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25 May 2012

Ms J Reid  
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Australian Customs and Border Protection Service  
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commercial-international

By email

Dear Joanne

## Investigation concerning aluminium road wheels from China Alleged information deficiencies - Statement of Essential Facts No. 181

We refer to Statement of Essential Facts 181 ("the SEF") published by Australian Customs and Border Protection Service ("Australian Customs") on 27 April 2012.

In the SEF, Australian Customs alleges that there were certain deficiencies in the information provided by the Government of China ("GOC") in its responses to the Government Questionnaire ("GQ") and Supplementary Government Questionnaire ("SGQ"). This letter and its related attachments represent the GOC's response and clarification to some of those deficiencies.

At the outset, the GOC would note that it has previously provided submissions regarding its ability to supply the information requested by Australian Customs in the ARW investigation. In this regard, the GOC refers to the explanations regarding the information provided in its responses to the GQ and SGQ. The GOC reiterates those submissions now. The GOC's capacity to answer certain questions has not changed since the lodgement of those submissions.

### **A Industrial Development Policy of the Aluminium Industry and the Special Planning for Aluminium Industry Development**

The SEF notes that the GOC has not provided copies of these two documents, and considers them to be part of the broad "GOC impact" on the aluminium industry.

The GOC has previously explained that these documents have not been formally published and therefore could not be provided for the purposes of the investigation. This, incidentally, precludes these documents from having any impact on GOC policy and/or the Chinese domestic aluminium market. Any contrary characterisation is purely wrong and, without reason or justification, completely disregards the relevant information provided by the GOC.

**B Whether SASAC, the Ministry of Commerce or the NDRC has approved the addition or reduction of any ARW capacity since 2006**

The SEF notes that, in response to question C3.1(c) of the GQ, the GOC has stated it "does not compile a list of such projects".

This is not an entirely accurate representation of the answer provided by the GOC. The Response given by the GOC read:

*For approval of aluminium projects, please refer to the response to the question C2.9(k) and C3.1(a) above. ARW is not subject to any approval beyond normal programming/zoning and environment impact analysis.*

*The GOC does not compile such a list of projects of ARW or of aluminium.*

To clarify - it is not the role of SASAC or the Ministry of Commerce to regulate, authorise, or otherwise approve the production capacity adjustment of industries, such as the electrolytic aluminium industry. While the NDRC has the broad oversight and administration of the laws relating to approval of addition or reduction in capacity, such approvals are also administered on a provincial and local level by local development and reform commissions. As may be the case between authorities in the States and local governments in Australia, there are differences in the way policies are implemented in different jurisdictions and, resultantly, in the information collected and compiled by each jurisdiction.

The GOC would also note that the decision to reduce capacity is one for the individual manufacturer to make. Such a choice could be made for any number of commercial reasons. For example, it could be that the manufacturer's business is not profitable, and so it may choose to leave the market. When a manufacturer makes such a decision it does not necessarily report or advise the GOC at a local, provincial or state level.

For such reasons, the GOC confirms that it cannot provide lists of the approval of addition or reduction of capacity in the ARW or any other industry.

**C Interim Provisions on Promoting Industrial Structure Adjustments and the Directory Catalogue on Readjustment of Industrial Structures**

The SEF notes that in Appendix A of the GQ, the GOC explained that the *Interim Provisions on Promoting Structure Adjustments* ("Interim Provisions") were abolished, but that no date as to the abolition was provided.

The GOC wishes to clarify this point. It is not the Interim Provisions that were abolished: it was the 2005 version of the *Directory Catalogue on Readjustment of Industrial Structures* ("Directory Catalogue"), which had been repealed by and replaced with the 2011 version of the Directory Catalogue. The two documents are part of the same policy. The Interim Provision sets out the criteria under which certain production processes may be classified as "encouraged", "restricted", or "eliminated" and how GOC agencies may deal with such processes. The Directory Catalogue identifies what production processes actually fall within these categories. Australian Customs will note that the majority of "encouraged" enterprises in the aluminium industry relate to the recycling of such metal. The environmental purpose of this policy cannot be ignored.

Australian Customs also notes that the 2011 version of the Directory Catalogue was only translated in so far as it related to the iron and steel industry. An updated version of the Directory Catalogue, with information regarding the aluminium industry translated, is attached. Please refer to Attachment A42 - *Directory Catalogue on Readjustment of Industrial Structures*.

**D     *Announcement of the 2010 List of Entities Subject to Elimination of Backward Production Capacity in Industry Sector***

The SEF notes that the translated version of the appendix to this document only contained information relevant to the iron and steel industry. A new translation of the document has been prepared. Please refer to Attachment A33 - *Announcement of the 2010 List of Entities Subject to Elimination of Backward Production Capacity in Industry Sector*.

**E     *"Monitoring Report System for Price of National Important Means of Production"***

Article 28 of the *Price Law* provides that a price monitoring mechanism shall be created for various purposes. In the GQ, the GOC explained that aluminium was subject to price monitoring. Question 14(i) of the SGQ requested "*a copy of the price monitoring report for aluminium and alumina*". In that regard the GOC explained that:

*Price collecting/submitting entities are not required to provide a specific report to price authorities under the administrative system which is in effect.*

The SEF explains that Australian Customs considers this answer was not a fully cooperative response to the question raised in the SGQ. The GOC would like to clarify this matter.

The price data referred to in the GOC's response to the GQ relates to information gathered by local price monitoring authorities from 36 designated cities in China. Each local authority will choose entities within its jurisdiction to report prices for the goods they produce, sell or market. For an example of the format of a report, please refer to:

- Attachment 161- Periodic report form of price of industrial production inputs.

These reports are then compiled by the local price monitoring authority and then passed on to the provincial price monitoring authorities. An information paper *may* be created and published partially based on the data so collected. See for example:

- Attachment 162 - *Price Information Paper for Jingmen City*.

The provincial price monitoring authority will collate the different city price data reports so it can get an idea of how prices are acting throughout the province. Where prices are acting erratically (for example, where there is a 10% or greater fluctuation in prices in a short period) the authority will seek to establish why the prices are behaving so. The Provincial pricing authority may also produce a province-wide briefing paper, which may be made publicly available. Please refer to:

- Attachment 163 -Guangdong Price Bureau aluminium price information.

As should be clear from this explanation, although the price of aluminium and alumina is monitored, no comprehensive report on prices of aluminium and alumina is prepared by any agency. This is the reason for the GOC's answer to the GSQ. It is not the role of the price monitoring system to forensically monitor the price of aluminium and alumina throughout China.

Additionally, Australian Customs will note that Attachment 162 is concerned with the movements of the Consumer Price Index and the Producer Price Purchase Index. Such economic measures are the true concern of the price monitoring system. These measures are common features throughout market economies worldwide. No intimation or government influence on price can or should be drawn from such activities.

#### **F Companies' Annual Reports**

In the SEF Australian Customs notes that several requested annual reports were not provided, or were not provided in English. Australian Customs states that it reasonably considers that the GOC would have access to these reports, given the status of the relevant entities as SIEs.

The GOC refers Australian Customs to its response to Question C3.11 of the GQ. The GOC explained that it did not collect much of the information requested by Australian Customs, and could only provide what information it could collect from public sources. The GOC notes that several companies identified by Australian Customs are privately-held companies. As in Australian corporations law, there is no requirement for such entities to prepare or publish annual reports. The GOC cannot provide information that does not exist.

The GOC notes that it was able to provide substantial volumes of information about each of the entities referred to in Question C3.11. The GOC notes that the information requested by Australian Customs was complex and overly burdensome and, in general, not relevant to the investigation at hand. As an example of this, the GOC has compiled further information from the website of Zhejiang Jinfei regarding its business scope and that of its subsidiaries. As Australian Customs will note, a large majority of the information relates to businesses which have no relevance to the ARW production process. Please refer to Attachment 164 - Zhejiang Jinfei Group information.

#### **G Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People**

The SEF is apparently critical of the GOC for not providing this law. This criticism appears to be based on the fact that the GOC provided the Law to Australian Customs in answer to "exactly" the same question in the HSS investigation.

The GOC notes that it provided the Law to Australian Customs in answer to this question in the HSS investigation:

*For each category of SOE, provide an explanation of the characteristics of these types of SOEs, including level of government ownership, influence and control.*

The GOC considers that the answer it provided – to the same question in the ARW investigation – was full and appropriate. Australian Customs did not request the GOC to provide a copy of this law. No requirement for the provision of this law – or any other – could be implied within the bounds of the question, nor was it requested subsequently in the SGQ. The GOC notes that the non-provision of a copy of the law in the GOC's response to the GQ did not prevent the ARW investigation team from having access to this document – because the GOC had already provided it in the almost parallel HSS investigation. Therefore the grounds for Australian Customs' criticism in this regard are obscure.

The law was enacted in 1988. The law is a relic of its times. Although it is still a Chinese "law", it

has been over-ridden and amended in its application by the many more modern laws that have been enacted over the 24 years since 1988. Many of the terms, laws and concepts contained in that law are out-dated and are not relevant to the modern Chinese economy or legal system. The authors of the SEF should be aware of this from their knowledge of the GOC's response to the GQ and SGQ in the HSS investigation.

Finally, the GOC would note that the law relates only to a specific subset of SIEs – being Wholly State-Owned Enterprises. In line with the modernisation of the Chinese economy, the number of Wholly-State Owned Enterprises has significantly decreased since 1988. The law is therefore of little relevance to the operation of SIEs during the period of investigation.

The GOC now resubmits the law. Please refer to Attachment 165 – *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People*.

In addition, the GOC also resubmits, as Attachment 166 in this investigation, the *Decision of the Standing Committee of the National People's Congress on Amending Some Laws* (2009). As explained in the HSS investigation, this Decision amends some functions of the *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People*. In particular, we note that the Decision removes redundant provisions of the Law having to do with mandatory planning.

Additionally, and for the sake of completeness, we would note that the Decisions of the Standing Committee of the National People's Conference also amend the *Principles of the Civil Law*. In this regard, please refer to:

- Attachment 167 – *Principles of the Civil Law* (1986); and
- Attachment 168 – *Principles of Civil Law* (2009).

**H Information regarding selected non-cooperating exporters for the purposes of determining "benefit" under Program 1**

In relation to Program 1, Australian Customs notes that no information was provided by either the GOC or by certain individual exporters themselves to identify whether a financial contribution had been received. Therefore, purportedly in accordance with Section 269TACC(7), Australian Customs deemed non-cooperating exporters to have the highest level of "benefit" under Program 1 (the highest level found for any of the selected exporters).

With respect, this proposition is incorrect. As Australian Customs is well aware, the GOC has repeatedly stated that Program 1 does not exist. No information of the kind sought by Australian Customs could be provided, because, unsurprisingly, that information does not exist.

**I A list of all Chinese ARW producers and/or exporters that have produced and/or exported ARWs destined for Australia during the investigation period that applied for, accrued, or received benefits under alleged Programs 1-56**

The SEF criticises the GOC for limiting its responses in this regard in the GQ to the responding enterprises and "apparently" only to the cooperating exporters under the SGQ.

This is incorrect. The GOC would firstly point out that Australian Customs only identified five

cooperative exporters. The responding companies included details of seven ARW exporters – four of which were included in the top 10 ARW exporters – in both the GQ and the SGQ

The GOC takes issue with Australian Customs' position towards non-cooperative exporters in this regard, which the SEF explained as follows:

*In the absence of relevant information to identify enterprises that had received financial contributions under each of the investigated subsidy programs, Customs and Border Protection has had regard to the available relevant facts and determines that non-cooperating exporters have received financial contributions that have conferred a benefit under all programs found to be countervailable in relation to ARWs.*

It would appear that this position was reached, firstly, through the assumption that non-cooperative exporters would have received a financial benefit under each program and, secondly, through the calculation of a maximum benefit for non-cooperative exporters under Section 269TACC(7) of the *Customs Act 1901*.

There is no express legislative power under which this assumption can be made. It is illogical and highly prejudicial to Chinese industry. Despite the wording of the SEF it appears that relevant facts were disregarded in making such an assumption.

For example, with relation to alleged Programs 4, 21, 29, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 50, 51, 53 and 56, the SEF notes that the programs are limited to entities in certain regions. Australian Customs explains that the GOC did not provide information regarding the location of ARW exporters, and so all non-cooperative exporters were deemed to have received a financial benefit under these programs. This is factually incorrect.

The GOC refers Australian Customs to:

- Attachments 1, 143 and 145 - which provide the addresses of the responding companies as well as the top ARW exporters operating in China, and explains whether those exporters operate in any "zone"; and
- the GOCs response to Question C3.11 - which provides the addresses of certain entities involved in exports or ARW.

To the extent that Australian Customs has assumed that these entities have received benefits under each of the above mentioned programs, it cannot be said to have done so having regard to "the available relevant facts".

Similarly, with relation to alleged Programs 2, 3, 4, 5, 7, 8, 9, 13, 14 and 22 the SEF notes that the programs are limited to foreign-invested entities. Australian Customs explains that the GOC did not provide information regarding the enterprise ownership information of ARW exporters, and so it was assumed that all non-cooperative exporters had received a financial benefit under these programs. This is also factually incorrect. The GOC refers Australian Customs to:

- Attachments 1, 143 and 145 - which detail the enterprise ownership of the top exporters of ARW as well as the responding exporters; and
- the GOCs response to Question C3.11 which provides the similar details of other entities involved in the export of ARWs.

To the extent that Australian Customs has assumed that these entities have received benefits under each of these programs, it cannot be said to have done so having regard to "the available relevant facts".

Indeed, according to the SEF, Australian Customs disregarded its own relevant information:

*Customs and Border Protection's commercial database does list 'supplier' addresses, but it is not certain for each 'supplier' whether they are in fact the exporter of the goods, and whether the supplier operates in more locations than that listed (e.g. the listed location could represent a central or head office of an enterprise that operates ARW manufacturing facilities in multiple locations in China). Customs and Border Protection's commercial database does not collect information about suppliers' FIE status, or whether they are considered 'high-tech' by the GOC.*

The decision to disregard this information on the basis of untested concerns regarding its accuracy is questionable. This is particularly apparent in light of the actual methodology adopted in the SEF - to assume that each supplier receives every geographically-based alleged subsidy. This methodology will lead to an outcome that is both manifestly inaccurate and grossly prescriptive and which cannot be claimed to reflect the relevant facts before Australian Customs. The GOC submits that it is better to rely on information which might not be "certain", rather than to adopt a methodology which is unquestionably inaccurate.

To the extent that entities not identified in these documents are assumed to have received payments under all of these programs, the logic is obviously faulty and the outcome is unfair to Chinese businesses. The GOC wishes to remind Australian Customs that a dumping investigation is an expensive and extensive exercise for an exporter to take part in. Many smaller exporters do not have the capacity to undertake such an exercise in defence of their rights. It is clear that the provision of one geographically-based Program is mutually exclusive to the provision of another geographically-based Program in a different city or province.

Finally, the GOC would submit that Section 269TACC(7) does not give Australian Customs the power to apply the highest subsidy rates to non-cooperative exporters. That Section is not a substitute for Section 269TAC(6) in the countervailing context, and should not be used as such. The approach adopted will result in the imposition of countervailing duties on Chinese companies which are punitive and unfair.

J Information regarding the legal structure of the enterprises showing the percentage ownership by the GOC and other entities, the ownership of all entities including subsidiaries and parent companies (also indicating the function and roles of each associated entity including whether they are involved in the production of aluminium, ARW's or other aluminium products)

Australian Customs considers that no detailed response was provided in answer to Question D2.25 of the GQ, which requested information regarding the legal structures and ownership of all entities (including subsidiaries and parent companies) for all State-Owned Enterprises identified in responses to Questions B3 and B4.

As the GOC explained in response to question D2.25, the GOC does not collect this kind of data. Further, it should be noted that the scope of the question and the information sought was extremely broad and of questionable relevance to the investigation as a whole.

However, the conclusion that no information was provided is not correct. Attachment 1 provided a list of the largest ARW exporters, including the percentage of GOC shareholding for each company. Attachment 2 also included relevant details regarding each of the responding aluminium suppliers, and included the business registration certificates for each of those companies. Similarly, Attachment 140, submitted with the SGQ, contained relevant information in this regard.

...

The GOC hopes that this clarifies these matters to the satisfaction of Australian Customs.

The GOC has at all times acted to the best of its ability to provide the information that has been requested by Australian Customs. To this end, substantial volumes of data and documents have been provided in response to the GQ and SGQ- as well as through the unsolicited submissions lodged by the GOC. We also note that Australian Customs did not approach the GOC to inquire about any possible verification of the information submitted by the GOC.

The GOC hopes this cooperation is reflected in the final report to the Minister for Customs.

Yours sincerely



Alistair Bridges  
Solicitor

Attachments



Directory Catalogue on Readjustment of Industrial Structure  
(2011 Version)

I Catalogue of Encouraged Investment Industries

1. Agriculture and forestry and related industries
2. Irrigation works
3. Coal
4. Power
5. New Energy
6. Nuclear Energy
7. Petroleum and Natural Gas
8. Iron & Steel
  - (1) Exploration of ferrous metal mine alternative resource and technological development of key exploration
  - (2) Advanced technology development and application as to coal moisture control .... and coke oven gas with using high added value
  - (3) Noncoking ironmaking
  - (4) Advanced PWR nuclear power tube..... and High corrosion resistance chemical pipe production
  - (5) Technology of high-performance, high quality and upgrade and update steel product development and application, including .....
  - (6) The technology of on-line heated, controlled and forced cool new TMCP application
  - (7) Development and production of UHP electrode, ..... and graphitization furnace
  - (8) Production technology of economizing, longevity and environmental refractory using in coke oven, blast furnace and hot blast stove; production technology of low or no carbon refractory and efficient, continuous casting and environmental refractory using in purified steel.
  - (9) On-line quality testing technology application in productive process
  - (10) Disposing waste using steel production equipment
  - (11) Multifunction dry removal of desulphurization, denitration and sintering flue gas, and recycling and reusing technology of byproduct
  - (12) Comprehensive utilize advanced productive technology of lean ore and associated ore
  - (13) Comprehensive utilize advanced productive technology of metallurgy solid waste
  - (14) New productive technology of smelting iron alloy from low grade manganese ore, and RKEF productive technology of refining ferronickel from lateritic-nickel-ore
  - (15) Productive technology and equipment of recycling metallurgy waste liquid (including waste water, waste acid, waste oil, etc.)
  - (16) Productive technology of new steel recycling development and application
  - (17) Gas dry degusting of blast furnace and converter
9. Non-ferrous metal

(3) Recycling and comprehensive utilization of scaled renewable resources of high efficiency and low energy consumption.

(i) Recycling of scraped and miscellaneous non-ferrous metal (ii) Comprehensive utilization of valuable elements (iii) Comprehensive utilization of red mud and smelting slag (iv) Alumina extracted from high-alumina fly ash

(5) The production of new nonferrous metal materials for eras such as transportation and high-end manufacturing (i) Transportation: IACS copper with compressive strength of 500MPa or above and conductivity of 80% or above

High-strength and high-conductivity copper alloys such as precision alloy strips and extra-long wire products, new high-strength, high-ductility, and anti-corrosion aluminum alloy materials and large-size products for primary load-carrying structure of transport facilities (aluminum alloys for aviation with compressive strength of 650MPa or above; aluminum alloys for high-speed trains with compressive strength of 500MPa or above)

10. Gold

11. Petrochemical and Chemical Industry

12. Building Materials

13. Medicine

14. Machinery

15. Urban Rail Facilities

16. Auto

(3) Application of lightweight materials: high-strength steel, magaluma, composite plastic, powder metallurgy, high-strength composite fibers, etc.; application of advanced materials processing technology: expansion of the application of laser tailor-welded blanks, hydroforming, hot forming of ultra high-strength steel, flexible roll forming, etc.; application of environmentally friendly materials: water-based paint, lead-free solder, etc.

17. Vessel

18. Aerospace

19. Light Industry

20. Textile

21. Building

22. Urban Infrastructure

23. Railway

24. Highway and Road Transport
25. Water Transport
26. Air Transport
27. Integrated Transportation
28. Information Industry
29. Modern Logistics
30. Financial Services Industry
31. Technology Services Industry
32. Commercial Services Industry
33. Business & Trade Services Industry
34. Travel Industry
35. Post Industry
36. Education, Culture, Health and Sports Industry
37. Other service Industry
38. Environment Protect and Conserving Resources Comprehensive Utilization
39. Public Security and Emergency Products
40. Explosion Production

## II Catalogue of Restricted Investment Industries

1. Agriculture and forestry and related industries
2. Coal
3. Power
4. Petrochemical and Chemical Industry
5. Information Industry
6. Iron & Steel

- (1) Coking project without dust collector of .....
- (2) 180 m<sup>2</sup> or less sintering machine
- (3)-(5) substandard blast furnace iron making, steel converter and electric furnace
- (6)-(8) 1450 mm or less hot rolled strip, 300 thousand tons/year or less hot dip galvanized coil and 200 thousand tons/year or less colour coating plate roll
- (9)-(14) Accessory materials, including carbon electrode production lines, graphite electrode production lines, etc.
- (15)(16)(19)(20) ferromanganese blast, ore-smelting electric furnace, etc.
  
- (17) Calcium silicon and silicon calcium barium aluminum alloy ore-smelting electric furnace of less than 12.5 thousand kilovoltampere; ore-smelting electric furnace of 12.5 thousand kilovoltampere or above with silicoaluminum power consumption of more than 11,000 kwh/ton
- (18) Silicoaluminum ore-smelting electric furnace of less than 16.5 thousand kilovoltampere; ore-smelting electric furnace of 16.5 thousand kilovoltampere or above with silicoaluminum power consumption of more than 9,000 kwh/ton
  
- 7. Non-ferrous metal
- (3) Electrolytic aluminum project (except the replacement project of eliminating backward production capacity and the project of optimizing industrial layout)
  
- 8. Gold
  
- 9. Building Materials
  
- 10. Medicine
  
- 11. Machinery
  
- 12. Light Industry
  
- 13. Textile
  
- 14. Tobacco
  
- 15. Fire Protection
  
- 16. Explosion Production
  
- 17. Other

### III Catalogue of Eliminated Investment Industries

Note: the year in the bracket follow the item is time limit of elimination

(I) Backward productive technology equipment

1. Agriculture and forestry and related industries

2. Coal

3. Power

4. Petrochemical and Chemical Industry

5. Steel

(1) –(5) Coke making bay indigenous methods , soil sinter and so on

(6)–(10) 400m<sup>3</sup> and less blast furnace, 30 tons and less converter, electric furnace, melting iron for steelmaking and so on

(11)–(19) Double duo wire rod mill, hot narrow strip mill, etc.

