conduct their activities in accordance with the law.

Article 8 Laborers shall, through the assembly of staff and workers or their congress, or other forms in accordance with the provisions of laws, rules and regulations, take part in democratic management or consult with the employing units on an equal footing about protection of the legitimate rights and interests of laborers.

Article 9 The labor administrative department of the State Council shall be in charge of the management of labor of the whole country.

The labor administrative departments of the local people's governments at or above the county level shall be in charge of the management of labor in the administrative areas under their respective jurisdiction.

## Chapter II Promotion of Employment

Article 10 The State shall create conditions for employment and increase opportunities for employment by means of the promotion of economic and social development.

The State shall encourage enterprises, institutional organizations, and societies to initiate industries or expand businesses for the increase of employment within the scope of the stipulations of laws, and administrative rules and regulations.

The State shall support laborers to get jobs by organizing themselves on a voluntary basis or by engaging in individual businesses.

Article 11 Local people's governments at various levels shall take measures to develop various kinds of job-introduction agencies and provide employment services.

Article 12 Laborers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief.

Article 13 Females shall enjoy equal rights as males in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding females from employment or to raise recruitment standards for the females, except for the types of work or posts that are not suitable for females as stipulated by the State.

Article 14 Where there are special stipulations in laws, rules and regulations on the employment of the disabled, the personnel of national minorities, and demobilized armymen, such special stipulations shall apply.

Article 15 No employing units shall be allowed to recruit juveniles under the age of 16.

Units of literature and art, physical culture and sport, and special arts and crafts that need to recruit juveniles under the age of 16 must go through the formalities of examination and approval according to the relevant provisions of the State and guarantee their right to compulsory education.

### Chapter III Labor Contracts and Collective Contracts

Article 16 A labor contract is the agreement reached between a laborer and an employing unit for the establishment of the labor relationship and the definition of the rights, interests and obligations of each party.

A labor contract shall be concluded where a labor relationship is to be established.

Article 17 Conclusion and modification of a labor contract shall follow the principles of equality, voluntariness and unanimity through consultation, and shall not run counter to the stipulations of laws, administrative rules and regulations.

A labor contract once concluded in accordance with the law shall possess legal binding force. The parties involved must fulfill the obligations as stipulated in the labor contract.

Article 18 The following labor contracts shall be invalid:

(1) labor contracts concluded in violation of laws, administrative rules and regulations; and

(2) labor contracts concluded by resorting to such measures as cheating and intimidation.

An invalid labor contract shall have no legal binding force from the very beginning of its conclusion. Where a part of a labor contract is confirmed as invalid and where the validity of the remaining part is not affected, the remaining part shall remain valid.

The invalidity of a labor contract shall be confirmed by a labor dispute arbitration committee or a people's court.

Article 19 A labor contract shall be concluded in written form and contain the



following clauses:

- (1) term of a labor contract;
- (2) contents of work;
- (3) labor protection and working conditions;
- (4) labor remuneration;
- (5) labor disciplines;
- (6) conditions for the termination of a labor contract; and
- (7) responsibility for the violation of a labor contract.

Apart from the required clauses specified in the preceding paragraph, other contents in a labor contract may be agreed upon through consultation by the parties involved.

Article 20 The term of a labor contract shall be divided into fixed term, flexible term or taking the completion of a specific amount of work as a term.

In case a laborer has kept working in a same employing unit for ten years or more and the parties involved agree to extend the term of the labor contract, a labor contract with a flexible term shall be concluded between them if the laborer so requested.

Article 21 A probation period may be agreed upon in a labor contract. The longest probation period shall not exceed six months.

Article 22 The parties involved in a labor contract may reach an agreement in their labor contract on matters concerning keeping the commercial secrets of the employing unit.

Article 23 A labor contract shall terminate upon the expiration of its term or the emergence of the conditions for the termination of the labor contract as agreed upon by the parties involved.

Article 24 A labor contract may be revoked upon agreement reached between the parties involved through consultation.

Article 25 The employing unit may revoke the labor contract with a laborer in any of the following circumstances:

- (1) to be proved not up to the requirements for recruitment during the probation period;
- (2) to seriously violate labor disciplines or the rules and regulations of the employing unit;
- (3) to cause great losses to the employing unit due to serious dereliction of duty

or engagement in malpractice for selfish ends; and

(4) to be investigated for criminal responsibilities in accordance with the law.

Article 26 In any of the following circumstances, the employing unit may revoke a labor contract but a written notification shall be given to the laborer 30 days in advance:

(1) where a laborer is unable to take up his original work or any new work arranged by the employing unit after the completion of his medical treatment for illness or injury not suffered from at work;

(2) where a laborer is unqualified for his work and remains unqualified even after receiving a training or an adjustment to an other work post; and

(3) no agreement on modification of the labor contract can be reached through consultation by the parties involved when the objective conditions taken as the basis for the conclusion of the contract have greatly changed so that the original labor contract can no longer be carried out.

Article 27 During the period of statutory consolidation when the employing unit comes to the brink of bankruptcy or runs deep into difficulties in production and management, and if reduction of its personnel becomes really necessary, the unit may make such reduction after it has explained the situation to the trade union or all of its staff and workers 30 days in advance, solicited opinions from them and reported to the labor administrative department.

Where the employing unit is to recruit personnel six months after the personnel reduction effected according to the stipulations of this Article, the reduced personnel shall have the priority to be re-employed.

Article 28 The employing unit shall make economic compensations in accordance with the relevant provisions of the State if it revokes its labor contracts according to the stipulations in Article 24, Article 26 and Article 27 of this Law.

Article 29 The employing unit shall not revoke its labor contract with a laborer in accordance with the stipulations in Article 26 and Article 27 of this Law in any of the following circumstances:

(1) to be confirmed to have totally or partially lost the ability to work due to occupational diseases or injuries suffered from at work;

(2) to be receiving medical treatment for diseases or injuries within the prescribed period of time;

(3) to be a female staff member or worker during pregnant, puerperal, or breast-feeding period; or

(4) other circumstances stipulated by laws, administrative rules and regulations.

Article 30 The trade union of an employing unit shall have the right to air its opinions

if it regards as inappropriate the revocation of a labor contract by the unit. If the employing unit violates laws, rules and regulations or labor contracts, the trade union shall have the right to request for reconsideration. Where the laborer applies for arbitration or brings in a lawsuit, the trade union shall render him support and assistance in accordance with the law.

Article 31 A laborer who intends to revoke his labor contract shall give a written notice to the employing unit 30 days in advance.

Article 32 A laborer may notify at any time the employing unit of his decision to revoke the labor contract in any of the following circumstances:

- (1) within the probation period;
- (2) where the employing unit forces the laborer to work by resorting to violence, intimidation or illegal restriction of personal freedom; or
- (3) failure on the part of the employing unit to pay labor remuneration or to provide working conditions as agreed upon in the labor contract.

Article 33 The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labor remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption.

A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise.

Article 34 A collective contract shall be submitted to the labor administrative department after its conclusion. The collective contract shall go into effect automatically if no objections are raised by the labor administrative department within 15 days from the date of the receipt of a copy of the contract.

Article 35 Collective contracts concluded in accordance with the law shall have binding force to both the enterprise and all of its staff and workers. The standards on working conditions and labor payments agreed upon in labor contracts concluded between individual laborers and the enterprise shall not be lower than those as stipulated in collective contracts.

#### Chapter IV Working Hours, Rest and Vacations

Article 36 The State shall practise a working hour system under which laborers shall work for no more than eight hours a day and no more than 44 hours a week on the average.

Article 37 In case of laborers working on the basis of piecework, the employing unit shall rationally fix quotas of work and standards on piecework remuneration in

accordance with the working hour system stipulated in Article 36 of this Law.

Article 38 The employing unit shall guarantee that its staff and workers have at least one day off in a week.

Article 39 Where an enterprise can not follow the stipulations in Article 36 and Article 38 of this Law due to its special production nature, it may adopt other rules on working hours and rest with the approval of the labor administrative department.

Article 40 The employing unit shall arrange holidays for laborers in accordance with the law during the following festivals:

- (1) the New Year's Day;
- (2) the Spring Festival;
- (3) the International Labor Day;
- (4) the National Day; and
- (5) other holidays stipulated by laws, rules and regulations.

Article 41 The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and laborers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of laborers is guaranteed. However, the total extension in a month shall not exceed thirty six hours.

Article 42 The extension of working hours shall not be subject to restriction of the provisions of Article 41 of this Law under any of the following circumstances:

- (1) where emergent dealing is needed in the event of natural disaster, accident or other reason that threatens the life, health and the safety of property of laborers;
- (2) where prompt rush repair is needed in the event of breakdown of production equipment, transportation lines or public facilities that affects production and public interests; and
- (3) other circumstances as stipulated by laws, administrative rules and regulations.

Article 43 The employing unit shall not extend working hours of laborers in violation of the provisions of this Law.

Article 44 The employing unit shall, according to the following standards, pay laborers remunerations higher than those for normal working hours under any of the following circumstances:

- (1) to pay no less than 150 per cent of the normal wages if the extension of working hours is arranged;
- (2) to pay no less than 200 per cent of the normal wages if the extended hours are

arranged on days of rest and no deferred rest can be taken; and

(3) to pay no less than 300 per cent of the normal wages if the extended hours are arranged on statutory holidays.

Article 45 The State shall practise a system of annual vacation with pay.

Laborers who have kept working for one year and more shall be entitled to annual vacation with pay. The concrete measures shall be formulated by the State Council.

#### Chapter V Wages

Article 46 The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work.

The level of wages shall be gradually raised on the basis of economic development. The State shall exercise macro-regulations and control over the total payroll.

Article 47 The employing unit shall independently determine its form of wage distribution and wage level for its own unit according to law and based on the characteristics of its production and business and economic results.

Article 48 The State shall implement a system of guaranteed minimum wages. Specific standards on minimum wages shall be determined by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record.

Wages paid to laborers by the employing unit shall not be lower than the local standards on minimum wages.

Article 49 The determination and readjustment of the standards on minimum wages shall be made with reference to the following factors in a comprehensive manner:

- (1) the lowest living expenses of laborers themselves and the average family members they support;
- (2) the average wage level of the society as a whole;
- (3) labor productivity;
- (4) the situation of employment; and
- (5) the different levels of economic development between regions.

Article 50 Wages shall be paid monthly to laborers themselves in cash. The wages paid to laborers shall not be deducted or delayed without justification.

Article 51 The employing unit shall pay wages according to law to laborers who observe statutory holidays, take leaves during the periods of marriage or funeral, or participate in social activities in accordance with the law.

## Chapter VI Occupational Safety and Health

Article 52 The employing unit must establish and perfect the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate laborers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards.

Article 53 Facilities of occupational safety and health must meet the standards stipulated by the State.

Facilities of occupational safety and health installed in new projects and projects to be rebuilt or expanded must be designed, constructed and put into operation and use at the same time as the main projects.

Article 54 The employing unit must provide laborers with occupational safety and health conditions conforming to the provisions of the State and necessary labor protection, and provide regular health examination for laborers engaged in work with occupational hazards.

Article 55 Laborers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations.

Article 56 Laborers must strictly abide by rules of safe operation in the process of their work.

Laborers shall have the right to refuse to operate if the management personnel of the employing unit command the operation in violation of rules and regulations or force laborers to run risks in operation; laborers shall have the right to criticize, report or file charges against the acts endangering the safety of their life and health.

Article 57 The State shall establish a system for the statistics, reports and dispositions of accidents of injuries and deaths, and cases of occupational diseases. The labor administrative departments and other relevant departments of the people's governments at or above the county level and the employing unit shall, according to law, compile statistics, report and dispose of accidents of injuries and deaths that occurred in the process of their work and cases of occupational diseases.