(20)–(44) Accessory materials, including environmental protection substandard metallurgical furnaces, 100m<sup>3</sup> or less ferroalloy ferromanganese blast furnace, lime burning earth kiln and so on

6. Non-ferrous metal

(9) Technologies and equipments for smelting renewable aluminum alloy and secondary lead by using coke-hole

(11) Project of renewable aluminum alloy or secondary lead with output of less than 10 thousand tons per year

(18) Reverberator technologies and equipments for secondary lead with output of less than 4 tons

7. Gold

8. Building Materials

9. Medicine

10. Machinery

11. Vessel

12. Light Industry

13. Textile

14. Printing

15. Explosion Production

16. Fire Protection

17. Other

(II) Backward Product

1. Petrochemical and Chemical Industry

2. Railway

3. Steel

(1) Hot-rolled silicon steel

(2) Steel wire and steel strand of ordinary relaxation level

(3) Hot-rolled steel bar: shop sign HRB335, HPB235

4. Non-ferrous metal

5. Building Materials

6. Medicine

7. Machinery

8. Vessel

9. Light Industry

10. Fire Protection

11. Explosion Production

12. Other

## 2010 年工业行业淘汰落后产能企业名单公告

<http://www.miit.gov.cn/n11293472/n11293832/n11293907/n11368223/13333127.html>

2010 年 8 月 5 日，工业和信息化部对 2010 年炼铁、炼钢、焦炭、铁合金、电石、电解铝、铜冶炼、铅冶炼、锌冶炼、水泥、玻璃、造纸、酒精、味精、柠檬酸、制革、印染和化纤等 18 个工业行业淘汰落后产能企业名单予以公告。全文如下：

### 中华人民共和国工业和信息化部公告

#### 工产业[2010]第 111 号

按照《国务院关于进一步加强淘汰落后产能工作的通知》（国发[2010]7 号）、《国务院关于进一步加大工作力度确保实现“十一五”节能减排目标的通知》（国发[2010]12 号）和《关于下达 2010 年工业行业淘汰落后产能目标任务的通知》（工信部产业[2010]251 号）要求，截至目前，各省、自治区、直辖市已将 2010 年工业行业淘汰落后产能目标任务分解落实到企业，并将淘汰落后产能企业名单在当地媒体上进行了公告。在各省、自治区、直辖市公告淘汰落后产能企业名单的基础上，现将 2010 年炼铁、炼钢、焦炭、铁合金、电石、电解铝、铜冶炼、铅冶炼、锌冶炼、水泥、玻璃、造纸、酒精、味精、柠檬酸、制革、印染和化纤等行业淘汰落后产能企业名单予以公告（见附件）。有关方面要采取有效措施，确保列入名单企业的落后产能在 2010 年 9 月底前关停。

附件：2010 年工业行业淘汰落后产能企业名单

工业和信息化部

二〇一〇年八月五日

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## 2010 年工业行业淘汰落后产能企业名单

- 一、2010 年炼铁淘汰落后产能企业名单
- 二、2010 年炼钢淘汰落后产能企业名单
- 三、2010 年焦炭淘汰落后产能企业名单
- 四、2010 年铁合金淘汰落后产能企业名单
- 五、2010 年电石淘汰落后产能企业名单
- 六、2010 年电解铝淘汰落后产能企业名单
- 七、2010 年铜冶炼淘汰落后产能企业名单
- 八、2010 年铅冶炼淘汰落后产能企业名单
- 九、2010 年锌冶炼淘汰落后产能企业名单
- 十、2010 年水泥淘汰落后产能企业名单
- 十一、2010 年玻璃淘汰落后产能企业名单
- 十二、2010 年造纸淘汰落后产能企业名单
- 十三、2010 年酒精淘汰落后产能企业名单
- 十四、2010 年味精淘汰落后产能企业名单
- 十五、2010 年柠檬酸淘汰落后产能企业名单
- 十六、2010 年制革淘汰落后产能企业名单
- 十七、2010 年印染淘汰落后产能企业名单
- 十八、2010 年化纤淘汰落后产能企业名单



## 六、2010 年电解铝淘汰落后产能企业名单

序号	省 (区)	企 业 名 称	淘汰生产线(设备) 型号及数量	产 能 (万吨)
1	山西	太原东铝铝业有限公司	60kA 自焙阳极电解槽 104 台	1.5
2	山西	山西振兴集团铝业有限公司	90KA 预焙电解槽 86 台	2
3	山西	山西晋信铝业有限公司	75KA 预焙电解槽 36 台	0.7
4	山东	山东铝业公司	80KA 电解槽	2
5	山东	淄博铝厂有限公司	75KA 电解槽 64 台	1
6	山东	临沭县林鑫金属制品厂	烧结铝设备 1 套	0.2
7	河南	长垣县西方铝业有限公司	电解槽	0.25
8	河南	沁阳市沁澳铝业有限公司	85KA 电解槽 84 台	2
9	河南	周口凯特电熔材料有限公司	1250 千瓦电解铝脱壳炉	0.13
10	河南	中铝河南省分公司	85 千安电解槽	6
11	河南	三门峡天元铝业有限公司	80 千安电解槽	3
12	湖南	湖南猫儿口铝厂	自焙阳极电解工艺	0.6
13	贵州	贵阳金元铝业有限公司	90KA 预焙电解槽 88 台	3
14	贵州	贵州省六盘水双牌铝业有限责任公司	85KA 预焙槽 104 台	5
15	陕西	汉中锌业特种材料有限公司	60KA 铝电解槽 42 台, 硅整流 3 台	0.721
16	甘肃	中铝连城分公司	100KA×172 台电解槽	4
17	青海	青海物产工业投资有限公司	94KA 电解槽 180 台	5

**Announcement of 2010 enterprises list of elimination of backward production  
capacities in industry sector**

Ministry of Industry and Information Technology Announcement

Gongchanye [2010] No.111

In accordance with the requirement of *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capacities* (Guofa [2010] No.7), *Circular of the State Council on Further Strengthening Work to Ensure Realization of the "Eleventh Five-year" Goal of Energy Saving and Carbon Emission Reduction* (Guofa [2010] No. 12) and *Notice as to assign 2010 Target Task of Elimination of Backward Production Capacities in Industry Sector* (Gongxin Industry [2010]No.251), until now, all provinces, autonomous region and municipalities already assigned 2010 target task of elimination of backward production capacities in industry sector to enterprises, and announced enterprises list of elimination of backward production capacities on local media. On the basis of enterprises list of elimination of backward production announced by all provinces, autonomous region and municipalities, enterprises list of elimination of backward production capacities in 2010, including puddling, steel-making, coke, ferroalloy, calcium carbide, electrolytic aluminum, copper smelting, lead smelting, zinc smelting, cement, glass, papermaking, ethyl alcohol, monosodium glutamate, citric acid, leather, printing and dyeing, chemical fiber and other industries, are hereby published (see the appendix ). The authorities concerned shall make some measures to ensure close backward production of the enterprises in the list before September 2010.

Appendix: 2010 enterprises list of elimination of backward production capacities in industry sector

Ministry of Industry and Information Technology

August 5<sup>th</sup>, 2010

**2010 enterprises list of elimination of backward production capacities of  
primary aluminum**

Serial No.	Province	Enterprise Name	Elimination Production Line (Equipment) Type and Quantity	Production Capacities (ten thousand ton)
1	Shanxi	Taiyuan Donglv Aluminium Co., LTD	104 60kA self-baking anode electrolytic cells	1.5
2	Shanxi	Shanxi Zhenxing Group Aluminium Co., LTD	86 90KA pre-bake electrolytic cells	2
3	Shanxi	Shanxi Jinxin aluminium Co., LTD	36 75KA pre-bake electrolytic cells	0.7
4	Shandong	Shandong Aluminum Company	80KA electrolytic cell	2
5	Shandong	Zibo aluminum plant Co., LTD	64 75KA electrolytic cells	1
6	Shandong	LinShu County LinXin metal products factory	Sintering aluminum equipment	0.2
7	Henan	Changhuan County Xifang Aluminium Co., LTD	electrolytic cell	0.25
8	Henan	Qinyang Qinao Aluminium Co., LTD	84 85KA electrolytic cells	2
9	Henan	Zhoukou Kaite Electric Smelting Material Co., LTD	1250 KW Electrolytic aluminium shell furnace	0.13
10	Henan	Chalco Henan Branch	85 KA electrolytic cell	6
11	Henan	Sanmenxia Tianyuan Aluminium Co., LTD	80KA electrolytic cell	3
12	Hunan	Hunan Maoerkou Aluminium Plant	Self-baking anode electrolytic technology	0.6
13	Guizhou	Guiyang Jinyuan Aluminium Co., LTD	88 90KA pre-bake electrolytic cells	3
14	Guizhou	Liupanshui Shuangpai Aluminium Co., LTD	104 85KA pre-bake platform	5
15	Shanxi	Hanzhong Xinye Special Material Co., LTD	42 60KA Aluminium electrolytic cells, 3	0.721

			silicon rectifiers	
16	Gansu	Chalco Liancheng Branch	100KA×172 electrolytic cells	4
17	Qinghai	Qinghai Industrial Investment Co., LTD	180 94KAelectrolytic cells	5

Attachment II

Periodic (Ten Days) Report Form of Price of Industrial Production Inputs

Report Entity:                      Code of Report Entity:                      Date of Price Collection:

Region Name	Region Code	Commodity Name	Commodity Code	Designated Entities Responsible for Collecting and Reporting Price Information	Specification and Grade	Measuring Unit	Price	Note
Designated Cities		Variety I	<p>Instructions:</p> <p>1. For the specific varieties, specifications and grades, and units required to be reported in this form, please refer to the <i>Catalog and Code of Varieties Subject to Monitor of Industrial Production Inputs Sale Price</i>.</p> <p>2. Prices to be collected by this form are commodity (wholesale) prices.</p> <p>3. Price monitor authorities in 36 large and medium cities and other designated cities shall choose representative specialized production inputs markets or large and medium enterprises for collecting prices in 5<sup>th</sup>, 15<sup>th</sup>, and 25<sup>th</sup> of every month. The price monitor authorities in 36 large and medium cities shall report the collected prices to the Price Monitor Center of the National Development and Reform Commission and the provincial price monitor authorities on the day of price collection, while the price monitor authorities in other designated cities shall report the collected prices to the provincial price monitor authorities on the day of price collection. The provincial price monitor authorities shall compile prices in other designated cities of each own province, and then report the prices to the Price Monitor Center of the National Development and Reform Commission on the following day of the price collection day.</p> <p>4. If the amplitude of fluctuation of the reported price exceeds 10 percent, relevant explanations shall be indicated in the Note column.</p> <p>5. The unit prices shall be calculated to two decimal places</p>					
		Variety II						

Report Date:                      Reporter:                      Verifier:                      Telephone Number:

附表（二）工业生产资料价格旬报表

报告单位：

报告单位代码：

采价日期：

地区名称	地区代码	商品名称	商品代码	采报价   定点单位	规格   等级	计量   单位	价格	备注
定点城市		品种 1	填报说明： 品种 2 1. 本表填报的具体品种、规格等级、单位见《工业生产资料销售价格监测品种目录及代码》。 ... 2. 本表采集大宗商品交易（批发）价格。 3. 本表由 36 个大中城市和指定的定点城市价格监测机构选择当地有代表性的专业生产资料交易市场或大中型企业于每月 5 日、15 日和 25 日采价，36 个大中城市价格监测机构于采价日当日上报国家发展改革委价格监测中心和省级价格监测机构，其他定点城市价格监测机构于采价日当日上报省级价格价格监测机构，省级价格监测机构汇集本省其他定点城市价格后于采价日次日上报国家发展改革委价格监测中心。 4. 如果上报价格变动幅度超过 10%，须在备注栏中说明变动原因。 5. 单位价格保留两位小数。					
		品种 2						
		...						

报告日期：

填报人：

审核人：

联系电话：

# 荆门市 2011 年上半年价格监测报告

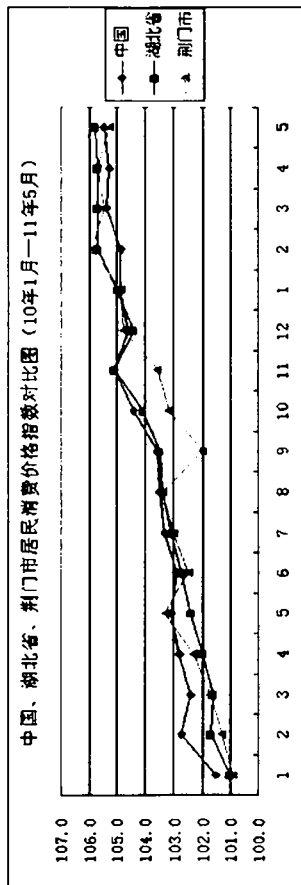
发布日期: 2011 年 07 月 04 日 | 信息来源: 荆门市物价局 | 访问量: 3025

<http://www.hbpic.gov.cn/jjcx/ssionid-1F58BE3F8707261F21B8B5574BF24580?for=VIEW&id=9481>

2011 年上半年, 荆门市物价部门监测的 345 种重要商品和服务价格与去年同期相比, 食品、农副产品、生产资料等 253 种商品价格上涨, 占 73%; 家电等 42 种商品价格下降, 占 12%; 涉农收费等 50 种价格基本稳定, 占 15%。荆门市七成以上商品价格上涨, 居民消费价格高位运行, CPI 调控在 4%左右的价格难度增大, 物价形势不容乐观。

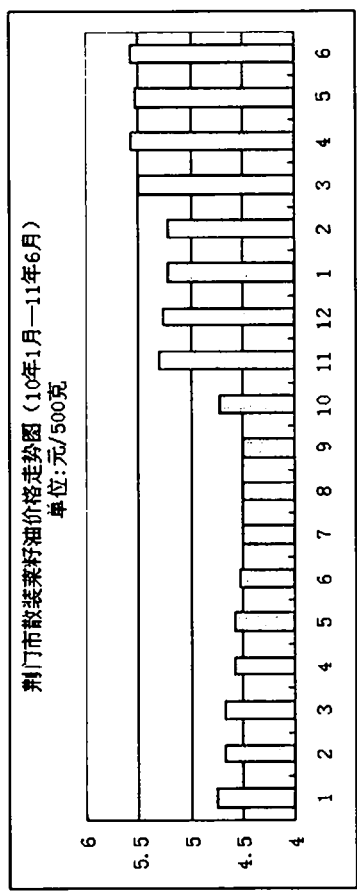
## 一、居民消费价格上涨

统计资料显示, 1-5 月荆门市 CPI 分别为 104. 9、105. 5、105. 7、105. 3, 累计上涨 5. 5%, 低于全省 0. 1、高于全国 0. 3 个百分点, 食品价格上涨是拉动 CPI 上涨的主要原因, 1-5 月荆门市食品类价格同比上涨 12%, 拉动 CPI 上涨 3. 7 个百分点, 对 CPI 的贡献达到了 67%。

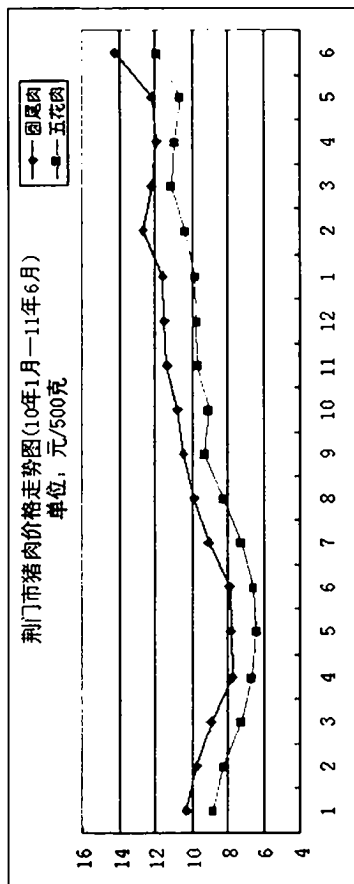


- 1、成品粮价格总体上涨。早籼米、中籼米、晚籼米、粳米分别上涨 23.69%、22.09%、29.16%、25.72%，特一粉、标准粉、玉米粉分别上涨 17.43%、24.20%、10.28%，绿豆、红小豆分别上涨 45.70%、32.40%，黄豆涨 3.70%。
- 2、花生油价格上涨明显。散装菜籽油、色拉油分别上涨 17.53%、20.59%，5 升装金龙鱼花生油、大豆调和油分别上涨 35.89%、19.53%，花生油上涨明显。





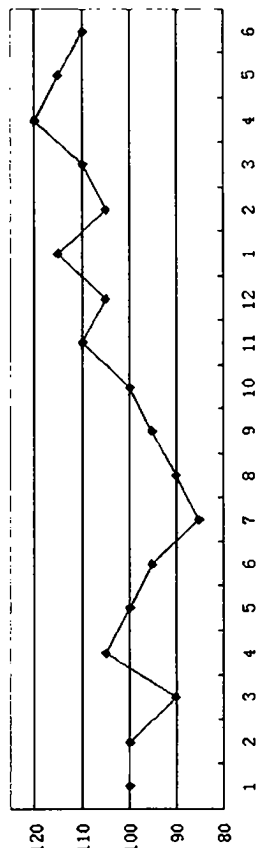
3、猪肉价格涨幅较大。今年春节以来,荆门市生猪和猪肉价格持续高位运行,圆尾肉价格比去年上半年平均上涨43.14%,五花肉上涨47.44%。此外,新鲜牛肉、白条鸡、活肉鸡、白壳蛋分别比去年上涨7.83%、13.20%、28.85%、40.96%,水产品价格平均上涨7.01%。



4、菜价涨幅有所回落。监测的15种蔬菜价格11涨4降,比去年上半年平均上涨9.58%,低于去年15.24%的涨幅。其中,四季豆涨53.64%,涨幅较大,芹菜、青椒、尖椒涨幅在20%左右,其余7种蔬菜价格涨幅在27%之间,球白菜、大白菜、黄瓜、萝卜价格分别下降13.26%、8.98%、2.30%、1.76%。

5、液化气价格有所上涨。受原油和成品油价格上涨等因素的影响,上半年荆门市液化气价格上涨15.26%。

荆门城区瓶装液化气零售价格走势图（10年1月—11年6月）  
单位：元/14.5公斤

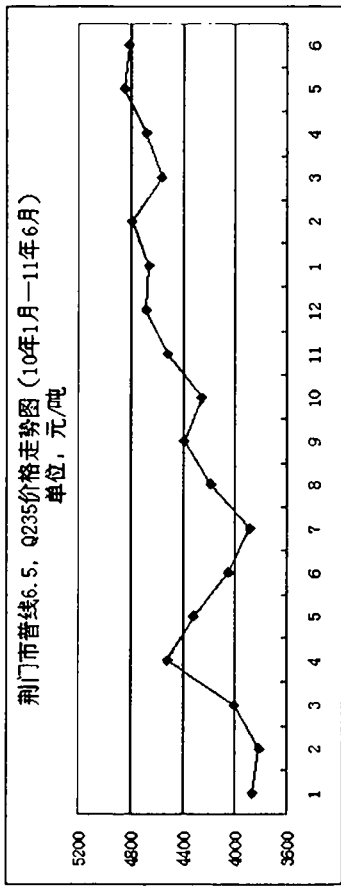


6、其他消费品价格上涨。因政策性调价，居民生活用水价格上涨 28.91%。此外，蜂窝煤涨 11.24%，烟酒涨 7.78%，副食品涨 2.78%，家电价格 10 涨 9 降，平均上涨 3.44%。

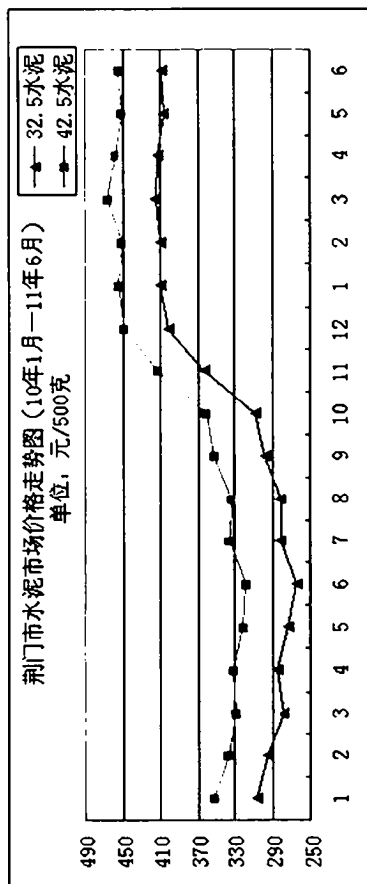
## 二、工业生产资料价格上涨

统计资料显示，125 月，荆门市工业生产者出厂价格指数分别为 112.68、114.16、114.05、112.77、116.83，累计上涨 14.09%，工业生产者购进价格指数累计上涨 19.28%，购进价格与出厂价格倒挂。

1、钢材价格有所上涨。45 种钢材价格比去年平均上涨 12.10%。其中主要钢材、线材、板材、型材、其他类钢材分别上涨 11.68%、16.07%、8.59%、16.96%、7.07%。如 6.5 普线每吨均价为 4723 元，比去年同期 4093 元，每吨上涨 630 元，涨幅为 15.37%。