## Chapter VII Special Protection for Female and Juvenile Workers

Article 58 The State shall provide female workers and juvenile workers with special protection.

"Juvenile workers" hereby refer to laborers at the age of 16 but not 18 yet.

Article 59 It is prohibited to arrange female workers to engage in work down the pit of mines, or work with Grade IV physical labor intensity as stipulated by the State, or other work that female workers should avoid.

Article 60 Female workers during their menstrual periods shall not be arranged to engage in work high above the ground, under low temperature, or in cold water or work with Grade III physical labor intensity as stipulated by the State.

Article 61 Female workers during their pregnancy shall not be arranged to engage in work with Grade III physical labor intensity as stipulated by the State or other work that they should avoid in pregnancy. Female workers pregnant for seven months or more shall not be arranged to extend their working hours or to work night shifts.

Article 62 After childbirth, female workers shall be entitled to no less than ninety days of maternity leaves with pay.

Article 63 Female workers during the period of breast-feeding their babies less than one year old shall not be arranged to engage in work with Grade III physical labor intensity as stipulated by the State or other labor that they should avoid during their breast-feeding period, or to extend their working hours or to work night shifts.

Article 64 No juvenile workers shall be arranged to engage in work down the pit of mines, work that is poisonous or harmful, work with Grade IV physical labor intensity as stipulated by the State, or other work that they should avoid.

Article 65 The employing unit shall provide regular physical examinations to juvenile workers.

#### Chapter VIII Vocational Training

Article 66 The State shall take various measures through various channels to expand vocational training undertakings so as to develop professional skills of laborers, improve their qualities, and raise their employment capability and work ability.

Article 67 People's governments at various levels shall incorporate the development of vocational training in the plans of social and economic development, encourage and support all enterprises, institutional organizations, societies and individuals, where conditions permit, to sponsor all kinds of vocational training.

Article 68 The employing unit shall establish a system for vocational training, raise and use funds for vocational training in accordance with the provisions of the State, and provide laborers with vocational training in a planned way and in the light of the actual situation of the unit.

Laborers to be engaged in technical work must receive pre-job training before taking up their posts.

Article 69 The State shall determine occupational classification, set up professional skill standards for the occupations classified, and practise a system of vocational qualification certificates. Examination and verification organizations authorized by the government are in charge of the examination and verification of the professional skills of laborers.

#### Chapter IX Social Insurance and Welfare

Article 70 The State shall develop social insurance undertakings, establish a social insurance system, and set up social insurance funds so that laborers may receive assistance and compensations under such circumstances as old age, illness,

work-related injury, unemployment and child-bearing.

Article 71 The level of social insurance shall be in proportion to the level of social and economic development and the social affordability.

Article 72 The sources of social insurance funds shall be determined according to the categories of insurance, and an overall pooling of insurance funds from the society shall be introduced step by step. The employing unit and laborers must participate in social insurance and pay social insurance premiums in accordance with the law.

Article 73 Laborers shall, in accordance with the law, enjoy social insurance benefits under the following circumstances:

- (1) retirement;
- (2) illness or injury;
- (3) disability caused by work-related injury or occupational disease;
- (4) unemployment; and
- (5) child-bearing.

The survivors of the insured laborers shall be entitled to subsidies for survivors in accordance with the law.

The conditions and standards for laborers to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

The social insurance amount that laborers are entitled to, must be timely paid in full.

Article 74 The agencies in charge of social insurance funds shall collect, expend, manage and operate the funds in accordance with the stipulations of laws, and assume the responsibility to maintain and raise the value of these funds.

The supervisory organizations of social insurance funds shall exercise supervision over the revenue and expenditure, management and operation of social insurance funds in accordance with the stipulations of laws.

The establishment and function of the agencies in charge of social insurance funds and the supervisory organizations of social insurance funds shall be stipulated by laws.

No organization or individual shall be allowed to misappropriate social insurance funds.

Article 75 The State shall encourage the employing unit to set up supplementary insurance for laborers according to its practical situations.

The State shall advocate that laborers practise individual insurance in form of saving account.



Article 76 The State shall develop social welfare undertakings, construct public welfare facilities, and provide laborers with conditions for taking rest, recuperation and rehabilitation.

The employing unit shall create conditions so as to improve collective welfare and raise welfare treatment of laborers.

#### Chapter X Labor Disputes

Article 77 Where a labor dispute between the employing unit and laborers takes place, the parties concerned may apply for mediation or arbitration or take legal proceedings according to law, or may seek for a settlement through consultation.

The principle of mediation shall apply to the procedures of arbitration and lawsuit.

Article 78 The settlement of a labor dispute shall follow the principle of legality, fairness and promptness so as to safeguard in accordance with the law the legitimate rights and interests of the parties involved.

Article 79 Where a labor dispute takes place, the parties involved may apply to the labor dispute mediation committee of their unit for mediation; if the mediation fails and one of the parties requests for arbitration, that party may apply to the labor dispute arbitration committee for arbitration. Either party may also directly apply to the labor dispute arbitration committee for arbitration. If one of the parties is not satisfied with the adjudication of arbitration, the party may bring the case to a people's court.

Article 80 A labor dispute mediation committee may be established inside the employing unit. The committee shall be composed of representatives of the staff and workers, representatives of the employing unit, and representatives of the trade union. The chairman of the committee shall be held by a representative of the trade union.

Agreements reached on labor disputes through mediation shall be implemented by the parties involved.

Article 81 A labor dispute arbitration committee shall be composed of representatives of the labor administrative department, representatives from the trade union at the corresponding level, and representatives of the employing unit. The chairman of the committee shall be held by a representative of the labor administrative department.

Article 82 The party that requests for arbitration shall file a written application to a labor dispute arbitration committee within 60 days starting from the date of the occurrence of a labor dispute. The arbitration committee may generally make an adjudication within 60 days from the date of receiving the application. The parties involved must implement the adjudication if no objections are raised.

Article 83 Where a party involved in a labor dispute is not satisfied with the adjudication, the party may bring a lawsuit to a people's court within 15 days from the date of receiving the ruling of arbitration. Where one of the parties involved

neither brings a lawsuit nor implements the adjudication of arbitration within the statutory time limit, the other party may apply to a people's court for compulsory implementation.

Article 84 Where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned, the labor administrative department of the local people's government may organize the relevant departments to handle the case in coordination.

Where a dispute arises from the implementation of a collective contract and no settlement can be reached through consultation by the parties concerned, the dispute may be submitted to the labor dispute arbitration committee for arbitration. Any party that is not satisfied with the adjudication of arbitration may bring a lawsuit to a people's court within 15 days from the date of receiving the adjudication.

#### Chapter XI Supervision and Inspection

Article 85 The labor administrative departments of people's governments at or above the county level shall, in accordance with the law, supervise and inspect the implementation of laws, rules and regulations on labor by the employing unit, and have the power to stop any acts that run counter to laws, rules and regulations on labor and order the rectification thereof.

Article 86 The inspectors from the labor administrative departments of people's governments at or above the county level shall, while performing their public duties, have the right to enter the employing units to make investigations about the implementation of laws, rules and regulations on labor, examine necessary data and inspect labor sites.

The inspectors from the labor administrative departments of people's governments at or above the county level must show their certifications while performing public duties, impartially enforce laws, and abide by relevant stipulations.

Article 87 Relevant departments of people's governments at or above the county level shall, within the scope of their respective duties and responsibilities, supervise the implementation of laws, rules and regulations on labor by the employing units.

Article 88 Trade unions at various levels shall, in accordance with the law, safeguard the legitimate rights and interests of laborers, and supervise the implementation of laws, rules and regulations on labor by the employing units.

Any organizations or individuals shall have the right to expose and accuse any acts in violation of laws, rules and regulations on labor.

#### Chapter XII Legal Responsibility

Article 89 Where the rules and regulations on labor formulated by the employing unit run counter to the provisions of laws, rules and regulations, the labor administrative department shall give a warning to the unit, order it to make corrections; where any harms have been caused to laborers, the unit shall be liable for compensations.

Article 90 Where the employing unit extends working hours of laborers in violation of the stipulations of this Law, the labor administrative department shall give it a warning, order it to make corrections, and may impose a fine.

Article 91 Where an employing unit infringes in any of the following ways the legitimate rights and interests of laborers, the labor administrative department shall order it to pay laborers remuneration or to make up for economic losses, and may also order it to pay compensations:

- (1) to deduct wages or delay in paying wages to laborers without reason;
- (2) to refuse to pay laborers remuneration for the extended working hours;
- (3) to pay laborers wages below the local standard on minimum wages; or
- (4) to fail to provide laborers with economic compensations in accordance with the provisions of this Law after revocation of labor contracts.

Article 92 Where the occupational safety facilities and health conditions of an employing unit do not comply with the provisions of the State or the unit fails to provide laborers with necessary labor protection facilities the labor administrative department or other relevant departments shall order it to make corrections, and may impose a fine. If circumstances are serious, the above-said departments shall apply to a people's government at or above the county level for a decision to order the unit to stop production for consolidation. If the unit fails to take measures against potential accident which later leads to the occurrence of a serious accident and the losses of laborers' lives and properties, criminal responsibilities shall be investigated against the persons in charge mutatis mutandis the stipulations of Article 187 of the Criminal Law.

Article 93 Where an employing unit forces laborers to operate with risks in violation of the rules and regulations, causing thus major accident of injuries and deaths, and serious consequences, criminal responsibilities of the person in charge shall be investigated according to law.

Article 94 Where an employing unit illegally recruits juveniles under the age of 16, the labor administrative department shall order it to make corrections, and impose a fine. If circumstances are serious, the administrative department for industry and commerce shall revoke its business license.

Article 95 Where an employing unit encroaches upon the legitimate rights and interests of female and juvenile workers in violation of the stipulations of this Law on their protection, the labor administrative department shall order it to make corrections, and impose a fine. If harms to female and juvenile workers have been caused, the unit shall assume the responsibility for compensations.

Article 96 Where an employing unit commits one of the following acts, the person in charge shall be taken by a public security organ into custody for 15 days or less, or fined, or given a warning; and criminal responsibilities shall be investigated against

the person in charge according to law if the act constitutes a crime:

(1) to force laborers to work by resorting to violence, intimidation or illegal restriction of personal freedom, or

(2) humiliating, giving corporal punishment, beating, illegally searching or detaining laborers.

Article 97 The employing unit shall bear the responsibility for compensation if the conclusion of any invalid contracts is attributed to the unit and have caused damages to laborers.

Article 98 The employing unit that revokes labor contracts or purposely delays the conclusion of labor contracts in violation of the conditions specified in this Law shall be ordered by the labor administrative department to make corrections and shall bear the responsibility for compensation if damages have been caused to laborers.

Article 99 The employing unit that recruits laborers whose labor contracts have not yet been revoked shall, according to law, assume joint responsibility for compensation if economic losses have been caused to the original employing unit of the laborers.

Article 100 The employing unit that fails to pay social insurance premium without reason shall be ordered by the labor administrative department to pay within fixed period of time. If the unit still fails to make the payment beyond the time limit, an additional arrear payment may be demanded.

Article 101 Where an employing unit unjustifiably obstructs the labor administrative department and other relevant departments as well as their functionaries from exercising the powers of supervision and inspection or retaliates informers, the labor administrative department or other relevant departments shall impose fines upon the unit. If a crime is constituted, the person in charge shall be investigated for criminal responsibilities according to law.

Article 102 Laborers who revoke labor contracts in violation of the conditions specified in this Law or violate terms on secret-keeping matters agreed upon in the labor contracts and thus have caused economic losses to the employing unit shall be liable for compensation in accordance with the law.