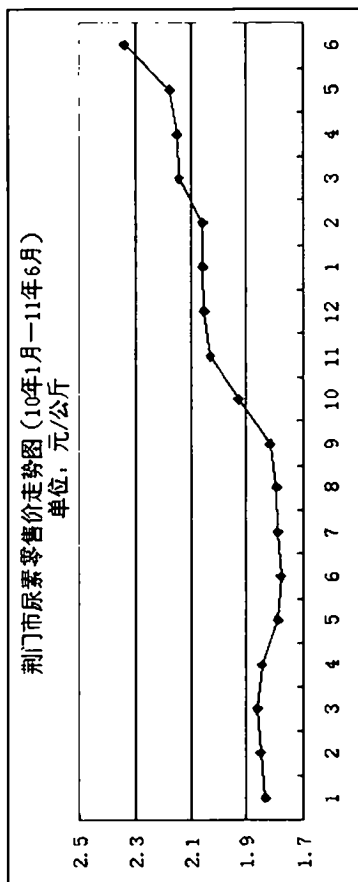


- 2、有色金属价格上涨。有色金属价格比去年平均上涨 16.74%，其中铜、铝、铅、锌、锡、镍分别上涨 22.28%、4.83%、9.20%、1.61%、40.88%、21.62%。
- 3、化工产品价格上涨。化工产品价格比去年平均上涨 20.23%。其中，聚氯乙烯、硫酸、纯碱、国产天然橡胶、合成顺丁胶分别上涨 14.11%、68.18%、37.73%、57.01%、44.47%，乙醇价格下降 3.75%。
- 4、木材及其制品价格有所上涨。红松原木、杉原木、国产胶合板、进口胶合板、针叶树纸浆、阔叶树纸浆、国产新闻纸 7.41%、4.18%、4.40%、3.47%、10.49%、5.47%、9.37%。
- 5、水泥价格上涨，玻璃价格下降。4 种水泥价格平均上涨 35.47%，普通平板玻璃、浮法平板玻璃分别下降 3.90%、5.37%。



### 三、农业生产资料价格以涨为主

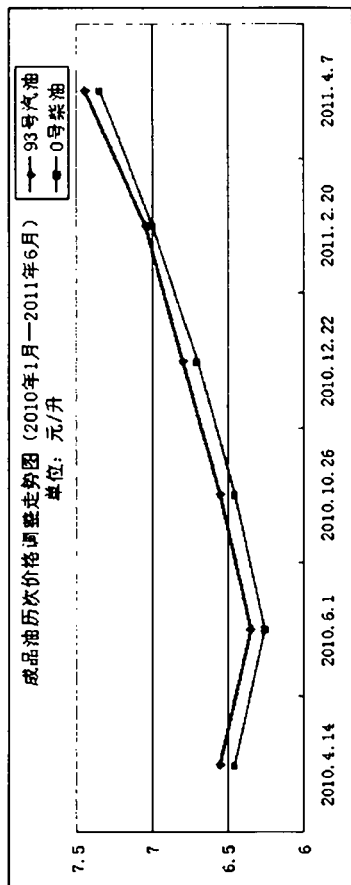
1、化肥价格上涨。监测的 11 种化肥价格比去年平均上涨 10.73%。其中, 磷酸氢铵、国产尿素、进口尿素、国产过磷酸钙、进口过磷酸钙、进口氯化钾、国产三元复合肥、进口三元复合肥价格分别上涨 19.75%、13.40%、12.10%、17.34%、16.56%、4.16%、12.68%、11.67%。



2、农膜价格上涨。今年荆门市每公斤农膜 14.15 元, 比去年上半年上涨 8.01%。

3、农药价格小幅上涨。敌敌畏、氧化乐果、氯吡啶酯、稻瘟净、百草枯分别上涨 0.39%、2.00%、1.50%、0.11%、0.45%。

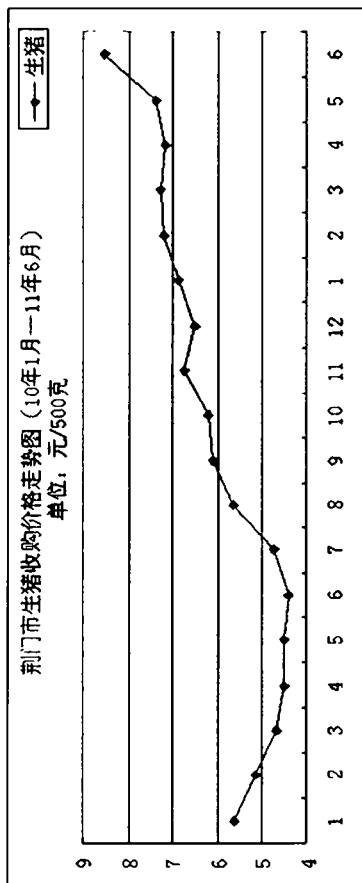
4、成品油价格上涨。今年上半年国家 2 次调高成品油价格。与去年同期比, 荆门市成品油购进价格平均上涨 18.08%, 零售价格平均上涨 12.69%。目前, 荆门市市场 0#柴油每升 7.35 元, 93#汽油每升 7.45 元。



#### 四、农副产品收购价格以涨为主

- 1、稻谷和小麦价格上涨。受今年国家连续4年提高粮食最低收购价格的影响,荆门市小麦开秤价0.98元,较上年0.86元涨13.95%,收购均价比去年上半年上涨8.06%。此外,早籼稻、中籼稻、晚籼稻收购价格比去年上半年分别上涨11.51%、21.49%、18.85%。
- 2、油菜籽价格趋涨。荆门市油菜籽开秤价2.3元同比涨24.32%,收购均价比去年上半年上涨12.26%,后期有上涨趋势,但空间有限。此外,花生涨17.75%,芝麻涨3.57%。
- 3、棉花价格高位运行。去年11月棉花收购均价创新高,达5.74元,此后缓慢下行,今年上半年棉花均价为4.88元,比去年上半年上涨55.67%。

4、生猪价格高位运行。受生猪出栏量下降、成本上升等因素的影响，12月荆门市每500克生猪收购均价分别为6.87元、7.22元、7.16元、7.37元、8.54元，今年6月价格比2008年2月历史高点8.48元还高0.06元，今年上半年生猪均价为7.41元，比去年上半年上涨54.02%。此外，仔猪涨102.34%，玉米涨4.19%，土鸡涨19.03%，土鸡蛋涨13.15%。

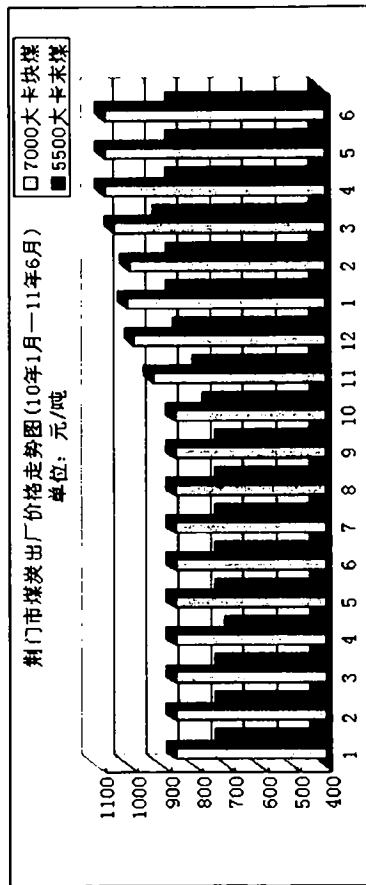


5、特色农产品价格以涨为主。11种特色农产品价格9涨1降1平，比去年上半年平均上涨13.55%。其中，香菇、金针菇、板栗、甲鱼、黄鳝、草鱼、银鱼、涪河虹鳟、京山桥米价格分别上涨19.18%、29.04%、40.1%、11.92%、3.17%、20.42%、5.68%、3.13%、22.55%，黑木耳下降6.12%，白芨菜持平。

五、地产品出厂价总体上涨



- 1、硫酸：今年上半年荆门市地产每吨硫酸出厂均价为550元，比去年上半年330元上涨68.18%。
- 2、磷矿石：本地产18%磷矿石每吨10元、24%磷矿石253元，28%磷矿石367元，分别上涨25%、34.51%、23.6%。
- 3、煤炭：本地产5500大卡末煤出矿价每吨867元，7000大卡块煤出矿价每吨1050元，比去年上半年分别涨22.93%、22.09%。



- 4、石膏：地产特级纤维石膏出矿价每吨350元、一级纤维248元、雪花膏57元，分别上涨12.47%、30.13%、2.24%。
- 5、化肥：含磷12%的地产磷肥出厂价每吨466元、地产碳铵出厂价每吨693元，分别为比去年上半年

上涨 28.53%、23.74%。

6、水泥：地产 32.5#水泥出厂价每吨 369 元、42.5#水泥出厂价每吨 421 元，分别比去年上半年上涨 55.66%、48.42%。

预计下半年，荆门市粮油价格小幅上涨，生猪价格高位震荡，蔬菜价格季节性波动，化肥和建材价格稳中有涨，石油、钢材、有色金属等大宗商品将随着国际价格震荡，煤炭、天然气等资源产品稳中有涨。但随着下半年翘尾因素的逐步减弱，预计下半年居民消费价格涨幅将有所回落。（代家宏彭巨涛 黄小兰）

## Price Monitoring Report of Jingmen City for the first half year of 2011

Release Date 2011-07-04 | Source: Price Bureau of Jingmen City

For the first half year of 2011, regarding 345 important commodities and service monitored by Price Bureau of Jingmen City, compared with the corresponding period of last year, the price of 253 commodities (73% of monitored ones) such as food, agricultural and sideline products and production inputs increased; the price of 42 commodities (12% of monitored ones) such a home appliances decreased; and the price of 50 commodities and service (15% of monitored ones) such as agriculture-related fees remained stable. The past half year has witnessed an growth in price for more than 70% of the commodities in Jingmen City. Given the high consumer prices, it becomes more difficult in keeping the CPI at round 4%. The price situation seems far from being satisfactory.

### I. A Growth in Consumer Prices

#### II. A Growth in Price of Industrial Production Input

According to the statistics, for the period from January to May, Industrial Producers Ex-factory Price Indices were 112.68, 114.16, 114.05, 112.77 and 116.83 respectively, which show an accumulative increase of 14.09%, while Industrial Producers Purchase Price Index accumulatively increased by 19.28%; the purchase price is higher than the ex-factory price.

1. The price of steel increased.....
2. The price of non-ferrous metal increased. Compared with the past year, on average, the price of non-ferrous metal increase by 16.74%; the price increase for copper, aluminum, lead, zinc, stannum and nickel were 22.28%, 4.83%, 9.20%, 1.61%, 40.88%, 21.62% respectively.
3. The price of chemical products increased.....

4. The price of wood and wood products increased.....
5. The price of cement increased, while that of glass decreased.....

III. There is mainly an increase in price of agricultural production inputs.

.....

IV. There is mainly an increase in price of agricultural and sideline products.

.....

V. In general, ex-factory price of land products increased.

.....

It is anticipated that, for the second half year, for Jingmen City, the price of grain and oil will slightly increase, the price of pig will fluctuate at high level, the price of vegetable will see seasonal fluctuations, the price of chemical fertilizer and building materials will remain stable generally and slightly increase sometimes, the price of bulk commodities such as petroleum, steel and non-ferrous metal will fluctuate with the price in the international markets, and the resource commodities such as coal and natural gas will remain stable generally and slightly increase sometime. With the carryover effects gradually weakening, the consumer prices are expected to fall down in the second half year.

广东省物价局 贯彻落实国16条和粤23条 建立健全价格监管长效机制

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下属企业

下一个 上一个 高亮



今飞控股集团  
JINFEI HOLDING GROUP

首页 走进今飞 新闻中心 企业文化 产品中心 质量保证 销售网络 人力资源 在线留言 公告 ENGLISH



- ..... 走进今飞
- 集团简介
- 组织架构
- 组织架构
- 下属企业
- 领导团队
- 公司位置

## ● 下属企业

• 走进今飞

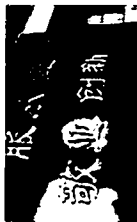
浙江今飞亚达轮毂有限公司

浙江今飞亚达轮毂有限公司是今飞控股集团有限公司控股的一资专业生产汽车轮毂的企业，成立于2004年，拥有总资产5.5亿元，员工1700余人.....

浙江今飞亚达轮毂股份有限公司

浙江今飞亚达轮毂股份有限公司是今飞控股集团有限公司的合资企业，注册资金2160万美元，是一家集自主开发、设计、自制模具、自主生产、销售为一体的铝合金汽车轮毂专业制造商.....





### 联系方式

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邮箱: jinfel@jinfel.cn  
zj@mail.jinhzj.cn

金华市今飞合金材料有限公司

金华市今飞合金材料有限公司是由本公司投资控股的专门加工生产合金轮的工厂, 成立于2005年12月。具有年加工10万吨合金轮的生产能力.....

金华市飞豹摩托车销售有限公司

金华市飞豹摩托车销售有限公司始建于1999年6月, 是今飞控股集团全额投资的一家摩托车销售公司。公司主要经营品牌有济阳摩托, 而且是济阳摩托浙江省内最大代理.....

金华市方圆检测技术有限公司

金华市方圆检测技术有限公司是今飞控股集团与金华市电测协会共同组建的承接产品的专业检测机构。是浙江省电测行业唯一经表面处理检测单位.....

浙江今飞摩托车有限公司

浙江今飞摩托车有限公司是由本公司投资控股的一家子公司, 成立于2010年2月, 总投资5亿元。新建厂房302亩, 一期新建厂房11.8万平方米, 形成.....

浙江今飞汽车零部件制造有限公司

浙江今飞汽车零部件制造有限公司是由本公司投资控股的一家子公司, 成立于2009年9月, 总投资5亿元。公司主要从事汽车轮毂、汽车变速箱的生产.....

金华市今飞房地产开发有限公司

金华市今飞房地产开发有限公司是由本公司投资控股的一家从事房地产开发、投资的子公司, 主要从事职工生活小区的开发, 成立于2009年10月.....

浙江今飞电动车轮有限公司

浙江今飞电动车轮有限公司是以今飞控股集团有限公司金华车轮厂为基础投资成立的一家全资子公司，注册资本为500万元。公司主要从事自行车轮胎.....

金华市今飞农业科技开发有限公司

金华市今飞农业科技开发有限公司是由今飞控股集团有限公司投资成立的一家全资子公司，成立于2010年6月，注册资金100万元.....

金华农业药械厂

金华农业药械厂是今飞控股集团有限公司的下属工厂，具有四十多年生产“金蜂”牌系列植保机械的悠久历史。主要产品有：“金蜂”牌福康泵，“金蜂”牌.....

浙江今跃机械科技有限公司

浙江今跃机械科技有限公司是由今飞控股集团有限公司投资控股的一家子公司，成立于2011年6月，总投资2050万元，主要经营范围为.....

浙江今飞金属压铸有限公司

浙江今飞金属压铸有限公司创建于2004年8月，位于金华市金东区曹宅镇，总投资1320万元，是今飞控股集团有限公司的一家子公司.....

金华市第一房产有限公司

金华市第一房产有限公司是由本公司投资控股的一家从事房地产综合开发经营；建筑材料、建筑五金的销售；房屋拆迁服务的子公司.....



金华市今飞物业管理有限公司

金华市今飞物业管理有限公司是本公司投资的一家从事物业管理子公司，主要从事职工生活小区的管理工作，成立于2003年3月.....

贵州今飞轮胎股份有限公司

贵州今飞轮胎股份有限公司是由浙江今飞轮胎股份有限公司于2010年12月成功并购控股的一家子公司，注册资本为5000万元，公司主要.....



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**JINFEI HOLDING GROUP**

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# 百年企业

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产今基

介紹圖例

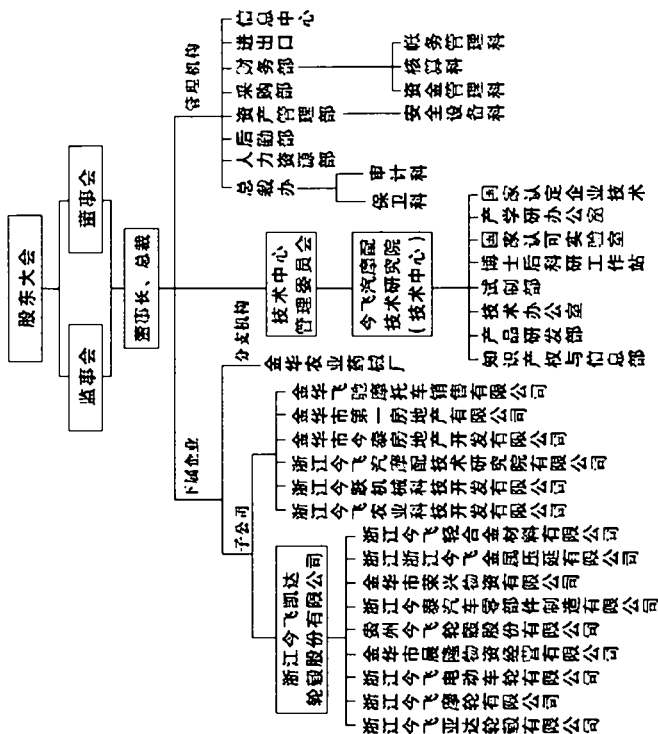
○ 附 錄

- 组织机构
- 下属企业
- 领导关怀
- 公司地位



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## About us

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## Subordinate body

+ About us

### Zhejiang Jinfei Yada Wheel Co., Ltd.

Zhejiang Jinfei Yada Wheel Co., Ltd. is a professional motorcycle production enterprise, and its "Jinfei" aluminum alloy motorcycle wheel is Zhejiang brand name. The product size is in domestic Top 2. In 2009, motorcycle wheel amounted to 5.5 million pcs. We establish corporation with Italia Piaggio, India Suzuki, Spain Suzuki, India Hero, India Honda, India BAJAJ, Brazil YAMAHA, Tailand Honda, Japan Honda and other countries Honda. We also supply products for main machine manufacturers, such as YAMAHA, SUZUKI, KTM, XINDAZHOU HONDA, Qianjiang Group, Jinan Qinqi Group, Dachangjiang Group and so on. Due to excellent quality, our products, highly praised by customers, are exported to tens of countries and regions, such as Southeast Asia, Europe, Japan, USA, and Taiwan.

Our company has the ability of changing customers' ideas into products. Making use of advanced production process and production testing equipment, our products have good look and high reliability. With the proven and advanced technology on bike wheel production, we exported our technology to India market, and started a joint venture plant with India RICO. The joint venture plant won the best supplier of 2011 awarding cup from India Honda.

Advocating the enterprise spirit of "obedience, corporation, respect-work, innovation" and the working style of "innovative work, excellent quality", we provide customers with satisfactory products.



## Contact us

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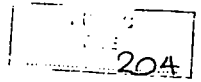
FAX: 86-579-82523282

### **Zhejiang Jinfei Kaida Wheel Co., Ltd.**

Zhejiang Jinfei Kaida Wheel Co., Ltd is a sino-foreign joint venture held by Zhejiang Jinfei Machinery Group Co., Ltd with a registered capital of 21.6 million US dollars. It is a professional aluminium alloy auto wheel manufacturer, integrated with capabilities of self-developing, designing, self mould producing, self-producing and sales. It has 4 plant such as South Xianhua Street, Shenli Street, Guiyang and Jintai. The company has a total asset of 1250 million RMB , and the number of staff reaches 1,800. The annual production capability of the company reaches 500pcs moulds and 5.5 million pcs of casted aluminium alloy wheel, 0.3 million forged alloy car wheel. Our products cover varieties of coating wheel, bright silver wheel, bright black wheel, and vacuum evaporation wheel, electroplating wheel and hardcover wheel range from 8 to 26 inch. We developed high-end wheels for domestic market such as racing wheel, milling wheel, two-piece, three-piece. Through years of hard working, our company has established cooperation relationship with domestic auto manufacturers such as Tianjin Xiali, Beijing Benz Company, Dandong Dawn, Cherry Automobile, Changshan Ford. With a foothold on domestic market, the company endeavours to open up international market which enables our products to be exported to more than ten countries such as USA, Japan, UK, Southeast Asia and Middle East, etc.

Our company carries out production strictly according to advanced international standard of auto aluminium-wheel, which is under the supervision of ISO/TS 16949 international quality management System and based on self-innovation and self-development. The enterprise develops products by expiring and casting analysing software such as CAD/CAM/CAE, PRO/E, UG, controls producing progress by SPC statistical, MSA measuring system analysing tool, thus has the capability of changing customers' ideas into new products. Meanwhile, we imports advanced producing and measuring machinery in all producing sequences, which makes the production to be based on reasonable management, scientific production and standard processing, and as a result assure the stability of products' quality.

We have established a complete organizing system of technical development, and founded a technology research & development centre, and achieved several domestically advanced technology R&D centre. In 2005, the centre was



recognized to be provincial grade R&D centre and founded a post-doctoral working station. The company pays much attention to product development and technology innovation, employ which, automobile wheel 6131570, gains patent certificate for appearance design and more scientific research such as aluminium alloy auto turbine technology, and get fund from national R&D projects fund.

TEL:86-579-82523261

### **Jinhua Jinfei Light Alloy Material Co., Ltd.**

Jinhua Jinfei Light Alloy Material Co., Ltd is a professional company for producing alloy ingot held by Zhejiang Jinfei Machinery Group Co., Ltd, which was founded in Dec.2005 and its annual production capacity is 100 thousand ton of alloy ingot. The main business of this company is aluminum alloy melting with a complete smelting system for aluminum alloy, of which, the technological levels of aluminum scrap recycling equipment and coal gas application equipment have reached national advanced standard. This system ensures product quality by Swiss made spectrometer controlling the production process.

### **Jinhua Feichi Motorcycle Sales Company**

Founded in June 1999, Jinhua Feichi Motorcycle Sales Company is a sales company of motorcycles with full investment from Jinfei Group. The company mainly deals Jinan Qingqi Motorcycle. It realizes annual sale revenue of 4.26 million RMB through wholesale and retail. Its motorcycles include high, medium and low level to meet the various requirements of different customers and subsequently expand its sales income. Due to qualified brands, favorable prices and perfect management and sales service, it has won high praise from customers.