Article 103 The functionaries of the labor administrative department or other relevant departments who abuse their functions and powers, neglect their duties, and engage in malpractices for selfish ends, shall be investigated for criminal responsibilities according to law if a crime is constituted, or shall be given an administrative sanction if the offenses do not yet constitute a crime.

Article 104 The functionaries of the State or the agencies in charge of social insurance funds who misappropriate the social insurance funds, shall be investigated for criminal responsibilities according to law if a crime is constituted.

Article 105 Where other laws or administrative rules and regulations have already specified punishments for the encroachment of the legitimate rights and interests of

laborers that also violate the stipulations of this Law, punishments shall be given in accordance with the stipulations of those laws or administrative rules and regulations.

#### Chapter XIII Supplementary Provisions

Article 106 People's governments of provinces, autonomous regions and municipalities directly under the Central Government shall work out the implementing measures for the labor contract system according to this Law and in light of their local conditions, and report the measures to the State Council for the record.

Article 107 This Law shall enter into force as of January 1, 1995.

1994年7月5日第八届全国人民代表大会常务委员会第八次会议通过

1994年7月5日中华人民共和国主席令第二十八号公布

自1995年1月1日起施行

## 第一章 总 则

第一条 为了保护劳动者的合法权益，调整劳动关系，建立和维护适应社会主义市场经济的劳动制度，促进经济发展和社会进步，根据宪法，制定本法。

第二条 在中华人民共和国境内的企业、个体经济组织(以下统称用人单位)和与之形成劳动关系的劳动者，适用本法。

国家机关、事业组织、社会团体和与之建立劳动合同关系的劳动者，依照本法执行。

第三条 劳动者享有平等就业和选择职业的权利、取得劳动报酬的权利、休息休假的权利、获得劳动安全卫生保护的权利、接受职业技能培训的权利、享受社会保险和福利的权利、提请劳动争议处理的权利以及法律规定的其他劳动权利。

劳动者应当完成劳动任务，提高职业技能，执行劳动安全卫生规程，遵守劳动纪律和职业道德。

第四条 用人单位应当依法建立和完善规章制度，保障劳动者享有劳动权利和履行劳动义务。

第五条 国家采取各种措施，促进劳动就业，发展职业教育，制定劳动标准，调节社会收入，完善社会保险，协调劳动关系，逐步提高劳动者的生活水平。

第六条 国家提倡劳动者参加社会义务劳动，开展劳动竞赛和合理化建议活动，鼓励和保护劳动者进行科学研究、技术革新和发明创造，表彰和奖励劳动模范和先进工作者。

第七条 劳动者有权依法参加和组织工会。

工会代表和维护劳动者的合法权益，依法独立自主地开展活动。

第八条 劳动者依照法律规定，通过职工大会、职工代表大会或者其他形式，参与民主管理或者就保护劳动者合法权益与用人单位进行平等协商。

第九条 国务院劳动行政部门主管全国劳动工作。

县级以上地方人民政府劳动行政部门主管本行政区域内的劳动工作。

## 第二章 促进就业

第十条 国家通过促进经济和社会发展，创造就业条件，扩大就业机会。

国家鼓励企业、事业组织、社会团体在法律、行政法规规定的范围内兴办产业或者拓展经营，增加就业。

国家支持劳动者自愿组织起来就业和从事个体经营实现就业。

第十一条 地方各级人民政府应当采取措施，发展多种类型的职业介绍机构，提供就业服务。

第十二条 劳动者就业，不因民族、种族、性别、宗教信仰不同而受歧视。

第十三条 妇女享有与男子平等的就业权利。在录用职工时，除国家规定的不适合妇女的工种或者岗位外，不得以性别为由拒绝录用妇女或者提高对妇女的录用标准。

第十四条 残疾人、少数民族人员、退出现役的军人的就业，法律、法规有特别规定的，从其规定。

第十五条 禁止用人单位招用未满十六周岁的未成年人。

文艺、体育和特种工艺单位招用未满十六周岁的未成年人，必须依照国家有关规定，履行审批手续，并保障其接受义务教育的权利。

### 第三章 劳动合同和集体合同

第十六条 劳动合同是劳动者与用人单位确立劳动关系、明确双方权利和义务的协议。

建立劳动关系应当订立劳动合同。

第十七条 订立和变更劳动合同，应当遵循平等自愿、协商一致的原则，不得违反法律、行政法规的规定。

劳动合同依法订立即具有法律约束力，当事人必须履行劳动合同规定的义务。

第十八条 下列劳动合同无效：

- (一) 违反法律、行政法规的劳动合同；
- (二) 采取欺诈、威胁等手段订立的劳动合同。

无效的劳动合同，从订立的时候起，就没有法律约束力。确认劳动合同部分无效的，如果不影响其余部分的效力，其余部分仍然有效。

劳动合同的无效，由劳动争议仲裁委员会或者人民法院确认。



第十九条 劳动合同应当以书面形式订立，并具备以下条款：

- (一) 劳动合同期限；
- (二) 工作内容；
- (三) 劳动保护和劳动条件；
- (四) 劳动报酬；
- (五) 劳动纪律；
- (六) 劳动合同终止的条件；
- (七) 违反劳动合同的责任。

劳动合同除前款规定的必备条款外，当事人可以协商约定其他内容。

第二十条 劳动合同的期限分为有固定期限、无固定期限和以完成一定的工作为期限。

劳动者在同一用人单位连续工作满十年以上，当事人双方同意续延劳动合同的，如果劳动者提出订立无固定期限的劳动合同，应当订立无固定期限的劳动合同。

第二十一条 劳动合同可以约定试用期。试用期最长不得超过六个月。

第二十二条 劳动合同当事人可以在劳动合同中约定保守用人单位商业秘密的有关事项。

第二十三条 劳动合同期满或者当事人约定的劳动合同终止条件出现，劳动合同即行终止。

第二十四条 经劳动合同当事人协商一致，劳动合同可以解除。

第二十五条 劳动者有下列情形之一的，用人单位可以解除劳动合同：

- (一) 在试用期间被证明不符合录用条件的；
- (二) 严重违反劳动纪律或者用人单位规章制度的；
- (三) 严重失职，营私舞弊，对用人单位利益造成重大损害的；
- (四) 被依法追究刑事责任的。

第二十六条 有下列情形之一的，用人单位可以解除劳动合同，但是应当提前三十日以书面形式通知劳动者本人：

- (一) 劳动者患病或者非因工负伤，医疗期满后，不能从事原工作也不能从事由用人单位另行安排的工作的；
- (二) 劳动者不能胜任工作，经过培训或者调整工作岗位，仍不能胜任工作的；
- (三) 劳动合同订立时所依据的客观情况发生重大变化，致使原劳动合同无法履行，经当事人协商不能就变更劳动合同达成协议的。

第二十七条 用人单位濒临破产进行法定整顿期间或者生产经营状况发生严重困难，确需裁减人员的，应当提前三十日向工会或者全体职工说明情况，听取工会或者职工的意见，经向劳动行政部门报告后，可以裁减人员。

用人单位依据本条规定裁减人员，在六个月内录用人员的，应当优先录用被裁减的人员。

第二十八条 用人单位依据本法第二十四条、第二十六条、第二十七条的规定解除劳动合同的，应当依照国家有关规定给予经济补偿。

第二十九条 劳动者有下列情形之一的，用人单位不得依据本法第二十六条、第二十七条的规定解除劳动合同：

- (一)患职业病或者因工负伤并被确认丧失或者部分丧失劳动能力的；
- (二)患病或者负伤，在规定的医疗期内的；
- (三)女职工在孕期、产期、哺乳期内的；
- (四)法律、行政法规规定的其他情形。

第三十条 用人单位解除劳动合同，工会认为不适当的，有权提出意见。如果用人单位违反法律、法规或者劳动合同，工会有权要求重新处理；劳动者申请仲裁或者提起诉讼的，工会应当依法给予支持和帮助。

第三十一条 劳动者解除劳动合同，应当提前三十日以书面形式通知用人单位。

第三十二条 有下列情形之一的，劳动者可以随时通知用人单位解除劳动合同：

- (一)在试用期内的；
- (二)用人单位以暴力、威胁或者非法限制人身自由的手段强迫劳动的；
- (三)用人单位未按照劳动合同约定支付劳动报酬或者提供劳动条件的。

第三十三条 企业职工一方与企业可以就劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利等事项，签订集体合同。集体合同草案应当提交职工代表大会或者全体职工讨论通过。

· 集体合同由工会代表职工与企业签订；没有建立工会的企业，由职工推举的代表与企业签订。

第三十四条 集体合同签订后应当报送劳动行政部门；劳动行政部门自收到集体合同文本之日起十五日内未提出异议的，集体合同即行生效。

第三十五条 依法签订的集体合同对企业和企业全体职工具有约束力。职工个人与企业订立的劳动合同中劳动条件和劳动报酬等标准不得低于集体合同的规定。

#### 第四章 工作时间和休息休假

第三十六条 国家实行劳动者每日工作时间不超过八小时、平均每周工作时间不超过四十四小时的工时制度。

第三十七条 对实行计件工作的劳动者，用人单位应当根据本法第三十六条规定的工时制度合理确定其劳动定额和计件报酬标准。

第三十八条 用人单位应当保证劳动者每周至少休息一日。

第三十九条 企业因生产特点不能实行本法第二十六条、第三十八条规定的，经劳动行政部门批准，可以实行其他工作和休息办法。

第四十条 用人单位在下列节日期间应当依法安排劳动者休假：

（一）元旦；

（二）春节；

（三）国际劳动节；

（四）国庆节；

(五)法律、法规规定的其他休假日。

第四十一条 用人单位由于生产经营需要，经与工会和劳动者协商后可以延长工作时间，一般每日不得超过一小时；因特殊原因需要延长工作时间的，在保障劳动者身体健康的条件下延长工作时间每日不得超过三小时，但是每月不得超过三十六小时。