TEL:86-579-82364509

### **Jinhua Fangyuan Painting & Plating Quality Inspection Co. Ltd.**

Jinhua Fangyuan Painting & Plating Quality Inspection Co. Ltd is a specialized

testing company established jointly by Zhejiang Jinfei Machinery Group Co., Ltd and Jinhua Quality Technology Inspection Institute. Since the foundation in 2003, the company has greatly introduced advanced equipment and possessed various testing equipments, such as Salt spray testing machine, Digital Electroplating Thickness Gauge, Vertical Microscope and so on, which enabled the company to be a unique firm for surface treatment testing in Zhejiang electroplating industry. In 2004, the company passed provincial measuring authentication, to be qualified to check products of surface treatment, such as electroplating, oxidation. The company owns tens of professional technicians, including engineers and senior engineers.

#### **Jinhua Jinfei Machinery Technology Developing Co. Ltd.**

Jinhua Jinfei Machinery Technology Developing Co. Ltd is a company held by Zhejiang Jinfei Machinery Group Co., Ltd., which was founded in May 2007 with registered capital of 2 million RMB. The company has more than 200 technicians, 5 of them with senior title and 20 of them with intermediate title and more than 60% of them are university graduated. Its main business include different types of molds, developing and sales of specialized machinery, developing and sales of different types of light alloy.

#### **Zhejiang Jinfei Motorcycle Wheel Co., Ltd.**

Zhejiang Jinfei Motorcycle Wheel Co., Ltd is a solely owned branch company invested by Jinfei Machinery Group, which is founded in Feb., 2010, and total investment is 500 million. The factory area of 302 mu, add new buildings 118 thousand squares first stage, and emerge product capacity 12 million piece high quality motorcycle alloy wheel per year. Our group has 15 years experience in wheel production. Using wheel melters, numerical control lathe, etc domestically-manufactured equipment, introducing spectrometer, tri-coordinate etc imported equipment, adopting manipulator, the key function of CNC machine, automatic heat-treatment furnaces and other advanced facilities, improve product quality, lead the company ranked as advanced world level, and mating international first-class motorcycle OEM manufacturers, as well, driving the development of packaging, coating, mould industries.

### **Jinhua Jintai Real estate development Co., Ltd**

Jinhua Jintai Real estate development Co., Ltd is a solely owned branch company invested by Jinfei Machinery Group, mainly engaging in real estate development, and it's subsidiary engaging in employee residential area development. It was founded in October 2009, owning registered capital of 5 million yuan. Group Company built "Jinfei Garden" in 2004 as workers community. On the basis of "Jinfei Garden", this company was founded in 2009, aiming to create and improve the living environment and accelerate worker staff construction pace, and maintain the stability of talents.

### **Zhejiang Jinfei E-bike Wheel Co.Ltd.**

Zhejiang Jinfei E-bike wheel CO Ltd is a subsidiary company which is invested base on Zhejiang Jinfei Machinery Group Co.Ltd, the registered capital is 5 million RMB. It mainly engaged in producing and selling bicycle rims and e-bike wheels. It has accumulated rich producing experience for more than 10 years, now it has stuff over 300, and have the ability to produce 3 milion e-bike wheels and 1 million pairs of bicycle rims per year. It can speedly meet the need of customers in the shortest time, especially in E-bike's sale season.

For quality, it can provide all types of e-bike wheels and "Feichi" bicycle rims which not only satisfy customers' requirement but also exceed industry level. Our production is highly praised by customers.

The products match with some famous vehicle companies, such as Yamaha, Xinri, Luyuan, Yadi, Xiaoniao and so on. And the sales has extended to the market of overseas, it has built a long cooperation relationship with the clients of these areas, such as Japan, Korea, Israel and Taiwan.

### **Jinhua Jinfei Agriculture Technology Development Co., Ltd**

Jinhua Jinfei Agriculture Technology Development Co., Ltd is a solely owned branch company invested by Jinfei Machinery Group, founded in June 2010 and owning 1000 thousand registered capital. The company mainly engages in agriculture technology development, service of agriculture visiting as well as the cultivating and sale of vegetable, fruits, and tea.



### **Jinhua Agricultural Chemical Machinery Factory**

Jinhua Agricultural Chemical Machinery Factory is a factory subordinated to Jinfei Group and has got experience of more than 40 years for manufacturing of "Jinfeng" brand plant protection machinery. The main products include "Jinfeng" brand diaphragm pump, "Jinfeng" brand spraying machine of stretcher type, fixed type, push type and saddle type. The company has an annual capacity of 10 thousand. "Jinfeng" brand spraying machine is widely used for preventing plant diseases and insect pests, irrigation, pipeline medicine-spraying, sanitation epidemic prevention, water extraction on high mountain, vehicle clean, industrial liquid transmission, etc.

### **Jinhua Bike Rim Factory is a company**

Jinhua Bike Rim Factory is a company mainly produces high standard aluminum alloy spoke motorcycle wheels and ATV wheels. The annual production capacity is 200,000 pcs. It has many surface treatment technologies such as painting, oxidation, pigmentation and electrophoresis. It is capable to design and produce different types of wheels for specialized vehicles. On the spirit of "quality first and credit first", it is ready to supply customers with qualified products.

### **Guizhou Jinfei Wheel Casting Co., Ltd**

Guizhou Jinfei Wheel Casting Co., Ltd is merged and held subordinated to Zhejiang Jinfei Kaida Wheel Co., Ltd, with registered capital of 50 million yuan. The company mainly engages in production and marketing of alloy wheel rough-castings for automobiles.

### **Zhejiang Jinyue Machinery Technology Development Co.,Ltd.**

As one of subsidiaries of Jinfei Holding Group, established in June of 2011. The total investment is 25 million RMB. Business scope is : development and research of foundry machinery&mold, metals sales. It has 31 engineers and 47 workers.

### **Zhejiang Jinfei metal rolling Co.,Ltd**

Founded in Aug of 2004, as one of Jinfei holding Group's subsidiaries. Located at

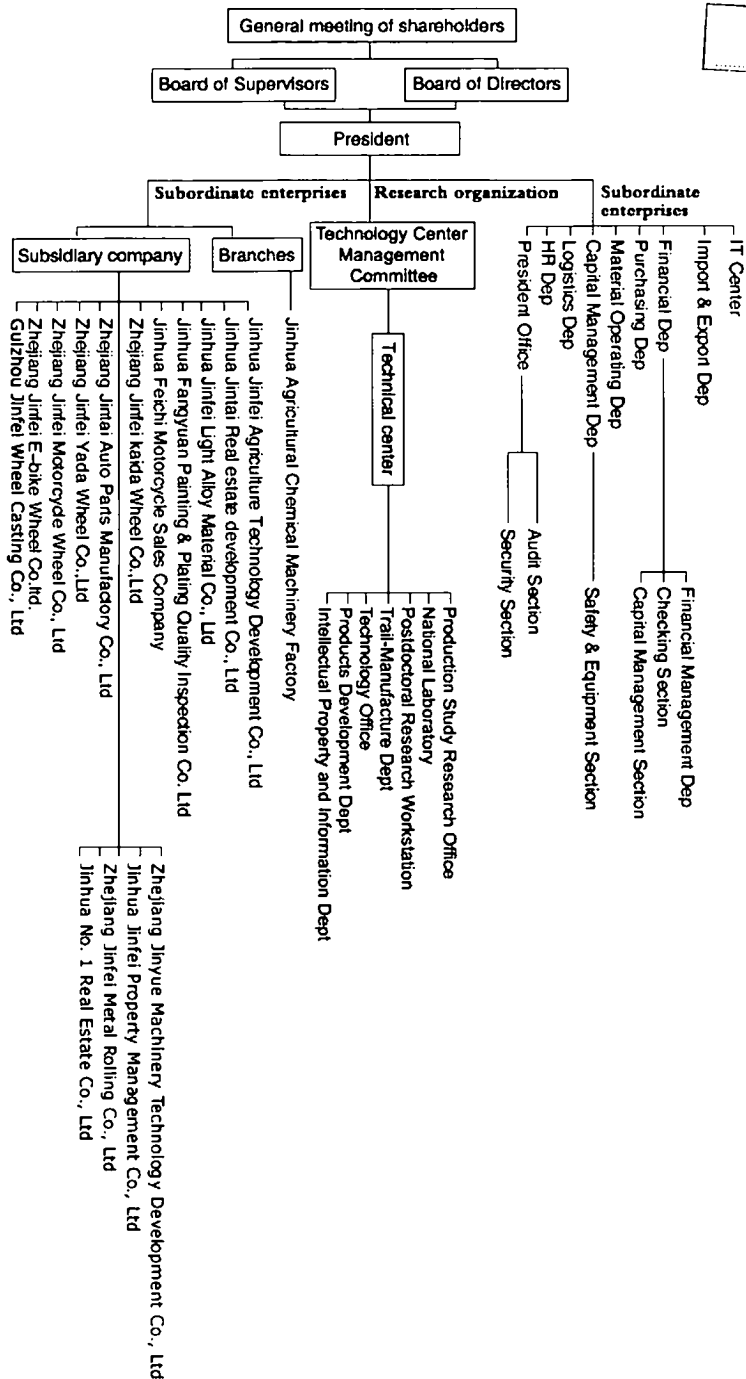
Caizhai, Jindong Dist, Jinhua and has a total investment of 13.2 million RMB. The business scope: metal rolling, production of electric cord&cable, machining for car&bike parts, assembly of machinery equipments.

#### **Jinhua Diyi Property Co.,Ltd**

A property company controlled by Jinfei's investment. Business scope: overall development of property, sales of internal finish material and hardware, house-demolition. Established in April of 1997. Total investment: 10 million RMB.

#### **Jinhua Jinfei Property management Co.,Ltd**

The subsidiary of Jinfei Holding Group. Mainly involved in the management of Jinfei community. Established in March of 2003. Total investment: 500 thousand RMB.



**Law of the People's Republic of China on Industrial Enterprises Owned by the Whole  
People**

Promulgation date: 04-13-1988 Department: National People's Congress

Effective date: 08-01-1988 Subject: Enterprises

**LAW OF THE PEOPLE'S REPUBLIC OF CHINA OF INDUSTRIAL ENTERPRISES OWNED  
BY THE WHOLE PEOPLE**

(Adopted at the First Session of the Seventh National People's Congress and promulgated by Order No. 3 of the President of the People's Republic of China on April 13, 1988, and effective as of August 1, 1988)

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**CHAPTER I GENERAL PROVISIONS**

Article 1. This Law is formulated in accordance with the Constitution of the People's Republic of China with a view to ensuring the consolidation and development of the economic sector under ownership by the whole people, defining the rights and obligations of industrial enterprises owned by the whole people, safeguarding their lawful rights and interests, enhancing their vitality and promoting socialist modernization.

Article 2. An industrial enterprise owned by the whole people (hereinafter referred to as the enterprise) shall be a socialist commodity production and operation unit which shall, in accordance with law, make its own managerial decisions, take full responsibility for its profits and losses and practise independent accounting.

The property of the enterprise shall be owned by the whole people, and shall be operated and managed by the enterprise with the authorization of the state in line with the principle of the separation of ownership and managerial authority. The enterprise shall enjoy the rights to possess, utilize and dispose of, according to law, the property which the state has authorized it to operate and manage.

The enterprise shall obtain the status of a legal person in accordance with law and bear civil liability with the property which the state has authorized it to operate and manage.

The enterprise may, in accordance with the decision of the competent department of the government, adopt contract, leasing or other forms of the system of managerial responsibility.

Article 3. The fundamental task of the enterprise shall be the development of commodity production, creation of wealth, increase of savings and satisfaction of society's growing material and cultural requirements by acting in line with state plans and market demands.

Article 4. While achieving socialist material growth, the enterprise must persistently promote socialist cultural and ideological progress and build up a contingent of well-educated and self-disciplined staff and workers with high ideals and moral integrity.

Article 5. The enterprise must observe the laws and regulations and keep to the socialist orientation.

Article 6. The enterprise must effectively utilize the property which the state has authorized it to operate and manage and realize the multiplication of its assets; the enterprise must, according to law, pay taxes and fees and hand in profits.

Article 7. The enterprise shall implement the system whereby the factory director (manager) assumes overall responsibility for the work of the enterprise.

The factory director shall exercise functions and powers according to law, which shall be protected by law.

Article 8. The grassroots organization of the Chinese Communist Party in the enterprise shall guarantee and supervise the implementation of the guiding principles and policies of the Party and the state in the enterprise.

Article 9. The state shall ensure that the staff and workers enjoy the status of the masters, and the lawful rights and interests of the staff and workers shall be protected by law.

Article 10. The enterprise shall, through the staff and workers' congress and other forms, practise democratic management.

Article 11. The trade union in the enterprise shall represent and safeguard the interests of the staff and workers and conduct its work independently according to law. The trade union in the enterprise shall organize the staff and workers for participation in democratic management and democratic supervision.

The enterprise shall bring into full play the role of the young staff and workers, the women staff and workers and scientific and technical personnel.

Article 12. The enterprise must strengthen and improve its operation and management, implement the economic responsibility system, promote scientific and technological progress, practise economy, combat waste, improve economic results and further its own transformation and development.

Article 13. The enterprise shall implement the principle of distribution according to work. It may also adopt other forms of distribution within the scope prescribed by law.

Article 14. The property which the state has authorized the enterprise to operate and manage shall be protected by law and shall not be infringed upon.

Article 15. The lawful rights and interests of the enterprise shall be protected by law and shall not be infringed upon.

## CHAPTER II THE ESTABLISHMENT, MODIFICATION AND TERMINATION OF THE ENTERPRISE

Article 16. The establishment of the enterprise must conform to the law and the relevant provisions of the State Council, and the application for the establishment must be submitted to the government or the competent department of the government for examination and approval. The enterprise shall obtain the status of a legal person after it is approved by, registers itself with and receives a business license from the administrative authorities for industry and commerce. The enterprise shall carry out its productive and operational activities within the approved and registered scope of operation.

Article 17. An enterprise must meet the following qualifications for its establishment:

- (1) Its products are needed by society;
- (2) It has access to the required energy sources, raw and processed materials, and communication and transportation facilities;
- (3) It possesses a name of its own and premises for production and operation;
- (4) It possesses funds in conformity with state provisions;

- (5) It possesses its own organizational structure;
- (6) It has a definite scope of operation; and
- (7) Other qualifications as provided by the laws and regulations.

Article 18. The merger of enterprises or the division of an enterprise shall be subject to approval by the government or the competent department of the government in accordance with the provisions of the laws and administrative rules and regulations.

Article 19. An enterprise shall be terminated for any of the following reasons:

- (1) being abolished due to its violation of the laws and regulations;
- (2) being dissolved by decision of the competent department of the government made in accordance with the provisions of the laws and regulations;
- (3) being declared bankrupt in accordance with law; or
- (4) other reasons.

Article 20. When an enterprise is merged with another enterprise or other enterprises or when it is divided or terminated, its property must be protected and its claims and debts shall be liquidated according to law.

Article 21. The modification of registered items such as the merger of enterprises and the division or termination of the enterprise, and the scope of operation shall be subject to approval by and registration with the administrative authorities for industry and commerce.

### CHAPTER III RIGHTS AND OBLIGATIONS OF THE ENTERPRISE

Article 22. The enterprise shall, under the guidance of state plans, have the right to arrange on its own the production of products needed by society or the provision of services for society.

Article 23. The enterprise shall have the right to request for the adjustment of mandatory plans when the needed materials subject to planned allocation are unavailable or when no arrangements are made for product sales.

The enterprise shall have the right to accept or reject production assignments given by any department or unit outside the mandatory plans.

Article 24. The enterprise shall have the right to sell its products on its own, except as otherwise stipulated by the State Council.

An enterprise undertaking production according to a mandatory plan shall have the right to market for itself products manufactured in excess of the planned quota and products it retains as its share under the plan.

Article 25. The enterprise shall have the right to choose the suppliers for itself and purchase from them materials needed for production.

Article 26. The enterprise shall have the right to determine for itself the prices of its products and the charges for its services, except for those which, as stipulated by the State Council, are under the control of the price authorities and the relevant competent departments.

Article 27. The enterprise shall have the right to negotiate and sign contracts with foreign parties in accordance with the provisions of the State Council.

The enterprise shall have the right to withdraw and use, according to the provisions of the State Council, the foreign exchange revenues it retains as its share.

Article 28. The enterprise shall have the right to budget and use its retained funds in accordance with the provisions of the State Council.

Article 29. The enterprise shall have the right, in accordance with the provisions of the State Council, to lease out or transfer against compensation the fixed assets that the state has authorized it to operate and manage, but the proceeds therefrom must be used for the renewal of equipment and technical transformation.

Article 30. The enterprise shall have the right to determine such forms of wages and methods of bonus distribution as are appropriate to its specific conditions.

Article 31. The enterprise shall have the right to employ or dismiss its staff members and workers in accordance with the provisions of the State Council.

Article 32. The enterprise shall have the right to decide on its organizational structure and the size of its personnel.

Article 33. The enterprise shall have the right to reject the exaction of its manpower, materials and financial resources in the form of apportionment by any state organ or unit. Except as otherwise stipulated by the laws and regulations, any demand made on the enterprise by any state organ or unit in any form for the provision of manpower, materials and financial resources shall be exaction by apportionment.

Article 34. The enterprise shall have the right, in accordance with law and the provisions of the State Council, to engage in joint operations with other enterprises or institutions, to invest in other enterprises or institutions and to hold shares in other enterprises. The enterprise shall have the right to issue bonds in accordance with the provisions of the State Council.



Article 35. The enterprise must fulfil the mandatory plans.

The enterprise must perform the contracts concluded according to law.

Article 36. The enterprise must ensure the normal maintenance of its fixed assets and upgrade and renew its equipment.

Article 37. The enterprise must observe state provisions concerning finance, labour and wages, price control, etc., and accept supervision by the financial, auditing, labour and wage, price and other administrative authorities.

Article 38. The enterprise must guarantee the quality of its products and services and be responsible to users and consumers.

Article 39. The enterprise must raise labour efficiency, economize the use of energy and of raw and processed materials and strive to reduce costs.

Article 40. The enterprise must strengthen its security work, maintain the order of production and protect state property.

Article 41. The enterprise must implement the system of safe production, improve labour conditions, do good work in labour protection and environmental protection, and carry on production in a safe and civilized manner.

Article 42. The enterprise shall strengthen ideological and political education, legal education, national defence education, scientific and cultural education as well as technical and vocational training so as to raise the quality of its staff and workers.

Article 43. The enterprise shall support its staff and workers in scientific research, invention and creation and activities for technical innovation, for making rationalization proposals and for socialist labour emulation, and reward them for such endeavours.

#### CHAPTER IV THE FACTORY DIRECTOR

Article 44. Except as otherwise stipulated by the State Council, the selection of the factory director shall be made by the competent department of the government in the light of the specific conditions of the enterprise by one of the following methods:

(1) appointment by the competent department of the government or choice of an applicant on a competitive basis by the same department; or

(2) election by the staff and workers' congress of the enterprise. With respect to the person to be appointed or the applicant to be chosen as factory director by the competent department of the

government, the opinions of the staff and workers shall be solicited, with respect to the person elected as factory director by the staff and workers' congress of the enterprise, his appointment shall be reported to the competent department of the government for approval.

The removal or dismissal of the factory director appointed or chosen from applicants by the competent department of the government shall be decided upon by such department, while the opinions of representatives of the staff and workers shall be solicited; the recall of the factory director elected by the staff and workers' congress of the enterprise shall be decided by such congress and reported to the competent department of the government for approval.

Article 45. The factory director shall be the legal representative of the enterprise.

The enterprise shall establish a system of production, operation and management headed by the factory director. The factory director shall occupy the central position in the enterprise and assume overall responsibility for building up a materially developed and culturally and ideologically advanced enterprise.

The factory director shall exercise leadership in the production, operation and management of the enterprise by exercising the following functions and powers:

- (1) to decide on the various plans of the enterprise or report them for examination and approval in accordance with law and the provisions of the State Council;
- (2) to decide on the administrative setup of the enterprise;
- (3) to propose to the competent department of the government the appointment or removal, employment or dismissal of leading administrative cadres at the level of a vice-director of the factory, except as otherwise stipulated by law and the provisions of the State Council;
- (4) to appoint or remove, employ or dismiss the intermediate-level leading administrative cadres of the enterprise, except as otherwise stipulated by law;
- (5) to propose plans for wage adjustment and bonus distribution and important rules and regulations, and refer them to the staff and workers' congress for examination and approval; to propose programmes for the use of the welfare fund and make suggestions regarding such other matters as are important for the well-being and benefits of the staff and workers, and to refer them to the staff and workers' congress for deliberation and decision; and
- (6) to reward or punish the staff members and workers according to law; to submit to the competent department of the government proposals for rewarding or punishing leading administrative cadres at the level of a vice-director of the factory.

Article 46. The factory director must rely on the staff members and workers for the fulfilment of the obligations of the enterprise prescribed in this Law, support the work of the staff and workers'

congress, the trade union and other public organizations, and implement the decisions made according to law by the staff and workers' congress.

Article 47. The enterprise shall establish a management committee or some other forms of organization to assist the factory director in making decisions on important issues of the enterprise. The management committee, with the factory director as its chairman, shall be composed of leading persons in charge of various aspects of the enterprise and representatives of the staff and workers.

The important issues as mentioned in the preceding paragraph shall include:

- (1) the policy of operation, long-term and annual plans, programmes for capital construction and major technical transformation, plans for the training of the staff and workers, plans for wage adjustment, programmes for the distribution and use of the retained funds and programmes for contract and leasing systems of managerial responsibility.
- (2) the size of the personnel of the enterprise whose wages are counted as cost of the enterprise and the establishment and adjustment of administrative organs; and
- (3) programmes for the formulation, revision and abrogation of major rules and regulations.

Proposals for discussion of the foregoing important issues shall all be made by the factory director.

Article 48. Factory directors who have made outstanding achievements in leading the enterprises in fulfilling their plans, raising product or service quality, improving economic results or promoting cultural and ideological progress shall be rewarded by the competent department of the government.