第四十二条 有下列情形之一的，延长工作时间不受本法第四十一条的限制：

(一)发生自然灾害、事故或者因其他原因，威胁劳动者生命健康和财产安全，需要紧急处理的；

(二)生产设备、交通运输线路、公共设施发生故障，影响生产和公众利益，必须及时抢修的；

(三)法律、行政法规规定的其他情形。

第四十三条 用人单位不得违反本法规定延长劳动者的工作时间。

第四十四条 有下列情形之一的，用人单位应当按照下列标准支付高于劳动者正常工作时间工资的工资报酬：

(一)安排劳动者延长工作时间的，支付不低于工资的百分之一百五十的工资报酬；

(二)休息日安排劳动者工作又不能安排补休的，支付不低于工资的百分之二百的工资报酬；

(三)法定休假日安排劳动者工作的，支付不低于工资的百分之三百的工资报酬。

第四十五条 国家实行带薪年休假制度。

劳动者连续工作一年以上的，享受带薪年休假。具体办法由国务院规定。

## 第五章 工 资

第四十六条 工资分配应当遵循按劳分配原则，实行同工同酬。

工资水平在经济发展的基础上逐步提高。国家对工资总量实行宏观调控。

第四十七条 用人单位根据本单位的生产经营特点和经济效益，依法自主确定本单位的工资分配方式和工资水平。

第四十八条 国家实行最低工资保障制度。最低工资的具体标准由省、自治区、直辖市人民政府规定，报国务院备案。

用人单位支付劳动者的工资不得低于当地最低工资标准。

第四十九条 确定和调整最低工资标准应当综合参考下列因素：

（一）劳动者本人及平均赡养人口的最低生活费用；

（二）社会平均工资水平；

（三）劳动生产率；

（四）就业状况；

（五）地区之间经济发展水平的差异。

第五十条 工资应当以货币形式按月支付给劳动者本人。不得克扣或者无故拖欠劳动者的工资。

第五十一条 劳动者在法定休假日和婚丧假期间以及依法参加社会活动期间，用人单位应当依法支付工资。

## 第六章 劳动安全卫生

第五十二条 用人单位必须建立、健全劳动安全卫生制度，严格执行国家劳动安全卫生规程和标准，对劳动者进行劳动安全卫生教育，防止劳动过程中的事故，减少职业危害。

第五十三条 劳动安全卫生设施必须符合国家规定的标准。

新建、改建、扩建工程的劳动安全卫生设施必须与主体工程同时设计、同时施工、同时投入生产和使用。

第五十四条 用人单位必须为劳动者提供符合国家规定的劳动安全卫生条件和必要的劳动防护用品，对从事有职业危害作业的劳动者应当定期进行健康检查。

第五十五条 从事特种作业的劳动者必须经过专门培训并取得特种作业资格。

第五十六条 劳动者在劳动过程中必须严格遵守安全操作规程。

劳动者对用人单位管理人员违章指挥、强令冒险作业，有权拒绝执行；对危害生命安全和身体健康的行为，有权提出批评、检举和控告。

第五十七条 国家建立伤亡事故和职业病统计报告和处理制度。县级以上各级人民政府劳动行政部门、有关部门和用人单位应当依法对劳动者在劳动过程中发生的伤亡事故和劳动者的职业病状况，进行统计、报告和处理。

## 第七章 女职工和未成年工特殊保护

第五十八条 国家对女职工和未成年工实行特殊劳动保护。

未成年工是指年满十六周岁未满十八周岁的劳动者。

第五十九条 禁止安排女职工从事矿山井下、国家规定的第四级体力劳动强度的劳动和其他禁忌从事的劳动。

第六十条 不得安排女职工在经期从事高处、低温、冷水作业和国家规定的第三级体力劳动强度的劳动。

第六十一条 不得安排女职工在怀孕期间从事国家规定的第三级体力劳动强度的劳动和孕期禁忌从事的劳动。对怀孕七个月以上的女职工，不得安排其延长工作时间和夜班劳动。

第六十二条 女职工生育享受不少于九十天的产假。

第六十三条 不得安排女职工在哺乳未满一周岁的婴儿期间从事国家规定的第三级体力劳动强度的劳动和哺乳期禁忌从事的其他劳动，不得安排其延长工作时间和夜班劳动。

第六十四条 不得安排未成年工从事矿山井下、有毒有害、国家规定的第四级体力劳动强度的劳动和其他禁忌从事的劳动。

第六十五条 用人单位应当对未成年工定期进行健康检查。

## 第八章 职业培训

第六十六条 国家通过各种途径，采取各种措施，发展职业培训事业，开发劳动者的职业技能，提高劳动者素质，增强劳动者的就业能力和工作能力。

第六十七条 各级人民政府应当把发展职业培训纳入社会经济发展的规划，鼓励和支持有条件的企业、事业组织、社会团体和个人进行各种形式的职业培训。



第六十八条 用人单位应当建立职业培训制度，按照国家规定提取和使用职业培训经费，根据本单位实际，有计划地对劳动者进行职业培训。

从事技术工种的劳动者，上岗前必须经过培训。

第六十九条 国家确定职业分类，对规定的职业制定职业技能标准，实行职业资格证书制度，由经过政府批准的考核鉴定机构负责对劳动者实施职业技能考核鉴定。

## 第九章 社会保险和福利

第七十条 国家发展社会保险事业，建立社会保险制度，设立社会保险基金，使劳动者在年老、患病、工伤、失业、生育等情况下获得帮助和补偿。

第七十一条 社会保险水平应当与社会经济发展水平和社会承受能力相适应。

第七十二条 社会保险基金按照保险类型确定资金来源，逐步实行社会统筹。用人单位和劳动者必须依法参加社会保险，缴纳社会保险费。

第七十三条 劳动者在下列情形下，依法享受社会保险待遇：

- (一) 退休；
- (二) 患病、负伤；
- (三) 因工伤残或者患职业病；
- (四) 失业；
- (五) 生育。

劳动者死亡后，其遗属依法享受遗属津贴。

劳动者享受社会保险待遇的条件和标准由法律、法规规定。

劳动者享受的社会保险金必须按时足额支付。

第七十四条 社会保险基金经办机构依照法律规定收支、管理和运营社会保险基金，并负有使社会保险基金保值增值的责任。

社会保险基金监督机构依照法律规定，对社会保险基金的收支、管理和运营实施监督。

社会保险基金经办机构和社会保险基金监督机构的设立和职能由法律规定。

任何组织和个人不得挪用社会保险基金。

第七十五条 国家鼓励用人单位根据本单位实际情况为劳动者建立补充保险。

国家提倡劳动者个人进行储蓄性保险。

第七十六条 国家发展社会福利事业，兴建公共福利设施，为劳动者休息、休养和疗养提供条件。

用人单位应当创造条件，改善集体福利，提高劳动者的福利待遇。

## 第十章 劳动争议

第七十七条 用人单位与劳动者发生劳动争议，当事人可以依法申请调解、仲裁、提起诉讼，也可以协商解决。

调解原则适用于仲裁和诉讼程序。

第七十八条 解决劳动争议，应当根据合法、公正、及时处理的原则，依法维护劳动争议当事人的合法权益。

第七十九条 劳动争议发生后，当事人可以向本单位劳动争议调解委员会申请调解；调解不成，当事人一方要求仲裁的，可以向劳动争议仲裁委员会申请仲裁。当事人一方也可以直接向劳动争议仲裁委员会申请仲裁。对仲裁裁决不服的，可以向人民法院提起诉讼。