#### CHAPTER V THE STAFF AND WORKERS AND THE STAFF AND WORKERS' CONGRESS

Article 49. The staff and workers of the enterprise shall have the right to participate in its democratic management; the right to put forward opinions and suggestions concerning its production and work; the right to enjoy, according to law, labour protection, labour insurance, rest and vacation; and the right to report the true situation to state organs and make criticisms and charges against the leading cadres of the enterprise. Women staff and workers shall have the right to enjoy special labour protection and labour insurance in accordance with the provisions of the state.

Article 50. The staff and workers should approach their work as the masters of the country that they are, observe labour discipline and the rules and regulations, and fulfil their tasks in production and work.

Article 51. The staff and workers' congress shall be the basic form for the practice of democratic management in the enterprise and the organ for the staff and workers to exercise their powers of

democratic management.

The working organ of the staff and workers' congress shall be the trade union committee of the enterprise. The trade union committee of the enterprise shall be responsible for the day-to-day work of the staff and workers' congress.

Article 52. The staff and workers' congress shall exercise the following functions and powers:

(1) to hear and deliberate the factory director's reports on the policy of operation, long-term and annual plans, programmes for capital construction and major technical transformation, plans for the training of the staff and workers, programmes for the distribution and use of the retained funds and programmes for contract and leasing systems of managerial responsibility, and to put forward opinions and suggestions;

(2) to examine and endorse or to reject the enterprise's programmes for wage adjustment, programmes for bonus distribution, measures for labour protection, measures for awards and penalties and other important rules and regulations;

(3) to deliberate and decide on the programmes for the use of the staff and workers' welfare fund, programmes for the allocation of the staff and workers' housing and other important matters concerning the well-being and benefits of the staff and workers;

(4) to evaluate and supervise the leading administrative cadres at various levels of the enterprise and put forward suggestions for rewarding or punishing them and for their appointment or removal; and

(5) to elect, by decision of the competent department of the government, the factory director and report to such department for approval.

Article 53. Democratic management shall be practised in workshops through the general meetings of the staff and workers, through the staff and workers representative groups or through other forms; the workers shall participate directly in the democratic management of shifts and groups.

Article 54. The staff and workers' congress shall support the factory director in exercising his functions and powers according to law and shall educate the staff and workers for the fulfilment of their obligations specified in this Law.

## CHAPTER VI THE RELATIONSHIP BETWEEN THE ENTERPRISES AND THE GOVERNMENT

Article 55. The government or the competent department of the government shall, in accordance with the provisions of the State Council, issue unified mandatory plans to the enterprises, ensure the supply of materials which are subject to planned allocation and needed by the enterprises for

the fulfilment of mandatory plans, examine and approve plans submitted by the enterprises for capital construction and major technical transformation, appoint or remove, reward or punish factory directors, appoint or remove, reward or punish leading administrative cadres at the level of a vice-director of a factory, as proposed by factory directors, and examine and train leading administrative cadres at the factory level.

Article 56. The relevant departments of the government shall, in conformity with the objective that the state regulates the market and the market guides the enterprises, provide services for the enterprises and exercise administration and supervision over the enterprises in line with their respective functions and in accordance with the provisions of the laws and regulations. These departments shall:

- (1) formulate and adjust industrial policies, and guide the enterprises in working out their development plans;
- (2) provide advice and information for the enterprises to make their operational decisions;
- (3) coordinate the relations between the enterprises and other units;
- (4) safeguard the normal production order of the enterprises, and protect from infringement the state property operated and managed by the enterprises; and
- (5) gradually improve the public facilities related to the enterprises

Article 57. The local governments at or above the county level in the locality of an enterprise shall provide it with the needed materials which are subject to local planning and control, coordinate the relations between the enterprises and other units in the locality, and strive to run well the public welfare undertakings related to the enterprises.

Article 58. No state organ or unit shall be permitted to encroach on the right which the enterprise enjoys according to law to make its own decisions in operation and management, or to exact manpower, materials or financial resources from the enterprise by way of apportionment, or to demand the establishment of an organ by the enterprise or to determine the size of the personnel of an organ.

## CHAPTER VII. LEGAL LIABILITY

Article 59. Whoever has conducted productive and operational activities in the name of an enterprise in violation of the provisions of Article 16 of this Law, without prior examination and approval by the government or the competent department of the government and without approval by and registration with the administrative authorities for industry and commerce, shall be ordered to suspend his business operations, and his illegal earnings shall be confiscated.

An enterprise that practises fraud in dealing with the registration authorities and conceals the true

situation from them shall be given a warning or punished with a fine; where the circumstances are serious, its business license shall be revoked.

The administrative punishment prescribed in this Article shall be decided upon by the administrative authorities for industry and commerce at or above the county level. If the party in question refuses to accept the decision on punishment in the form of a fine, the suspension of operations, the confiscation of illegal earnings or the revocation of the business license, it may file a suit in a court within 15 days of receiving the notification on the decision; if no suit is filed by the time limit and the decision is not complied with, the authorities that made the decision on punishment may apply to the court for compulsory enforcement.

Article 60. An enterprise that produces and sells substandard products and thereby causes property damage or physical injury to users and consumers shall be liable for damages; if a crime is constituted, the person or persons directly responsible shall be investigated for criminal responsibility according to law.

An enterprise whose product quality does not conform to the terms agreed upon in the economic contract shall be liable for breach of contract.

Article 61. If a decision of the government or the relevant department of the government violates the provisions of Article 58 of this Law, the enterprise shall have the right to apply to the authorities that made the decision for rescission. If no rescission is granted, the enterprise shall have the right to appeal to the authorities at the level next higher to the authorities that made the decision or to a supervisory department of the government. The authorities that accepts the appeal shall make a ruling and notify the enterprise of it within 30 days of receiving the appeal.

Article 62. Any leading cadre of the enterprise, who violates the lawful rights and interests of the staff and workers by abusing his power, where the circumstances are serious, shall be given an administrative sanction by the competent department of the government; any leading cadre of the enterprise who retaliates against and frames up charges against staff members or workers by abusing his power and using his public office for private ends shall be investigated for criminal responsibility in accordance with the provisions of Article 146 of the Criminal Law of the People's Republic of China.

Article 63. Any leading cadre of the enterprise or of the relevant department of the government who, due to faults in his work, causes relatively heavy losses to the enterprise and the state, shall be given an administrative sanction by the competent department of the government or the relevant state organ at a higher level.

Any leading cadre of the enterprise or of the relevant department of the government who, due to neglect of duty, causes the property of the enterprise or the interests of the state and the people to suffer heavy losses, shall be investigated for criminal responsibility in accordance with the provisions of Article 187 of the Criminal Law of the People's Republic of China.

Article 64. Whoever obstructs, without resorting to violence or threat, the enterprise leaders from carrying out their functions according to law, shall be punished by the public security organ in the locality of the enterprise in accordance with the provisions of Article 19 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; whoever by means of violence or threat obstructs the enterprise leaders from carrying out their functions according to law shall be investigated for criminal responsibility in accordance with the provisions of Article 157 of the Criminal Law of the People's Republic of China.

Whoever disturbs the order of the enterprise, thereby making it impossible for production, business operations and work to go on smoothly, but has not caused serious losses, shall be punished by the public security organ in the locality of the enterprise in accordance with the provisions of Article 19 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; if the circumstances are so serious that production, business operations and work cannot be carried on and serious losses are caused, he shall be investigated for criminal responsibility in accordance with the provisions of Article 158 of the Criminal Law of the People's Republic of China.

#### CHAPTER VIII SUPPLEMENTARY PROVISIONS

Article 65. The principles of this Law shall be applicable to enterprises owned by the whole people in communications and transportation, the postal and telecommunications service, geological exploration, construction and installation, commerce, foreign trade, materials supply, agriculture, forestry and water conservancy.

Article 66. If the enterprise implements the contract and leasing systems of managerial responsibility, the party awarding the contract and the contractor, the lessor and the lessee, with regard to their respective rights and obligations, shall implement the relevant provisions of the State Council, apart from abiding by the provisions of this Law.

With respect to the system of leadership in jointly operated enterprises, large-scale associated enterprises and stock enterprises, the relevant provisions of the State Council shall be implemented.

Article 67. The State Council shall, in accordance with this Law, formulate rules for implementation.

Article 68. The standing committees of the people's congresses of the autonomous regions may, in accordance with the principles of this Law and the Law of the People's Republic of China on Regional National Autonomy and in the light of the special features of their respective localities, formulate rules for implementation and report them to the Standing Committee of the National People's Congress for the record.

Article 69. This Law shall come into force as of August 1, 1988.

## 中华人民共和国全民所有制工业企业法

发布日期：1988-04-13 发布部门：全国人民代表大会

生效日期：1988-08-01 类 别：企业

### 中华人民共和国全民所有制工业企业法

(1988年4月13日第七届全国人民代表大会第一次会议通过)

1988年4月13日中华人民共和国主席令第3号公布)

#### 第一章 总 则

第一条 为保障全民所有制经济的巩固和发展，明确全民所有制工业企业的权利和义务，保障其合法权益，增强其活力，促进社会主义现代化建设，根据《中华人民共和国宪法》，制定本法。

第二条 全民所有制工业企业(以下简称企业)是依法自主经营、自负盈亏、独立核算的社会主义商品生产的经营单位。

企业的财产属于全民所有，国家依照所有权和经营权分离的原则授予企业经营管理。企业对国家授予其经营管理的财产享有占有、使用和依法处分的权利。

企业依法取得法人资格，以国家授予其经营管理的财产承担民事责任。

企业根据政府主管部门的决定，可以采取承包、租赁等经营责任制形式。

(相关资料：法律1篇 部门规章1篇 司法解释1篇 裁判文书4篇 相关论文6篇 实务指南)

第三条 企业的根本任务是：根据国家计划 and 市场需求，发展商品生产，创造财富，增加积累，满足社会日益增长的物质和文化生活需要。

(相关资料：裁判文书1篇)



第四条 企业必须坚持在建设社会主义物质文明的同时,建设社会主义精神文明,建设有理想、有道德、有文化、有纪律的职工队伍。

第五条 企业必须遵守法律、法规,坚持社会主义方向。

第六条 企业必须有效地利用国家授予其经营管理的财产,实现资产增值;依法缴纳税金、费用、利润。

第七条 企业实行厂长(经理)负责制。

厂长依法行使职权,受法律保护。

第八条 中国共产党在企业中的基层组织,对党和国家的方针、政策在本企业的贯彻执行实行保证监督。

(相关资料:地方法规1篇)

第九条 国家保障职工的主人翁地位,职工的合法权益受法律保护。

(相关资料:地方法规1篇)

第十条 企业通过职工代表大会和其他形式,实行民主管理。

(相关资料:地方法规1篇)

第十一条 企业工会代表和维护职工利益,依法独立自主地开展工作。企业工会组织职工参加民主管理和民主监督。

企业应当充分发挥青年职工、女职工和科学技术人员的作用。

(相关资料:地方法规1篇)

第十二条 企业必须加强和改善经营管理,实行经济责任制,推进科学技术进步,厉行节约,反对浪费,提高经济效益,促进企业的改造和发展。

第十三条 企业贯彻按劳分配原则。在法律规定的范围内,企业可以采取其他分配方式。

(相关资料:部门规章1篇)

第十四条 国家授予企业经营管理的财产受法律保护，不受侵犯。

(相关资料:裁判文书1篇)

第十五条 企业的合法权益受法律保护，不受侵犯。

(相关资料:裁判文书1篇)

## 第二章 企业的设立、变更和终止

第十六条 设立企业，必须依照法律和国务院规定，报请政府或者政府主管部门审核批准。经工商行政管理部门核准登记、发给营业执照，企业取得法人资格。

企业应当在核准登记的经营范围内从事生产经营活动。

第十七条 设立企业必须具备以下条件：

- (一) 产品为社会所需要。
- (二) 有能源、原材料、交通运输的必要条件。
- (三) 有自己的名称和生产经营场所。
- (四) 有符合国家规定的资金。
- (五) 有自己的组织机构。
- (六) 有明确的经营范围。
- (七) 法律、法规规定的其他条件。

(相关资料:相关论文1篇)

第十八条 企业合并或者分立，依照法律、行政法规的规定，由政府或者政府主管部门批准。

(相关资料:裁判文书1篇)

第十九条 企业由于下列原因之一终止：

- (一) 违反法律、法规被责令撤销。

(二) 政府主管部门依照法律、法规的规定决定解散。

(三) 依法被宣告破产。

(四) 其他原因。

(相关资料: 裁判文书1篇 相关论文1篇 实务指南)

第二十条 企业合并、分立或者终止时, 必须保护其财产, 依法清理债权、债务。

(相关资料: 相关论文1篇 实务指南)

第二十一条 企业的合并、分立、终止, 以及经营范围等登记事项的变更, 须经工商行政管理部门核准登记。

(相关资料: 裁判文书2篇 相关论文1篇 实务指南)

### 第三章 企业的权利和义务

第二十二条 在国家计划指导下, 企业有权自行安排生产社会需要的产品或者为社会提供服务。

第二十三条 企业有权要求调整没有必需的计划供应物资或者产品销售安排的指令性计划。

企业有权接受或者拒绝任何部门和单位在指令性计划外安排的生产任务。

(相关资料: 部门规章1篇)

第二十四条 企业有权自行销售本企业的产品, 国务院另有规定的除外。

承担指令性计划的企业, 有权自行销售计划外超产的产品和计划内分成的产品。

第二十五条 企业有权自行选择供货单位, 购进生产需要的物资。

第二十六条 除国务院规定由物价部门和有关主管部门控制价格的以外, 企业有权自行确定产品价格、劳务价格。

第二十七条 企业有权依照国务院规定与外商谈判并签订合同。

企业有权依照国务院规定提取和使用分成的外汇收入。

第二十八条 企业有权依照国务院规定支配使用留用资金。

第二十九条 企业有权依照国务院规定出租或者有偿转让国家授予其经营管理的固定资产，所得的收益必须用于设备更新和技术改造。

(相关资料：部门规章1篇 实务指南)

第三十条 企业有权确定适合本企业情况的工资形式和奖金分配办法。

第三十一条 企业有权依照法律和国务院规定录用、辞退职工。

第三十二条 企业有权决定机构设置及其人员编制。

第三十三条 企业有权拒绝任何机关和单位向企业摊派人力、物力、财力。除法律、法规另有规定外，任何机关和单位以任何方式要求企业提供人力、物力、财力的，都属于摊派。

(相关资料：相关论文1篇)

第三十四条 企业有权依照法律和国务院规定与其他企业、事业单位联营，向其他企业、事业单位投资，持有其他企业的股份。

企业有权依照国务院规定发行债券。

(相关资料：实务指南)

第三十五条 企业必须完成指令性计划。

企业必须履行依法订立的合同。

第三十六条 企业必须保障固定资产的正常维修、改进和更新设备。

第三十七条 企业必须遵守国家关于财务、劳动工资和物价管理等方面的规定，接受财政、审计、劳动工资和物价等机关的监督。

(相关资料：部门规章1篇)

第三十八条 企业必须保证产品质量和服务质量，对用户和消费者负责。

(相关资料: 部门规章1篇)

第三十九条 企业必须提高劳动效率, 节约能源和原材料, 努力降低成本。

第四十条 企业必须加强保卫工作, 维护生产秩序, 保护国家财产。

第四十一条 企业必须贯彻安全生产制度, 改善劳动条件, 做好劳动保护和环境保护工作, 做到安全生产和文明生产。

第四十二条 企业应当加强思想政治教育、法制教育、国防教育、科学文化教育和技术业务培训, 提高职工队伍的素质。

第四十三条 企业应当支持和奖励职工进行科学研究、发明创造, 开展技术革新、合理化建议和社会主义劳动竞赛活动。

#### 第四章 厂长

第四十四条 厂长的产生, 除国务院另有规定外, 由政府主管部门根据企业的情况决定采取下列一种方式:

(一) 政府主管部门委任或者招聘。

(二) 企业职工代表大会选举。

政府主管部门委任或者招聘的厂长人选, 须征求职工代表的意见; 企业职工代表大会选举的厂长, 须报政府主管部门批准。

政府主管部门委任或者招聘的厂长, 由政府主管部门免职或者解聘, 并须征求职工代表的意见; 企业职工代表大会选举的厂长, 由职工代表大会罢免, 并须报政府主管部门批准。

(相关资料: 相关论文1篇)

第四十五条 厂长是企业的法定代表人。

企业建立以厂长为首的生产经营管理系统。厂长在企业中处于中心地位, 对企业的物质文明建设和精神文明建设负有全面责任。

厂长领导企业的生产经营管理工作，行使下列职权：

（一）依照法律和国务院规定，决定或者报请审查批准企业的各项计划。

（二）决定企业行政机构的设置。

（三）提请政府主管部门任免或者聘任、解聘副厂级行政领导干部。法律和国务院另有规定的除外。

（四）任免或者聘任、解聘企业中层行政领导干部。法律另有规定的除外。

（五）提出工资调整方案、奖金分配方案和重要的规章制度，提请职工代表大会审查同意。提出福利基金使用方案和其他有关职工生活福利的重大事项的建议，提请职工代表大会审议决定。

（六）依法奖惩职工；提请政府主管部门奖惩副厂级行政领导干部。

（相关资料：地方法规1篇）

第四十六条 厂长必须依靠职工群众履行本法规定的企业的各项义务，支持职工代表大会、工会和其他群众组织的工作，执行职工代表大会依法作出的决定。

第四十七条 企业设立管理委员会或者通过其他形式，协助厂长决定企业的重大问题。管理委员会由企业各方面的负责人和职工代表组成。厂长任管理委员会主任。

前款所称重大问题：

（一）经营方针、长远规划和年度计划、基本建设方案和重大技术改造方案，职工培训计划，工资调整方案，留用资金分配和使用方案，承包和租赁经营责任制方案。

（二）工资列入企业成本开支的企业人员编制和行政机构的设置和调整。

（三）制订、修改和废除重要规章制度的方案。

上述重大问题的讨论方案，均由厂长提出。

（相关资料：地方法规1篇）

第四十八条 厂长在领导企业完成计划、提高产品质量和服务质量、提高经济效益和加强精神文明建设等方面成绩显著的，由政府主管部门给予奖励。

## 第五章 职工和职工代表大会

第四十九条 职工有参加企业民主管理的权利，有对企业的生产和工作提出意见和建议的权利；有依法享受劳动保护、劳动保险、休息、休假的权利；有向国家机关反映真实情况，对企业领导干部提出批评和控告的权利。女职工有依照国家规定享受特殊劳动保护和劳动保险的权利。

(相关资料：相关论文1篇)

第五十条 职工应当以国家主人翁的态度从事劳动，遵守劳动纪律和规章制度，完成生产和工作任务。

第五十一条 职工代表大会是企业实行民主管理的基本形式，是职工行使民主管理权力的机构。

职工代表大会的工作机构是企业的工会委员会。企业工会委员会负责职工代表大会日常工作。

(相关资料：裁判文书1篇 相关论文1篇)

第五十二条 职工代表大会行使下列职权：

(一) 听取和审议厂长关于企业的经营方针、长远规划、年度计划、基本建设方案、重大技术改造方案、职工培训计划、留用资金分配和使用方案、承包和租赁经营责任制方案的报告，提出意见和建议。

(二) 审查同意或者否决企业的工资调整方案、奖金分配方案、劳动保护措施、奖惩办法以及其他重要的规章制度。

(三) 审议决定职工福利基金使用方案、职工住宅分配方案和其他有关职工生活福利的

重大事项。

(四) 评议、监督企业各级行政领导干部,提出奖惩和任免的建议。

(五) 根据政府主管部门的决定选举厂长,报政府主管部门批准。

(相关资料:裁判文书2篇)

第五十三条 车间通过职工大会、职工代表组或者其他形式实行民主管理。工人直接参加班组的民主管理。

(相关资料:裁判文书1篇)

第五十四条 职工代表大会应当支持厂长依法行使职权,教育职工履行本法规定的义务。

## 第六章 企业和政府的关系

第五十五条 政府或者政府主管部门依照国务院规定统一对企业下达指令性计划,保证企业完成指令性计划所需的计划供应物资,审查批准企业提出的基本建设、重大技术改造等计划;任免、奖惩厂长,根据厂长的提议,任免、奖惩副厂级行政领导干部,考核、培训厂级行政领导干部。

第五十六条 政府有关部门按照国家调节市场、市场引导企业的目标,为企业提供服务,并根据各自的职责,依照法律、法规的规定,对企业实行管理和监督。

(一) 制定、调整产业政策,指导企业制定发展规划。

(二) 为企业的经营决策提供咨询、信息。

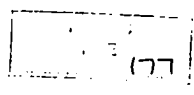
(三) 协调企业与其他单位之间的关系。

(四) 维护企业正常的生产秩序,保护企业经营管理的国家财产不受侵犯。

(五) 逐步完善与企业有关的公共设施。

(相关资料:相关论文1篇)





第五十七条 企业所在地的县级以上地方政府应当提供企业所需的由地方计划管理的物资,协调企业与当地其他单位之间的关系,努力办好与企业有关的公共福利事业。

第五十八条 任何机关和单位不得侵犯企业依法享有的经营管理自主权;不得向企业摊派人力、物力、财力;不得要求企业设置机构或者规定机构的编制人数。

(相关资料:部门规章1篇)

## 第七章 法律责任

第五十九条 违反本法第十六条规定,未经政府或者政府主管部门审核批准和工商行政管理部门核准登记,以企业名义进行生产经营活动的,责令停业,没收违法所得。

企业向登记机关弄虚作假、隐瞒真实情况的,给予警告或者处以罚款;情节严重的,吊销营业执照。

本条规定的行政处罚,由县级以上工商行政管理部门决定。当事人对罚款、责令停业、没收违法所得、吊销营业执照的处罚决定不服的,可以在接到处罚通知之日起十五日内向法院起诉;逾期不起诉又不履行的,由作出处罚决定的机关申请法院强制执行。

(相关资料:地方法规1篇)

第六十条 企业因生产、销售质量不合格的产品,给用户和消费者造成财产、人身损害的,应当承担赔偿责任;构成犯罪的,对直接责任人员依法追究刑事责任。

产品质量不符合经济合同约定的条件的,应当承担违约责任。

第六十一条 政府和政府有关部门的决定违反本法第五十八条规定的,企业有权向作出决定的机关申请撤销;不予撤销的,企业有权向作出决定的机关的上一级机关或者政府监察部门申诉。接受申诉的机关应于接到申诉之日起三十日内作出裁决并通知企业。

第六十二条 企业领导干部滥用职权,侵犯职工合法权益,情节严重的,由政府主管部门给予行征处分;滥用职权、假公济私,对职工实行报复陷害的,依照《中华人民共和国刑法

法》第一百四十六条的规定追究刑事责任。

(相关资料: 实务指南)

第六十三条 企业和政府有关部门的领导干部,因工作过失给企业和国家造成较大损失的,由政府主管部门或者有关上级机关给予行政处分。

企业和政府有关部门的领导干部玩忽职守,致使企业财产、国家和人民利益遭受重大损失的,依照《中华人民共和国刑法》第一百八十七条的规定追究刑事责任。

(相关资料: 相关论文1篇)

第六十四条 阻碍企业领导干部依法执行职务,未使用暴力、威胁方法的,由企业所在地公安机关依照《中华人民共和国治安管理处罚条例》第十九条的规定处罚;以暴力、威胁方法阻碍企业领导干部依法执行职务的,依照《中华人民共和国刑法》第一百五十七条的规定追究刑事责任。

扰乱企业的秩序,致使生产、营业、工作不能正常进行,尚未造成严重损失的,由企业所在地公安机关依照《中华人民共和国治安管理处罚条例》第十九条的规定处罚;情节严重,致使生产、营业、工作无法进行、造成严重损失的,依照《中华人民共和国刑法》第一百五十八条的规定追究刑事责任。

(相关资料: 实务指南)

## 第八章 附 则

第六十五条 本法的原则适用于全民所有制交通运输、邮电、地质勘探、建筑安装、商业、外贸、物资、农林、水利企业。

第六十六条 企业实行承包、租赁经营责任制的,除遵守本法规定外,发包方和承包方、出租方和承租方的权利、义务依照国务院有关规定执行。

联营企业、大型联合企业和股份企业,其领导体制依照国务院有关规定执行。

(相关资料: 部门规章 1 篇)

第六十七条 国务院根据本法制定实施条例。

第六十八条 自治区人民代表大会常务委员会可以根据本法和《中华人民共和国民族区域自治法》的原则,结合当地的特点,制定实施办法,报全国人民代表大会常务委员会备案。

第六十九条 本法自 1988 年 8 月 1 日起施行。

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

(No.18)

The Decision of the Standing Committee of the National People's Congress on Amending Some Laws, which was adopted at the 10th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on August 27, 2009, is hereby promulgated, and shall come into force on the date of promulgation.