第八十条 在用人单位内，可以设立劳动争议调解委员会。劳动争议调解委员会由职工代表、用人单位代表和工会代表组成。劳动争议调解委员会主任由工会代表担任。

劳动争议经调解达成协议的，当事人应当履行。

第八十一条 劳动争议仲裁委员会由劳动行政部门代表、同级工会代表、用人单位方面的代表组成。劳动争议仲裁委员会主任由劳动行政部门代表担任。

第八十二条 提出仲裁要求的一方应当自劳动争议发生之日起六十日内向劳动争议仲裁委员会提出书面申请。仲裁裁决一般应在收到仲裁申请的六十日内作出。对仲裁裁决无异议的，当事人必须履行。

第八十三条 劳动争议当事人对仲裁裁决不服的，可以自收到仲裁裁决书之日起十五日内向人民法院提起诉讼。一方当事人在法定期限内不起诉又不履行仲裁裁决的，另一方当事人可以申请人民法院强制执行。

第八十四条 因签订集体合同发生争议，当事人协商解决不成的，当地人民政府劳动行政部门可以组织有关各方协调处理。

因履行集体合同发生争议，当事人协商解决不成的，可以向劳动争议仲裁委员会申请仲裁；对仲裁裁决不服的，可以自收到仲裁裁决书之日起十五日内向人民法院提起诉讼。

## 第十一章 监督检查

第八十五条 县级以上各级人民政府劳动行政部门依法对用人单位遵守劳动法律、法规的情况进行监督检查，对违反劳动法律、法规的行为有权制止，并责令改正。

第八十六条 县级以上各级人民政府劳动行政部门监督检查人员执行公务，有权进入用人单位了解执行劳动法律、法规的情况，查阅必要的资料，并对劳动场所进行检查。

县级以上各级人民政府劳动行政部门监督检查人员执行公务，必须出示证件，秉公执法并遵守有关规定。

第八十七条 县级以上各级人民政府有关部门在各自职责范围内，对用人单位遵守劳动法律、法规的情况进行监督。

第八十八条 各级工会依法维护劳动者的合法权益，对用人单位遵守劳动法律、法规的情况进行监督。

任何组织和个人对于违反劳动法律、法规的行为有权检举和控告。

## 第十二章 法律责任

第八十九条 用人单位制定的劳动规章制度违反法律、法规规定的，由劳动行政部门给予警告，责令改正；对劳动者造成损害的，应当承担赔偿责任。

第九十条 用人单位违反本法规定，延长劳动者工作时间的，由劳动行政部门给予警告，责令改正，并可以处以罚款。

第九十一条 用人单位有下列侵害劳动者合法权益情形之一的，由劳动行政部门责令支付劳动者的工资报酬、经济补偿，并可以责令支付赔偿金：

- (一) 克扣或者无故拖欠劳动者工资的；
- (二) 拒不支付劳动者延长工作时间工资报酬的；
- (三) 低于当地最低工资标准支付劳动者工资的；
- (四) 解除劳动合同后，未依照本法规定给予劳动者经济补偿的。

第九十二条 用人单位的劳动安全设施和劳动卫生条件不符合国家规定或者未向劳动者提供必要的劳动防护用品和劳动保护设施的，由劳动行政部门或者有关部门责令改正，可以处以罚款；情节严重的，提请县级以上人民政府决定责令停产整顿；对事故隐患不采取措施，致使发生重大事故，造成劳动者生命和财产损失的，对责任人员比照刑法第一百八十七条的规定追究刑事责任。

第九十三条 用人单位强令劳动者违章冒险作业，发生重大伤亡事故，造成严重后果的，对责任人员依法追究刑事责任。

第九十四条 用人单位非法招用未满十六周岁的未成年人的，由劳动行政部门责令改正，处以罚款；情节严重的，由工商行政管理部门吊销营业执照。

第九十五条 用人单位违反本法对女职工和未成年工的保护规定，侵害其合法权益的，由劳动行政部门责令改正，处以罚款；对女职工或者未成年工造成损害的，应当承担赔偿责任。

第九十六条 用人单位有下列行为之一，由公安机关对责任人员处以十五日以下拘留、罚款或者警告；构成犯罪的，对责任人员依法追究刑事责任：

(一)以暴力、威胁或者非法限制人身自由的手段强迫劳动的；

(二)侮辱、体罚、殴打、非法搜查和拘禁劳动者的。

第九十七条 由于用人单位的原因订立的无效合同，对劳动者造成损害的，应当承担赔偿责任。

第九十八条 用人单位违反本法规定的条件解除劳动合同或者故意拖延不订立劳动合同的，由劳动行政部门责令改正；对劳动者造成损害的，应当承担赔偿责任。

第九十九条 用人单位招用尚未解除劳动合同的劳动者，对原用人单位造成经济损失的，该用人单位应当依法承担连带赔偿责任。

第一百条 用人单位无故不缴纳社会保险费的，由劳动行政部门责令其限期缴纳，逾期不缴的，可以加收滞纳金。

第一百零一条 用人单位无理阻挠劳动行政部门、有关部门及其工作人员行使监督检查权，打击报复举报人员的，由劳动行政部门或者有关部门处以罚款；构成犯罪的，对责任人员依法追究刑事责任。

第一百零二条 劳动者违反本法规定的条件解除劳动合同或者违反劳动合同中约定的保密事项，对用人单位造成经济损失的，应当依法承担赔偿责任。

第一百零三条 劳动行政部门或者有关部门的工作人员滥用职权、玩忽职守、徇私舞弊，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。

第一百零四条 国家工作人员和社会保险基金经办机构的工作人员挪用社会保险基金，构成犯罪的，依法追究刑事责任。

第一百零五条 违反本法规定侵害劳动者合法权益，其他法律、法规已规定处罚的，依照该法律、行政法规的规定处罚。

### 第十三章 附 则

第一百零六条 省、自治区、直辖市人民政府根据本法和本地区的实际情况，规定劳动合同制度的实施步骤，报国务院备案。

第一百零七条 本法自1995年1月1日起施行。