President of the People's Republic of China Hu Jintao

August 27, 2009

Decision of the Standing Committee of the National People's Congress on Amending Some Laws

(Adopted at the 10th Meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on August 27, 2009)

It is decided at the 10th meeting of the Standing Committee of the 11th National People's Congress that:

I. The provisions that obviously go against the socialist market economic and social development demands in the following laws shall be amended.

1. Article 7 of the General Principles of the Civil Law of the People's Republic of China shall be amended as: "Civil activities shall have respect for social ethics and shall not harm the public interest or disrupt social economic order."

Item 6, Paragraph 1 of Article 58 shall be deleted.

2. Paragraph 4 of Article 2, Article 23, Paragraph 1 of Article 35 and Article 55 of the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People shall be deleted.

3. Article 47 of the Law of the People's Republic of China on Physical Culture and Sports shall be deleted.

4. Paragraph 3 of Article 57 and Article 59 of the Education Law of the People's Republic of China shall be deleted.

5. Article 52 of the Flood Control Law of the People's Republic of China shall be deleted.

II. The provisions containing "expropriation" in the following laws and legal interpretations shall be amended.

(I) The term "expropriation" in the following laws and legal interpretations shall be amended as "expropriation or requisition"

6. Article 18 of the Forest Law of the People's Republic of China

7. Article 12 of the Law of the People's Republic of China on the Protection of Military Installations

8. Article 48 of the National Defense Law of the People's Republic of China

9. Article 13 of the Law of the People's Republic of China on the Protection of the Rights and Interests of Returned Overseas Chinese and Their Family Members

10. Articles 16 and 59 of the Rural Land Contracting Law of the People's Republic of China

11. Articles 38, 39 and 63 of the Grassland Law of the People's Republic of China

12. Articles 381 and 410 of the Criminal Law of the People's Republic of China

13. Interpretation of the Standing Committee of the National People's Congress on Paragraph 2 of Article 93 of the Criminal Law of the People's Republic of China

14. Interpretation of the Standing Committee of the National People's Congress on Articles 228, 342 and 410 of the Criminal Law of the People's Republic of China

(II) The term "expropriation" in the following laws shall be amended as "requisition".

15. Article 14 of the Fisheries Law of the People's Republic of China

16. Article 36 of the Railway Law of the People's Republic of China

17. Article 9 of the Law of the People's Republic of China on Urban Real Estate Administration

18. Article 16 of the Electric Power Law of the People's Republic of China

19. Article 20 of the Coal Law of the People's Republic of China

20. Article 30 of the Administrative Reconsideration Law of the People's Republic of China

21. Article 71 of the Agricultural Law of the People's Republic of China

III. The criminal responsibility provisions in the following laws shall be amended.

(I) In the following laws, the term "according to Article x of the Criminal Law" or "according to Article x of the Criminal Law by analogy" shall be amended as "according to the relevant provisions of the Criminal Law".

22. Article 29 of the Metrological Law of the People's Republic of China

23. Articles 39, 40, 43, 44 and 48 of the Mineral Resources Law of the People's Republic of China

24. Article 22 of the Frontier Quarantine Law of the People's Republic of China

25. Articles 62 and 63 of the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People

26. Articles 32 and 37 of the Law of the People's Republic of China on the Protection of Wildlife

27. Article 29 of the Law of the People's Republic of China on Assembly, Parade and Demonstration

28. Articles 33 and 34 of the Law of the People's Republic of China on the Protection of Military Installations

29. Articles 60, 64 and 65 of the Railway Law of the People's Republic of China

30. Articles 42 and 43 of the Law of the People's Republic of China on the Entry and Exit Quarantine for Animals and Plants

31. Article 39 of the Law of the People's Republic of China on Deputies to the National People's Congress and the Local People's Congresses at All Levels

32. Articles 46 and 47 of the Mine Safety Law of the People's Republic of China

33. Articles 26, 27 and 32 of the National Security Law of the People's Republic of China

34. Article 36 of the Law of the People's Republic of China on Teachers

35. Article 15 of the Law of the People's Republic of China on the Red Cross Society

36. Article 92 of the Labor Law of the People's Republic of China

37. Article 36 of the Law of the People's Republic of China on Maternal and Infant Health Care

38. Articles 194, 196, 198 and 199 of the Civil Aviation Law of the People's Republic of China

39. Articles 71, 72 and 74 of the Electric Power Law of the People's Republic of China

40. Article 61 of the Administrative Penalty Law of the People's Republic of China

41. Articles 40, 42 and 43 of the Law of the People's Republic of China on the Control of Guns

42. Articles 78 and 79 of the Coal Law of the People's Republic of China

(II) In the following laws, the provisions quoting the decisions on the punishment of crimes that have been incorporated into the Criminal Law and have been abolished shall be amended as "according to the relevant provisions of the Criminal Law".

43. Article 31 of the Law of the People's Republic of China on the Protection of Wildlife

44. Article 35 of the Law of the People's Republic of China on the Protection of Military Installations

45. Article 69 of the Railway Law of the People's Republic of China

46. Articles 40 and 42 of the Tobacco Monopoly Law of the People's Republic of China

47. Article 191 of the Civil Aviation Law of the People's Republic of China

(III) The term "engaging in speculation and profiteering" or "the crime of speculation and profiteering" in the following laws shall be deleted and the provisions containing them shall be amended accordingly.

48. Article 28 of the Metrological Law of the People's Republic of China shall be amended as:

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"Whoever manufactures, sells or uses measuring instruments for the purpose of deceiving consumers shall have the measuring instruments and illegal gains confiscated and may be concurrently punished by a fine. If the circumstances are serious, the individual, or the directly responsible person of the entity, shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

49. Paragraph 2 of Article 35 of the Law of the People's Republic of China on the Protection of Wildlife shall be amended as: "Whoever, in violation of this Law, sells or purchases wildlife under special state protection or the products thereof, if the circumstances are serious enough to constitute a crime, shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

50. Article 70 of the Railway Law of the People's Republic of China shall be amended as: "Any railway worker who, by taking advantage of his position, engages in smuggling or collaborates with any other person in smuggling shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

51. Paragraph 1 of Article 38 of the Tobacco Monopoly Law of the People's Republic of China shall be amended as: "Whoever resells tobacco monopoly commodities for profit, if any crime is constituted, shall be subject to criminal responsibility according to law; if the circumstances are not so serious as to constitute a crime, the administrative department for industry and commerce shall confiscate the tobacco monopoly commodities and illegal gains, and may concurrently impose a fine."

(IV) The specific criminal responsibility provisions in the following laws shall be amended.

52. Article 16 of the Law of the People's Republic of China on the Control of the Entry and Exit of Citizens shall be amended as: "Where a state functionary implementing this Law takes advantage of his position and power to extort and accept bribes or commits any other transgression of the law and neglect of duty, if the circumstances are serious enough to constitute a crime, he shall be subject to criminal responsibility according to law."

53. Article 61 of the Railway Law of the People's Republic of China shall be amended as: "Any person who intentionally damages or moves any railway signaling installation, or places on the railway track any obstacle that might lead to the overturning of a train shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Article 62 shall be amended as: "Any person who steals any spare part or component of a train operation facility installed on a railway line or any equipment attached to a railway line and thus endangers the safe operation of the train shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Article 63 shall be amended as: "The ringleader and core members of persons who gather together to intercept or block the way of a train or assault a railway traffic control office and pay no heed to the order to stop shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Article 66 shall be amended as: "Any person who resells passenger tickets for profit shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law if a

crime is constituted. Any railway worker who resells passengers tickets for profit or collaborates with any other person in reselling passenger tickets for profit shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

54. Article 39 of the Tobacco Monopoly Law of the People's Republic of China shall be amended as: "Any enterprise or individual that forges, alters, buys or sells the licenses prescribed in this Law such as those for tobacco monopoly manufacturing enterprises and tobacco monopoly business as well as transportation permits, shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Any staff member of an administrative department of tobacco monopoly or a tobacco company who, by taking advantage of his position, commits the crime prescribed in the preceding two paragraphs shall be subject to a heavier punishment according to law."

55. Paragraph 2 of Article 71 of the Law of the People's Republic of China on Urban Real Estate Administration shall be amended as: "Any worker of the real estate administrative department or the land administrative department who, by taking advantage of his position, extorts other's property or illegally accepts other's property to seek interests for any other person shall be subject to criminal responsibility if any crime is constituted or shall be given an administrative penalty if no crime is constituted."

56. Article 192 of the Civil Aviation Law of the People's Republic of China shall be amended as: "Any person who uses force against any staff aboard a civil aircraft in flight and imperils the flight safety shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Paragraph 1 of Article 193 shall be amended as: "Any person who, in violation of this Law, secretly carries explosives, detonators or any other hazardous articles when taking a civil aircraft or consigns any hazardous articles in the name of non-hazardous articles shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Paragraph 3 shall be amended as: "Any person who secretly carries any gun, bullet or cutting tool which is under control when taking a civil aircraft shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Article 195 shall be amended as: "Any person who intentionally places any hazardous article on a civil aircraft in use or instigates any other person to do so shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law if the hazardous article is hazardous enough to destroy the civil aircraft and endangers flight safety."

Article 197 shall be amended as: "Any person who steals or intentionally damages, destroys or moves any aviation facility in use shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law if his abovementioned act endangers flight safety and may cause the falling or wrecking of the civil aircraft."

57. Article 39 of the Law of the People's Republic of China on the Control of Guns shall be amended as: "Any person who, in violation of this Law, manufactures, trades or transports guns without permit shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."



"Where any entity commits the act mentioned in the preceding paragraph, a fine shall be imposed upon it, and the directly responsible person in charge and other directly liable persons of the entity shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

Article 41 shall be amended as: "Any person, in violation of this Law, illegally possesses guns or illegally transports or carries guns into or outside China shall be subject to criminal responsibility according to the relevant provisions of the Criminal Law."

58. Paragraph 1 of Article 62 of the Military Service Law of the People's Republic of China shall be amended as: "Any soldier in active service who refuses to fulfill obligations or escapes from the army for the purpose of avoiding performing military services shall be punished according to the provisions of the Military Commission of the Central Committee and, if any crime is constituted, subject to criminal responsibility according to law."

IV. The public security administrative punishment provisions in the following laws and decisions on the relevant legal matters shall be amended.

(1) The term "Regulation on Public Security Administrative Punishments" as quoted in the following laws and decisions on the relevant legal matters shall be amended as "Law on Public Security Administrative Punishments".

59. Article 64 of the Military Service Law of the People's Republic of China

60. Articles 41 and 48 of the Mineral Resources Law of the People's Republic of China

61. Article 39 of the Law of the People's Republic of China on the Protection of Wildlife

62. Articles 28 and 32 of the Law of the People's Republic of China on Assembly, Parade and Demonstration

63. Article 67 of the Railway Law of the People's Republic of China

64. Article 37 of the Soil and Water Conservation Law of the People's Republic of China

65. Article 41 of the Tobacco Monopoly Law of the People's Republic of China

66. Article 51 of the Trade Union Law of the People's Republic of China

67. Article 69 of the Product Quality Law of the People's Republic of China

68. Article 52 of the Law of the People's Republic of China on the Protection of Consumers' Rights and Interests

69. Articles 51 through 53 of the Law of the People's Republic of China on Physical Culture and Sports

70. Article 200 of the Civil Aviation Law of the People's Republic of China

71. Article 70 of the Electric Power Law of the People's Republic of China

72. Article 42 of the Administrative Punishment Law of the People's Republic of China

73. Article 76 of the Coal Law of the People's Republic of China

74. Articles 46 and 48 of the Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly

75. Article 50 of the Civil Air Defense Law of the People's Republic of China

76. Articles 61, 62 and 64 of the Flood Control Law of the People's Republic of China

77. Article 40 of the Law of the People's Republic of China on Medical Practitioners

78. Article 94 of the Work Safety Law of the People's Republic of China

79. Article 72 of the Water Law of the People's Republic of China

80. Articles 2 and 3 of the Decision of the Standing Committee of the National People's Congress on Punishing Criminals Who Smuggle, Produce, Sell or Disseminate Pornographic Articles

81. Article 4 of the Decision of the Standing Committee of the National People's Congress on Seriously Punishing Criminals Who Kidnap and Sell Women and Children

82. Article 6 of the Decision of the Standing Committee of the National People's Congress on Maintaining Internet Security

(II) The specific public security administrative punishment provisions in the following laws and decisions on legal matters shall be amended.

83. Paragraph 1 of Article 64 of the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People shall be deleted.

Paragraph 2 shall be amended as: "Whoever disturbs the order of an enterprise, and thereby causes the discontinuity of its normal production, business operations and work, but has not caused serious losses, shall be punished by the public security organ in the locality of the enterprise in accordance with the Law of the People's Republic of China on Public Security Administrative Punishments."

84. Paragraph 2 of Article 33 of the Law of the People's Republic of China on the Protection of Wildlife shall be amended as: "Whoever, in violation of this Law, hunts wildlife with a gun without a license for the gun shall be punished by the public security organ according to Article 32 of the Law on Public Security Administrative Law."

85. The phrase "according to Article 19 of the Regulation on Public Security Administrative Punishments by analogy" as mentioned in Articles 32, 33 and 34 of the Law of the People's Republic of China on the Protection of Military Installations shall be amended as "according to Article 23 of the Law of the People's Republic of China on Public Security Administrative Punishments".

86. Article 19 of the National Flag Law of the People's Republic of China shall be amended as: "Whoever desecrates the National Flag of the People's Republic of China by publicly and willfully burning, destroying, scrawling on, defiling or trampling upon it shall be subject to criminal responsibility according to law. If the offence is relatively minor, the offender shall be detained by the public security organ for not more than 15 days."

87. Article 13 of the National Emblem Law of the People's Republic of China shall be amended as:

"Whoever desecrates the National Emblem of the People's Republic of China by publicly and willfully burning, destroying, scrawling on, defiling or trampling upon it shall be subject to criminal responsibility according to law. If the offence is relatively minor, the offender shall be detained by the public security organ for not more than 15 days."

88. The phrase "according to Article 19 of the Regulation on Public Security Administrative Punishments" as mentioned in Paragraph 3 of Article 39 of the Law of the People's Republic of China on Deputies to the National People's Congress and the Local People's Congresses at All Levels shall be amended as "according to Article 50 of the Law of the People's Republic of China on Public Security Administrative Punishments".

89. The phrase "according to Article 19 of the Regulation on Public Security Administrative Punishments by analogy" as mentioned in Paragraph 2 of Article 15 of the Law of the People's Republic of China on the Red Cross Society shall be amended as "according to Article 50 of the Law of the People's Republic of China on Public Security Administrative Punishments".

90. Article 83 of the Highway Law of the People's Republic of China shall be amended as: "Whoever impedes the construction or urgent repair of a highway and thereby disturbs the normal construction or urgent repair of the highway shall be punished according to the Law of the People's Republic of China on Public Security Administrative Punishments if no serious losses are caused.

"Whoever damages any highway or moves any highway sign without permit, which may affect traffic safety but is not serious enough to be punishable by a criminal punishment, shall be punished according to Article 99 of the Law of the People's Republic of China on Road Traffic Safety.

"Whoever refuses or impedes the performing of duties by highway supervisors or inspectors but does not use violence or threat shall be punished according to the Law of the People's Republic of China on Public Security Administrative Punishments."

91. The phrase "according to Article 30 of the Regulation on Public Security Administrative Punishments" as mentioned in Articles 3 and 4 of the Decision of the Standing Committee of the National People's Congress on Prohibiting Prostitution and Going Whoring shall be amended as "according to the provisions of the Law of the People's Republic of China on Public Security Administrative Punishments".

V. The inconsistent names and articles of laws quoted in the following laws shall be amended.

92. The term "Regulation on the Service of the Officers of the Chinese People's Liberation Army" as mentioned in Article 27 of the Military Service Law of the People's Republic of China shall be amended as "Law of the People's Republic of China on Officers in Active Service and the Law of the People's Republic of China on Officers on Reserve Service".

93. The term "Urban Planning Law of the People's Republic of China" as mentioned in Paragraph 2 of Article 35 of the Meteorology Law of the People's Republic of China shall be amended as "Urban and Rural Planning Law of the People's Republic of China".

94. Article 2 of the Regulation of the People's Republic of China on the Police Ranks of the

People's Police shall be amended as: "A system of police ranks shall be practiced for the people's police."

95. The term "Paragraph 2 of Article 217 of the Civil Procedure Law" as mentioned in Article 63 of the Arbitration Law of the People's Republic of China shall be amended as "Paragraph 2 of Article 213 of the Civil Procedure Law"; the term "Paragraph 1 of Article 260 of the Civil Procedure Law" as mentioned in Articles 70 and 71 shall be amended as "Paragraph 1 of Article 258 of the Civil Procedure Law".

This Decision shall come into force on the date of promulgation.

中华人民共和国主席令

第十八号

《全国人民代表大会常务委员会关于修改部分法律的决定》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十次会议于2009年8月27日通过，现予公布，自公布之日起施行。

中华人民共和国主席 胡锦涛

2009年8月27日

全国人民代表大会常务委员会

关于修改部分法律的决定

(2009年8月27日第十一届全国人民代表大会常务委员会第十次会议通过)

第十一届全国人民代表大会常务委员会第十次会议决定：

一、对下列法律中明显不适应社会主义市场经济和社会发展要求的规定作出修改

1. 将《中华人民共和国民法通则》第七条修改为：“民事活动应当尊重社会公德，不得损害社会公共利益，扰乱社会经济秩序。”

删去第五十八条第一款第六项。

2. 删去《中华人民共和国全民所有制工业企业法》第二条第四款、第二十三条、第三十五条第一款、第五十五条。

3. 删去《中华人民共和国体育法》第四十七条。

4. 删去《中华人民共和国教育法》第五十七条第三款、第五十九条。

5. 删去《中华人民共和国防洪法》第五十二条。

二、对下列法律和法律解释中关于“征用”的规定作出修改

(一) 将下列法律和法律解释中的“征用”修改为“征收、征用”

6. 《中华人民共和国森林法》第十八条

7. 《中华人民共和国军事设施保护法》第十二条

8. 《中华人民共和国国防法》第四十八条

9. 《中华人民共和国归侨侨眷权益保护法》第十三条

10. 《中华人民共和国农村土地承包法》第十六条、第五十九条

11. 《中华人民共和国草原法》第三十八条、第三十九条、第六十三条

12. 《中华人民共和国刑法》第三百八十一条、第四百一十条

13. 全国人大常委会工作委员会关于《中华人民共和国刑法》第九十三条第二款的解释

14. 全国人大常委会工作委员会关于《中华人民共和国刑法》第二百二十八条、第三百四十二条、第四百一十条的解释

(二) 将下列法律中的“征用”修改为“征收”

15. 《中华人民共和国渔业法》第十四条

16. 《中华人民共和国铁路法》第三十六条

17. 《中华人民共和国城市房地产管理法》第九条

18. 《中华人民共和国电力法》第十六条

19. 《中华人民共和国煤炭法》第二十条

20. 《中华人民共和国行政复议法》第三十条

21. 《中华人民共和国农业法》第七十一条

三、对下列法律中关于刑事责任的规定作出修改

(一) 将下列法律中的“依照刑法第×条的规定”、“比照刑法第×条的规定”修改为“依照刑法有关规定”

22. 《中华人民共和国计量法》第二十九条

23. 《中华人民共和国矿产资源法》第三十九条、第四十条、第四十三条、第四十四条、第四十八条

24. 《中华人民共和国国境卫生检疫法》第二十二条

25. 《中华人民共和国全民所有制工业企业法》第六十二条、第六十三条

26. 《中华人民共和国野生动物保护法》第三十二条、第三十七条

27. 《中华人民共和国集会游行示威法》第二十九条

28. 《中华人民共和国军事设施保护法》第三十三条、第三十四条

29. 《中华人民共和国铁路法》第六十条、第六十四条、第六十五条

30. 《中华人民共和国进出境动植物检疫法》第四十二条、第四十三条

31. 《中华人民共和国全国人民代表大会和地方各级人民代表大会代表法》第三十九条

32. 《中华人民共和国矿山安全法》第四十六条、第四十七条

- 33. 《中华人民共和国国家安全法》第二十六条、第二十七条、第三十二条
- 34. 《中华人民共和国教师法》第三十六条
- 35. 《中华人民共和国红十字会法》第十五条
- 36. 《中华人民共和国劳动法》第九十二条
- 37. 《中华人民共和国母婴保健法》第三十六条
- 38. 《中华人民共和国民用航空法》第一百九十四条、第一百九十六条、第一百九十八条、第一百九十九条
- 39. 《中华人民共和国电力法》第七十一条、第七十二条、第七十四条
- 40. 《中华人民共和国行政处罚法》第六十一条
- 41. 《中华人民共和国枪支管理法》第四十条、第四十二条、第四十三条
- 42. 《中华人民共和国煤炭法》第七十八条、第七十九条

(二) 将下列法律中引用已纳入刑法并被废止的关于惩治犯罪的决定的规定修改为“依照刑法有关规定”

- 43. 《中华人民共和国野生动物保护法》第三十一条
- 44. 《中华人民共和国军事设施保护法》第三十五条
- 45. 《中华人民共和国铁路法》第六十九条
- 46. 《中华人民共和国烟草专卖法》第四十条、第四十二条
- 47. 《中华人民共和国民用航空法》第一百九十一条

(三) 删去下列法律中关于“投机倒把”、“投机倒把罪”的规定，并作出修改

48. 将《中华人民共和国计量法》第二十八条修改为：“制造、销售、使用以欺骗消费者为目的的计量器具的，没收计量器具和违法所得，处以罚款；情节严重的，并对个人或者单位直接责任人员依照刑法有关规定追究刑事责任。”

49. 将《中华人民共和国野生动物保护法》第三十五条第二款修改为：“违反本法规定，出售、收购国家重点保护野生动物或者其产品，情节严重，构成犯罪的，依照刑法有关规定追究刑事责任。”

50. 将《中华人民共和国铁路法》第七十条修改为：“铁路职工利用职务之便走私的，或者与其他人员勾结走私的，依照刑法有关规定追究刑事责任。”

51. 将《中华人民共和国烟草专卖法》第三十八条第一款修改为：“倒卖烟草专卖品，构成犯罪的，依法追究刑事责任；情节轻微，不构成犯罪的，由工商行政管理部门没收倒卖的烟草专卖品和违法所得，可以并处罚款。”

(四) 对下列法律中关于追究刑事责任的具体规定作出修改

52. 将《中华人民共和国公民出境入境管理法》第十六条修改为：“执行本法的国家工作人员，利用职权索取、收受贿赂，或者有其他违法失职行为，情节严重，构成犯罪的，

依法追究刑事责任。”

53. 将《中华人民共和国铁路法》第六十一条修改为：“故意损毁、移动铁路行车信号装置或者在铁路线路上放置足以使列车倾覆的障碍物的，依照刑法有关规定追究刑事责任。”

第六十二条修改为：“盗窃铁路线路上行车设施的零件、部件或者铁路线路上的器材，危及行车安全的，依照刑法有关规定追究刑事责任。”

第六十三条修改为：“聚众拦截列车、冲击铁路行车调度机构不听制止的，对首要分子和骨干分子依照刑法有关规定追究刑事责任。”

第六十六条修改为：“倒卖旅客车票，构成犯罪的，依照刑法有关规定追究刑事责任。铁路职工倒卖旅客车票或者与其他人员勾结倒卖旅客车票的，依照刑法有关规定追究刑事责任。”

54. 将《中华人民共和国烟草专卖法》第三十九条修改为：“伪造、变造、买卖本法规定的烟草专卖生产企业许可证、烟草专卖经营许可证等许可证件和准运证的，依照刑法有关规定追究刑事责任。”

“烟草专卖行政主管部门和烟草公司工作人员利用职务上的便利犯前款罪的，依法从重处罚。”

55. 将《中华人民共和国城市房地产管理法》第七十一条第二款修改为：“房产管理部门、土地管理部门工作人员利用职务上的便利，索取他人财物，或者非法收受他人财物为他人谋取利益，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。”

56. 将《中华人民共和国民用航空法》第一百九十二条修改为：“对飞行中的民用航空器上的人员使用暴力，危及飞行安全的，依照刑法有关规定追究刑事责任。”

第一百九十三条第一款修改为：“违反本法规定，隐匿携带炸药、雷管或者其他危险品乘坐民用航空器，或者以非危险品品名托运危险品的，依照刑法有关规定追究刑事责任。”

第三款修改为：“隐匿携带枪支子弹、管制刀具乘坐民用航空器的，依照刑法有关规定追究刑事责任。”

第一百九十五条修改为：“故意在使用中的民用航空器上放置危险品或者唆使他人放置危险品，足以毁坏该民用航空器，危及飞行安全的，依照刑法有关规定追究刑事责任。”

第一百九十七条修改为：“盗窃或者故意损毁、移动使用中的航行设施，危及飞行安全，足以使民用航空器发生坠落、毁坏危险的，依照刑法有关规定追究刑事责任。”

57. 将《中华人民共和国枪支管理法》第三十九条修改为：“违反本法规定，未经许可制造、买卖或者运输枪支的，依照刑法有关规定追究刑事责任。”

“单位有前款行为的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员依照刑法有关规定追究刑事责任。”

第四十一条修改为：“违反本法规定，非法持有、私藏枪支的，非法运输、携带枪支入境、出境的，依照刑法有关规定追究刑事责任。”

58. 将《中华人民共和国兵役法》第六十二条第一款修改为：“现役军人以逃避服兵



役为目的，拒绝履行职责或者逃离部队的，按照中央军事委员会的规定给予处分；构成犯罪的，依法追究刑事责任。”

#### 四、对下列法律和有关法律问题的决定中关于治安管理处罚的规定作出修改

（一）将下列法律和有关法律问题的决定中引用的“治安管理处罚条例”修改为“治安管理处罚法”

- 59.《中华人民共和国兵役法》第六十四条
- 60.《中华人民共和国矿产资源法》第四十一条、第四十八条
- 61.《中华人民共和国野生动物保护法》第三十九条
- 62.《中华人民共和国集会游行示威法》第二十八条、第三十二条
- 63.《中华人民共和国铁路法》第六十七条
- 64.《中华人民共和国水土保持法》第三十七条
- 65.《中华人民共和国烟草专卖法》第四十一条
- 66.《中华人民共和国工会法》第五十一条
- 67.《中华人民共和国产品质量法》第六十九条
- 68.《中华人民共和国消费者权益保护法》第五十二条
- 69.《中华人民共和国体育法》第五十一条至第五十三条
- 70.《中华人民共和国民用航空法》第二百零条
- 71.《中华人民共和国电力法》第七十条
- 72.《中华人民共和国行政处罚法》第四十二条
- 73.《中华人民共和国煤炭法》第七十六条
- 74.《中华人民共和国老年人权益保障法》第四十六条、第四十八条
- 75.《中华人民共和国人民防空法》第五十条
- 76.《中华人民共和国防洪法》第六十一条、第六十二条、第六十四条
- 77.《中华人民共和国执业医师法》第四十条
- 78.《中华人民共和国安全生产法》第九十四条
- 79.《中华人民共和国水法》第七十三条
- 80.《全国人民代表大会常务委员会关于惩治走私、制作、贩卖、传播淫秽物品的犯罪分子的决定》第二条、第三条
- 81.《全国人民代表大会常务委员会关于严惩拐卖、绑架妇女、儿童的犯罪分子的决定》第四条
- 82.《全国人民代表大会常务委员会关于维护互联网安全的决定》第六条

(二)对下列法律和有关法律问题的决定中关于治安管理处罚的具体规定作出修改

8 3. 删去《中华人民共和国全民所有制工业企业法》第六十四条第一款:

第二款修改为:“扰乱企业的秩序,致使生产、营业、工作不能正常进行,尚未造成严重损失的,由企业所在地公安机关依照《中华人民共和国治安管理处罚法》的规定处罚。”

8 4. 将《中华人民共和国野生动物保护法》第三十三条第二款修改为:“违反本法规定,未取得持枪证持枪猎捕野生动物的,由公安机关依照治安管理处罚法第三十二条的规定处罚。”

8 5. 将《中华人民共和国军事设施保护法》第三十二条、第三十三条、第三十四条中的“比照治安管理处罚条例第十九条的规定处罚”修改为“适用《中华人民共和国治安管理处罚法》第二十三条的处罚规定”。

8 6. 将《中华人民共和国国旗法》第十九条修改为:“在公共场合故意以焚烧、毁损、涂划、玷污、践踏等方式侮辱中华人民共和国国旗的,依法追究刑事责任;情节较轻的,由公安机关处以十五日以下拘留。”

8 7. 将《中华人民共和国国徽法》第十三条修改为:“在公共场合故意以焚烧、毁损、涂划、玷污、践踏等方式侮辱中华人民共和国国徽的,依法追究刑事责任;情节较轻的,由公安机关处以十五日以下拘留。”

8 8. 将《中华人民共和国全国人民代表大会和地方各级人民代表大会代表法》第三十九条第三款中的“依照治安管理处罚条例第十九条的规定处罚”修改为“适用《中华人民共和国治安管理处罚法》第五十条的处罚规定”。

8 9. 将《中华人民共和国红十字会法》第十五条第二款中的“比照治安管理处罚条例第十九条的规定处罚”修改为“适用《中华人民共和国治安管理处罚法》第五十条的处罚规定”。

9 0. 将《中华人民共和国公路法》第八十三条修改为:“阻碍公路建设或者公路抢修,致使公路建设或者抢修不能正常进行,尚未造成严重损失的,依照《中华人民共和国治安管理处罚法》的规定处罚。”

“损毁公路或者擅自移动公路标志,可能影响交通安全,尚不够刑事处罚的,适用《中华人民共和国道路交通安全法》第九十九条的处罚规定。”

“拒绝、阻碍公路监督检查人员依法执行职务未使用暴力、威胁方法的,依照《中华人民共和国治安管理处罚法》的规定处罚。”

9 1. 将《全国人民代表大会常务委员会关于严禁卖淫嫖娼的决定》第三条、第四条中的“依照治安管理处罚条例第三十条的规定处罚”修改为“依照《中华人民共和国治安管理处罚法》的规定处罚”。

五、对下列法律中引用其他法律名称或者条文不对应的规定作出修改

9 2. 将《中华人民共和国兵役法》第二十七条中的“中国人民解放军军官服役条例”修改为“《中华人民共和国现役军官法》和《中华人民共和国预备役军官法》”。

9 3. 将《中华人民共和国气象法》第三十五条第二款中的“《中华人民共和国城市规划法》”修改为“《中华人民共和国城乡规划法》”。

94. 将《中华人民共和国人民警察警衔条例》第二条修改为“人民警察实行警衔制度。”

95. 将《中华人民共和国仲裁法》第六十三条中的“民事诉讼法第二百一十七条第二款”修改为“民事诉讼法第二百一十三条第二款”；第七十条、第七十一条中的“民事诉讼法第二百六十条第一款”修改为“民事诉讼法第二百五十八条第一款”。

本决定自公布之日起施行。

## **General Principles of the Civil Law of the People's Republic of China**

**(Adopted at the Fourth Session of the Sixth National People's Congress, promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986, and effective as of January 1, 1987)**

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#### CHAPTER I Basic Principles

Article 1. This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2. The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3. Parties to a civil activity shall have equal status.

Article 4. In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5. The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6. Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7. civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

Article 8. The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

#### CHAPTER II Citizen (Natural Person)

#### Section I Capacity for Civil Rights and Capacity for Civil Conduct

Article 9. A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10. All citizens are equal as regards their capacity for civil rights.

Article 11. A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labor shall be regarded as a person with full capacity for civil conduct.

Article 12. A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13. A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14. The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15. The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

## Section II Guardianship

Article 16. The parents of a minor shall be his guardians.

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

(1) paternal or maternal grandparent;

(2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighborhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighborhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this article is available to be the guardian, the units of the minor's parents, the neighborhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17. A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

(1) spouse;

(2) parent;

(3) adult child;

(4) any other near relative;

(5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighborhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighborhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighborhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18. A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardians's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19. A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

### Section III Declarations of Missing Persons and Death

Article 20. If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21. A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

Article 22. In the event that a person who has been declared missing reappears or his whereabouts are ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23. Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

- (1) if the citizen's whereabouts have been unknown for four years or
- (2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.



Article 24. In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25. A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items no longer exist. Section IV Individual Businesses and Lease-holding Farm Households

Article 26. "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27. "Lease-holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28. The legitimate rights and interests of individual businesses and lease-holding farm households shall be protected by law.

Article 29. The debts of an individual business or a lease-holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family. Section V Individual Partnership

Article 30. "Individual partnership" refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31. Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32. The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33. An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and

registered.

Article 34. The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35. A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

### CHAPTER III Legal Persons

#### Section I General Stipulations

Article 36. A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.

A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37. A legal person shall have the following qualifications:

- (1) establishment in accordance with the law;
- (2) possession of the necessary property or funds;
- (3) possession of its own name, organization and premises; and
- (4) ability to independently bear civil liability.

Article 38. In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.

Article 39. A legal person's domicile shall be the place where its main administrative office is located.

Article 40. When a legal person terminates, it shall go into liquidation in accordance with the law

and discontinue all other activities.

## Section II Enterprise as Legal Person

Article 41. An enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the state; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority.

A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42. An enterprise as legal person shall conduct operations within the range approved and registered.

Article 43. An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44. If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it.

When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45. An enterprise as legal person shall terminate for any of the following reasons:

- (1) if it is dissolved by law;
- (2) if it is disbanded;
- (3) if it is declared bankrupt in accordance with the law; or
- (4) for other reasons.

Article 46. When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47. When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48. An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49. Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) conducting illegal operations beyond the range approved and registered by the registration authority;
- (2) concealing facts from the registration and tax authorities and practicing fraud;
- (3) secretly withdrawing funds or hiding property to evade repayment of debts;
- (4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;
- (5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;
- (6) Engaging in other activities prohibited by law, damaging the interests of the state or the public interest.

#### Section III Official Organ, Institution and Social Organization as Legal Person

Article 50. An independently funded official organ shall be qualified as a legal person on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

#### Section IV Economic Association

Article 51. If a new economic entity is formed by enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52. If the enterprises or an enterprise and an institution that engage in economic

association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53. If the contract for economic association of enterprises of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

#### CHAPTER IV Civil Juristic Acts and Agency

##### Section I Civil Juristic Acts

Article 54. A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55. A civil juristic act shall meet the following requirements:

- (1) the actor has relevant capacity for civil conduct;
- (2) the intention expressed is genuine; and
- (3) the act does not violate the law or the public interest.

Article 56. A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57. A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58. Civil acts in the following categories shall be null and void:

- (1) those performed by a person without capacity for civil conduct;
- (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;
- (3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;
- (4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;
- (5) those that violate the law or the public interest;

(6) economic contracts that violate the state's mandatory plans; and

(7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59. A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

(1) those performed by an actor who seriously misunderstood the contents of the acts;

(2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60. If part of a civil act is null and void, it shall not affect the validity of other parts.

Article 61. After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party.

Article 62. A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met. Section II Agency

Article 63. Citizens and legal persons may perform civil juristic acts through agents.

An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency.

Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64. Agency shall include entrusted agency, statutory agency and appointed agency.

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65. A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal.

If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66. The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. If a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given.

An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal.

If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable.

If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67. If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68. If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69. An entrusted agency shall end under any of the following circumstances:

- (1) when the period of agency expires or when the tasks entrusted are completed;
- (2) when the principal rescinds the entrustment or the agent declines the entrustment;
- (3) when the agent dies;

(4) when the principal loses his capacity for civil conduct; or

(5) when the principal or the agent ceases to be a legal person.

Article 70. A statutory or appointed agency shall end under any of the following circumstances:

(1) When the principal gains or recovers capacity for civil conduct;

(2) When the principal or the agent dies;

(3) When the agent loses capacity for civil conduct;

(4) When the people's court or the unit that appointed the agent rescinds the appointment; or

(5) When the guardian relationship between the principal and the agent ends for other reasons.

## CHAPTER V Civil Rights

### Section I Property Ownership and Related Property Rights

Article 71. "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72. Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

Article 73. State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74. Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

(1) Land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;

(2) Property of collective economic organizations;

(3) Collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific,



cultural, health, sports and other facilities; and

(4) Other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villager' committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants of the township (town).

Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 75. A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects d'art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property.

A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 76. Citizens shall have the right of inheritance under the law.

Article 77. The lawful property of social organizations, including religious organizations, shall be protected by law.

Article 78. Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property.

Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal.

Article 79. If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80. State-owned land may be used according to law by units under ownership by the whole

people; it may also be lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land.

The right of citizens and collectives to contract for management of land under collective ownership or of state-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81. State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by unit under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are lawfully owned by collective may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82. Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Article 83. In the spirit of helping production, making things convenient for people's lives, enhancing unity and mutual assistance, and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damage to his neighbor, shall stop the infringement, eliminate the obstruction and compensate for the damage.

## Section II Creditors' Rights

Article 84. A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The

party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions. Article 85. A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86. When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87. When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88. The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) if quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.

(2) if the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) if the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) if the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements.

Article 89. In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90. Legitimate loan relationships shall be protected by law.

Article 91. If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92. If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93. If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

### Section III Intellectual Property Rights

Article 94. Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law.

Article 95. The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96. The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97. Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological research shall have the right to apply for and receive certificates of honor, bonuses or other awards.

#### Section IV Personal Rights

Article 98. Citizens shall enjoy the rights of life and health.

Article 99. Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited.

Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100. Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profit without his consent shall be prohibited.

Article 101. Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102. Citizens and legal persons shall enjoy the right of honor. It shall be prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103. Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104. Marriage, the family, old people, mothers and children shall be protected by law.

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The lawful rights and interests of the handicapped shall be protected by law.

Article 105. Women shall enjoy equal civil rights with men.

#### CHAPTER VI Civil Liability

##### Section I General Stipulations

Article 106. Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107. Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108. Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by instalments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109. If a person suffers damages from preventing or stopping encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110. Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

##### Section II Civil Liability for Breach of Contract

Article 111. If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112. The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it shall pay the other

party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

Article 113. If both parties breach the contract, each party shall bear its respective civil liability.

Article 114. If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115. A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116. If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

### Section III Civil Liability for Infringement of Rights

Article 117. Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price.

Anyone who damages the property of the state, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well.

Article 118. If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119. Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120. If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses.

The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor.

Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil liability.

Article 122. If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123. If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124. Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125. Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damage to others shall bear civil liability.

Article 126. If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damage to others, its owner or manager shall bear civil liability, unless he can prove himself not at fault.

Article 127. If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128. A person who causes harm in exercising justifiable defense shall not bear civil liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129. If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130. If two or more persons jointly infringe upon another person's rights and cause him



damage, they shall bear joint liability. Article 131. If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced.

Article 132. If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances.

Article 133. If a person without or with limited capacity for civil conduct causes damage to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit.

Section IV Methods of Bearing Civil Liability

Article 134. The main methods of bearing civil liability shall be:

- (1) cessation of infringements;
- (2) removal of obstacles;
- (3) elimination of dangers;
- (4) return of property;
- (5) restoration of original condition;
- (6) repair, reworking or replacement;
- (7) compensation for losses;
- (8) payment of breach of contract damages;
- (9) elimination of ill effects and rehabilitation of reputation; and
- (10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently.

When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

## CHAPTER VII Limitation of Action

Article 135. Except as otherwise stipulated by law, the limitation of action regarding applications to people's court for protection of civil rights shall be two years.

Article 136. The limitation of action shall be one year in cases concerning the following:

- (1) Claims for compensation for bodily injuries;
- (2) Sales of substandard goods without proper notice to that effect;
- (3) Delays in paying rent or refusal to pay rent; or
- (4) Loss of or damage to property left in the care of another person.

Article 137. A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may extend the limitation of action.

Article 138. If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139. A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140. A limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141. If the law has other stipulations concerning limitation of action, those stipulations shall apply.

## CHAPTER VIII Application of Law in Civil Relations with Foreigners

Article 142. The application of law in civil relations with foreigners shall be determined by the provisions in this chapter.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Article 143. If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144. The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145. The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146. The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.

An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147. The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148. Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149. In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150. The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

#### CHAPTER IX Supplementary Provisions

Article 151. The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing

Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152. If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically qualify as a legal person without having to re-register as such.

Article 153. For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154. Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours.

When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day.

If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day.

The last day shall end at 24:00 hours. If business hours are applicable, the last day shall end at closing time.

Article 155. In this Law, the terms "not less than," "not more than," "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure.

Article 156. This Law shall come into force on January 1, 1987.

## 中华人民共和国民法通则

( 一九八六年四月十二日第六届全国人民代表大会第四次会议通过 )

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### 第一章 基本原则

第一条 为了保障公民、法人的合法的民事权益，正确调整民事关系，适应社会主义现代化建设事业发展的需要，根据宪法和我国实际情况，总结民事活动的实践经验，制定本法。

第二条 中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。

第三条 当事人在民事活动中的地位平等。

第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

第五条 公民、法人的合法的民事权益受法律保护，任何组织和个人不得侵犯。

第六条 民事活动必须遵守法律，法律没有规定的，应当遵守国家政策。

第七条 民事活动应当尊重社会公德，不得损害社会公共利益，破坏国家经济计划，扰乱社会经济秩序。

第八条 在中华人民共和国领域内的民事活动，适用中华人民共和国法律，法律另有规定的除外。

本法关于公民的规定，适用于在中华人民共和国领域内的外国人、无国籍人，法律另有规定的除外。

## 第二章 公 民（自然人）

### 第一节 民事权利能力和民事行为能力

第九条 公民从出生时起到死亡时止，具有民事权利能力，依法享有民事权利，承担民事义务。

第十条 公民的民事权利能力一律平等。

第十一条 十八周岁以上的公民是成年人，具有完全民事行为能力，可以独立进行民事活动，是完全民事行为能力人。

十六周岁以上不满十八周岁的公民，以自己的劳动收入为主要生活来源的，视为完全民事行为能力人。

第十二条 十周岁以上的未成年人是限制民事行为能力人，可以进行与他的年龄、智力相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

不满十周岁的未成年人是无民事行为能力人，由他的法定代理人代理民事活动。

第十三条 不能辨认自己行为的精神病人是无民事行为能力人，由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人，可以进行与他的精神健康状况相适应的民事活动；其他民事活动由他的法定代理人代理，或者征得他的法定代理人的同意。

第十四条 无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。

第十五条 公民以他的户籍所在地的居住地为住所，经常居住地与住所不一致的，经常居住地视为住所。

## 第二节 监 护

第十六条 未成年人的父母是未成年人的监护人。

未成年人的父母已经死亡或者没有监护能力的，由下列人员中有监护能力的人担任监护人：



(一) 祖父母、外祖父母；

(二) 兄、姐；

(三) 关系密切的其他亲属、朋友愿意承担监护责任，经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款、第二款规定的监护人的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十七条 无民事行为能力或者限制民事行为能力的精神病人，由下列人员担任监护人：

(一) 配偶；

(二) 父母；

(三) 成年子女；

(四) 其他近亲属；

(五) 关系密切的其他亲属、朋友愿意承担监护责任，经精神病人的所在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款规定的监护人的，由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十八条 监护人应当履行监护职责，保护被监护人的人身、财产及其他合法权益，除为被监护人的利益外，不得处理被监护人的财产。

监护人依法履行监护的权利，受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的，应当承担责任；给被监护人造成财产损失的，应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请，撤销监护人的资格。

第十九条 精神病人的利害关系人，可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的，根据他健康恢复的状况，经本人或者利害关系人申请，人民法院可以宣告他为限制民事行为能力人或者完全民事行为能力人。

### 第三节 宣告失踪和宣告死亡

第二十条 公民下落不明满二年的，利害关系人可以向人民法院申请宣告他为失踪人。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十一条 失踪人的财产由他的配偶、父母、成年子女或者关系密切的其他亲属、朋友代管。代管有争议的，没有以上规定的人或者以上规定的人无能力代管的，由人民法院指定的人代管。

失踪人所欠税款、债务和应付的其他费用，由代管人从失踪人的财产中支付。

第二十二条 被宣告失踪的人重新出现或者确知他的下落，经本人或者利害关系人申请，人民法院应当撤销对他的失踪宣告。

第二十三条 公民有下列情形之一的，利害关系人可以向人民法院申请宣告他死亡：

(一) 下落不明满四年的；

(二) 因意外事故下落不明，从事故发生之日起满二年的。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十四条 被宣告死亡的人重新出现或者确知他没有死亡，经本人或者利害关系人申请，人民法院应当撤销对他的死亡宣告。

有民事行为能力人在被宣告死亡期间实施的民事法律行为有效。

第二十五条 被撤销死亡宣告的人有权请求返还财产。依照继承法取得他的财产的公民或者组织，应当返还原物；原物不存在的，给予适当补偿。

#### 第四节 个体工商户，农村承包经营户

第二十六条 公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

第二十七条 农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

第二十八条 个体工商户，农村承包经营户的合法权益，受法律保护。

第二十九条 个体工商户，农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

## 第五节 个 人 合 伙

第三十条 个人合伙是指两个以上公民按照协议，各自提供资金、实物、技术等，合伙经营、共同劳动。

第三十一条 合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项，订立书面协议。

第三十二条 合伙人投入的财产，由合伙人统一管理和使用。

合伙经营积累的财产，归合伙人共有。

第三十三条 个人合伙可以起字号，依法经核准登记，在核准登记的经营范围內从事经营。

第三十四条 个人合伙的经营活动，由合伙人共同决定，合伙人有执行或监督的权利。

合伙人可以推举负责人。合伙负责人和其他人员的经营活动，由全体合伙人承担民事责任。

第三十五条 合伙的债务，由合伙人按照出资比例或者协议的约定，以各自的财产承担清偿责任。

合伙人对合伙的债务承担连带责任，法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人，有权向其他合伙人追偿。

### 第三章 法 人

#### 第一节 一般规定

第三十六条 法人是具有民事权利能力和民事行为能力，依法独立享有民事权利和承担民事义务的组织。

法人的民事权利能力和民事行为能力，从法人成立时产生，到法人终止时消灭。

第三十七条 法人应当具备下列条件：

(一) 依法成立；

(二) 有必要的财产或者经费;

(三) 有自己的名称、组织机构和场所;

(四) 能够独立承担民事责任。

第三十八条 依照法律或者法人组织章程规定，代表法人行使职权的负责人，是法人的法定代表人。

第三十九条 法人以它的主要办事机构所在地为住所。

第四十条 法人终止，应当依法进行清算，停止清算范围外的活动。

## 第二节 企 业 法 人

第四十一条 全民所有制企业、集体所有制企业有符合国家规定的资金数额，有组织章程、组织机构和场所，能够独立承担民事责任，经主管机关核准登记，取得法人资格。

在中华人民共和国领域内设立的中外合资经营企业，中外合作经营企业和外资企业，具备法人条件的，依法经工商行政管理机关核准登记，取得中国法人资格。

第四十二条 企业法人应当在核准登记的经营范围内从事经营。

第四十三条 企业法人对它的法定代表人和其他工作人员的经营活动，承担民事责任。

第四十四条 企业法人分立、合并上或有其他重要事项变更，应当向登记机关办理登记并公告。

企业法人分立、合并，它的权利和义务由变更后的法人享有和承担。

第四十五条 企业法人由于下列原因之一终止：

- (一) 依法被撤销；
- (二) 解散；
- (三) 依法宣告破产；
- (四) 其他原因。

第四十六条 企业法人终止，应当向登记机关办理注销登记并公告。

第四十七条 企业法人解散，应当成立清算组织，进行清算。企业法人被撤销、被宣告破产的，应当由主管机关或者人民法院组织有关机关和有关人员成立清算组织，进行清算。

第四十八条 全民所有制企业法人以国家授予它经营管理的财产承担民事责任。集体所有制企业法人以企业所有的财产承担民事责任。中外合资经营企业法人、中外合作经营企业法人和外资企业法人以企业所有的财产承担民事责任，法律另有规定的除外。

第四十九条 企业法人有下列情形之一的，除法人承担责任外，对法定代表人可以给予行政处分、罚款，构成犯罪的，依法追究刑事责任：

- (一) 超出登记机关核准登记的经营范围从事非法经营的；

- (二) 向登记机关、税务机关隐瞒真实情况、弄虚作假的；
- (三) 抽逃资金、隐匿财产逃避债务的；
- (四) 解散、被撤销、被宣告破产后，擅自处理财产的；
- (五) 变更、终止时不及时申请办理登记和公告，使利害关系人遭受重大损失的；
- (六) 从事法律禁止的其他活动，损害国家利益或者社会公共利益的。

### 第三节 机关、事业单位和社会团体法人

第五十条 有独立经费的机关从成立之日起，具有法人资格。

具备法人条件的事业单位、社会团体，依法不需要办理法人登记的，从成立之日起，具有法人资格；依法需要办理法人登记的，经核准登记，取得法人资格。

### 第四节 联 营

第五十一条 企业之间或者企业、事业单位之间联营，组成新的经济实体，独立承担民事责任，具备法人条件的，经主管机关核准登记，取得法人资格。



第五十二条 企业之间或者企业、事业单位之间联营，共同经营、不具备法人条件的，由联营各方按照出资比例或者协议的约定，以各自所有的或者经营管理的财产承担民事责任。依照法律的规定或者协议的约定负连带责任的，承担连带责任。

第五十三条 企业之间或者企业、事业单位之间联营，按照合同的约定各自独立经营的，它的权利和义务由合同约定，各自承担民事责任。

#### 第四章 民事法律行为和代理

##### 第一节 民事法律行为

第五十四条 民事法律行为是公民或者法人设立、变更、终止民事权利和民事义务的合法行为。

第五十五条 民事法律行为应当具备下列条件：

- (一) 行为人具有相应的民事行为能力；
- (二) 意思表示真实；
- (三) 不违反法律或者社会公共利益。

第五十六条 民事法律行为可以采用书面形式、口头形式或者其他形式。法律规定用特定形式的，应当依照法律规定。

第五十七条 民事法律行为从成立时起具有法律约束力。行为人非依法律规定或者取得对方同意，不得擅自变更或者解除。

第五十八条 下列民事行为无效：

- (一) 无民事行为能力人实施的；
- (二) 限制民事行为能力人依法不能独立实施的；
- (三) 一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下所为的；
- (四) 恶意串通，损害国家、集体或者第三人利益的；
- (五) 违反法律或者社会公共利益的；
- (六) 经济合同违反国家指令性计划的；
- (七) 以合法形式掩盖非法目的的；

无效的民事行为，从行为开始起就没有法律约束力。

第五十九条 下列民事行为，一方有权请求人民法院或者仲裁机关予以变更或者撤销：

- (一) 行为人对行为内容有重大误解的；
- (二) 显失公平的。

被撤销的民事行为从行为开始起无效。

第六十条 民事行为部分无效，不影响其他部分的效力的，其他部分仍然有效。

第六十一条 民事行为被确认为无效或者被撤销后，当事人因该行为取得的财产，应当返还给受损失的一方。有过错的一方应当赔偿对方因此所受的损失，双方都有过错的，应当各自承担相应的责任。

双方恶意串通，实施民事行为损害国家的、集体的或者第三人的利益的，应当追缴双方取得的财产，收归国家、集体所有或者返还第三人。

第六十二条 民事法律行为可以附条件，附条件的民事法律行为在符合所附条件时生效。

## 第二节 代 理

第六十三条 公民、法人可以通过代理人实施民事法律行为。

代理人在代理权限内，以被代理人的名义实施民事法律行为。被代理人对代理人的代理行为，承担民事责任。

依照法律规定或者按照双方当事人约定，应当由本人实施的民事法律行为，不得代理。

第六十四条 代理包括委托代理、法定代理和指定代理。

委托代理人按照被代理人的委托行使代理权，法定代理人依照法律的规定行使代理权，指定代理人按照人民法院或者指定单位的指定行使代理权。

第六十五条 民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。

书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或盖章。

委托书授权不明的，被代理人应当向第三人承担民事责任，代理人负连带责任。

第六十六条 没有代理权、超越代理权或者代理权终止后的行为，只有经过被代理人的追认，被代理人才承担民事责任。未经追认的行为，由行为人承担民事责任。本人知道他人以本人名义实施民事行为而不作否认表示的，视为同意。

代理人不履行义务而给被代理人造成损害的，应当承担民事责任。

代理人和第三人串通、损害被代理人的利益的，由代理人和第三人负连带责任。

第三人知道行为人没有代理权、超越代理权或者代理权已终止还与行为人实施民事行为给他人造成损害的，由第三人和行为人负连带责任。

第六十七条 代理人知道被委托代理的事项违法仍然进行代理活动的，或者被代理人知道代理人的代理行为违法不表示反对的，由被代理人 and 代理人负连带责任。

第六十八条 委托代理人为被代理人的利益需要转托他人代理的，应当事先取得被代理人的同意。事先没有取得被代理人同意的，应当在事后及时告诉被代理人，如果被代理人不同意，由代理人对自己所转托的人的行为负民事责任，但在紧急情况下，为了保护被代理人的利益而转托他人代理的除外。

第六十九条 有下列情形之一的，委托代理终止：

- (一) 代理期间届满或者代理事务完成；
- (二) 被代理人取消委托或者代理人辞去委托；
- (三) 代理人死亡；
- (四) 代理人丧失民事行为能力；
- (五) 作为被代理人或者代理人的法人终止。

第七十条 有下列情形之一的，法定代理或者指定代理终止：

- (一) 被代理人取得或者恢复民事行为能力；
- (二) 被代理人或者代理人死亡；
- (三) 代理人丧失民事行为能力；
- (四) 指定代理的人民法院或者指定单位取消指定；
- (五) 由其他原因引起的被代理人和代理人之间的监护关系消灭。

## 第五章 民事权利

### 第一节 财产所有权和与财产所有权有关的财产权

第七十一条 财产所有权是指所有人依法对自己的财产享有占有、使用、收益和处分的权利。

第七十二条 财产所有权的取得，不得违反法律规定。按照合同或者其他合法方式取得财产的，财产所有权从财产交付时起转移，法律另有规定或者当事人另有约定的除外。

第七十三条 国家财产属于全民所有。

国家财产神圣不可侵犯，禁止任何组织或者个人侵占、哄抢、私分、截留、破坏。

第七十四条 劳动群众集体组织的财产属于劳动群众集体所有，包括：

（一） 法律规定为集体所有的土地和森林、山岭、草原、荒地、滩涂等；

（二） 集体经济组织的财产；

（三） 集体所有的建筑物、水库、农田水利设施和教育、科学、文化、卫生、体育等设施；

（四） 集体所有的其他财产。

集体所有的土地依照法律属于村农民集体所有，由村农业生产合作社等农业集体经济组织或者村民委员会经营、管理。已经属于乡（镇）农民集体经济组织所有的，可以属于乡（镇）农民集体所有。

集体所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、破坏或者非法查封、扣押、冻结、没收。

第七十五条 公民的个人财产，包括公民的合法收入、房屋、储蓄、生活用品、文物、图书资料、林木、牲畜和法律允许公民所有的生产资料以及其他合法财产。

公民的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破坏或者非法查封、扣押、冻结、没收。

第七十六条 公民依法享有财产继承权。

第七十七条 社会团体包括宗教团体的合法财产受法律保护。

第七十八条 财产可以由两个以上的公民、法人共有。

共有分为按份共有和共同共有。按份共有人按照各自的份额，对共有财产分享权利，分担义务。共同共有人对共有财产享有权利，承担义务。

按份共有财产的每个共有人有权要求将自己的份额分出或者转让。但在出售时，其他共有人在同等条件下，有优先购买的权利。

第七十九条 所有人不明的埋藏物、隐藏物，归国家所有。接收单位应当对上缴的单位或者个人，给予表扬或者物质奖励。

拾得遗失物、漂流物或者失散的饲养动物，应当归还失主，因此而支出的费用由失主偿还。

第八十条 国家所有的土地，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

公民、集体依法对集体所有的或者国家所有由集体使用的土地的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

土地不得买卖、出租、抵押或者以其他形式非法转让。

第八十一条 国家所有的森林、山岭、草原、荒地、滩涂、水面等自然资源，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

国家所有的矿藏，可以依法由全民所有制单位和集体所有制单位开采，也可以依法由公民采挖。国家保护合法的采矿权。

公民、集体依法对集体所有的或者国家所有由集体使用森林、山岭、草原、荒地、滩涂、水面的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

国家所有的矿藏、水流，国家所有的和法律规定属于集体所有的林地、山岭、草原、荒地、滩涂不得买卖、出租、抵押或者以其他形式非法转让。

第八十二条 全民所有制企业对国家授予它经营管理的财产依法享有经营权，受法律保护。

第八十三条 不动产的相邻各方，应当按照有利生产、方便生活、团结互助、公平合理的精神，正确处理截水、排水、通行、通风、采光等方面的相邻关系。给相邻方造成妨碍或者损失的，应当停止侵害，排除妨碍，赔偿损失。



## 第二节 债 权

第八十四条 债是按照合同的约定或者依照法律的规定，在当事人之间产生的特定的权利和义务关系。享有权利的人是债权人，负有义务的人是债务人。

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

第八十五条 合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。

第八十六条 债权人为二人以上的，按照确定的份额分享权利。债务人为二人以上的，按照确定的份额分担义务。

第八十七条 债权人或者债务人一方人数为二人以上的，依照法律的规定或者当事人的约定，享有连带权利的每个债权人，都有权要求债务人履行义务；负有连带义务的每个债务人，都负有清偿全部债务的义务，履行了义务的人，有权要求其他负有连带义务的人偿付他应当承担的份额。

第八十八条 合同的当事人应当按照合同的约定，全部履行自己的义务。

合同中有关质量、期限、地点或者价款约定不明确，按照合同有关条款内容不能确定，当事人又不能通过协商达成协议的，适用下列规定：

（一）质量要求不明确的，按照国家质量标准履行，没有国家质量标准的，按照通常标准履行。

(二) 履行期限不明确的，债务人可以随时向债权人履行义务，债权人也可以随时要求债务人履行义务，但应当给对方必要的准备时间。

(三) 履行地点不明确，给付货币的，在接受给付一方的所在地履行，其他标的在履行义务一方的所在地履行。

(四) 价格约定不明确，按照国家规定的价格履行；没有国家规定价格的，参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的，完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的，当事人都有使用的权利。

**第八十九条** 依照法律的规定或者按照当事人的约定，可以采用下列方式担保债务的履行：

(一) 保证人向债权人保证债务人履行债务，债务人不履行债务的，按照约定由保证人履行或者承担连带责任；保证人履行债务后，有权向债务人追偿。

(二) 债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的，债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

(三) 当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行债务的，无权要求返还定金；接受定金的一方不履行债务的，应当双倍返还定金。

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(四) 按照合同约定一方占有对方的财产,对方不按照合同给付应付款项超过约定期限的,占有人有权留置该财产,依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

第九十条 合法的借贷关系受法律保护。

第九十一条 合同一方将合同的权利、义务全部或者部分转让给第三人的,应当取得合同另一方的同意,并不得牟利。依照法律规定应当由国家批准的合同,需经原批准机关批准。但是,法律另有规定或者原合同另有约定的除外。

第九十二条 没有合法根据,取得不当利益,造成他人损失的,应当将取得的不当利益返还受损失的人。

第九十三条 没有法定的或者约定的义务,为避免他人利益受损失进行管理或者服务的,有权要求受益人偿付由此而支付的必要费用。

### 第三节 知识产权

第九十四条 公民、法人享有著作权(版权),依法有署名、发表、出版、获得报酬等权利。

第九十五条 公民、法人依法取得的专利权受法律保护。

第九十六条 法人、个体工商户、个人合伙依法取得商标专用权受法律保护。

第九十七条 公民对自己的发现享有发现权。发现人有权申请领取发现证书、奖金或者其他奖励。

公民对自己的发明或者其他科技成果，有权申请领取荣誉证书、奖金或者其他奖励。

#### 第四节 人 身 权

第九十八条 公民享有生命健康权。

第九十九条 公民享有姓名权、有权决定、使用和依照规定改变自己的姓名，禁止他人干涉、盗用、假冒。

法人、个体工商户、个人合伙享有名称权。企业法人、个体工商户、个人合伙有权使用、依法转让自己的名称。

第一百条 公民享有肖像权，未经本人同意，不得以营利为目的使用公民的肖像。

第一百零一条 公民、法人享有名誉权，公民的人格尊严受法律保护，禁止用侮辱、诽谤等方式损害公民、法人的名誉。

第一百零二条 公民、法人享有荣誉权，禁止非法剥夺公民、法人的荣誉称号。

第一百零三条 公民享有婚姻自主权，禁止买卖、包办婚姻和其他干涉婚姻自由的行为。

第一百零四条 婚姻、家庭、老人、母亲和儿童受法律保护。

残疾人的合法权益受法律保护。

第一百零五条 妇女享有同男子平等的民事权利。

## 第六章 民事责任

### 第一节 一般规定

第一百零六条 公民、法人违反合同或者不履行其他义务的，应当承担民事责任。

公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的应当承担民事责任。

没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

第一百零七条 因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

第一百零八条 债务应当清偿。暂时无力偿还的，经债权人同意或者人民法院裁决，可以由债务人分期偿还。有能力偿还拒不偿还的，由人民法院判决强制偿还。

第一百零九条 因防止、制止国家的、集体的财产或者他人的财产、人身遭受侵害而使自己受到损害的，由侵害人承担赔偿责任，受益人也可以给予适当的补偿。

第一百一十条 对承担民事责任的公民、法人需要追究行政责任的，应当追究行政责任；构成犯罪的，对公民、法人的法定代表人应当依法追究刑事责任。

## 第二节 违反合同的民事责任

第一百一十一条 当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

第一百一十二条 当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。

当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

第一百一十三条 当事人双方都违反合同的，应当分别承担各自应负的民事责任。

第一百一十四条 当事人一方因另一方违反合同受到损失的，应当及时采取措施防止损失的扩大；没有及时采取措施致使损失扩大的，无权就扩大的损失要求赔偿。

第一百一十五条 合同的变更或者解除，不影响当事人要求赔偿损失的权利。

第一百一十六条 当事人一方由于上级机关的原因，不能履行合同义务的，应当按照合同约定向另一方赔偿损失或者采取其补救措施，再由上级机关对它因此受到的损失负责处理。

### 第三节 侵权的民事责任

第一百一十七条 侵占国家的、集体的财产或者他人财产的，应当返还财产，不能返还财产的，应当折价赔偿。

损坏国家的、集体的财产或者他人财产的，应当恢复原状或者折价赔偿。

受害人因此遭受其他重大损失的，侵害人并应当赔偿损失。

第一百一十八条 公民、法人的著作权（版权），专利权、商标专用权、发现权、发明权和其他科技成果权受到剽窃、篡改、假冒等侵害的，有权要求停止侵害，消除影响，赔偿损失。

第一百一十九条 侵害公民身体造成伤害的，应当赔偿医疗费、因误工减少的收入、残废者生活补助费等费用；造成死亡的，并应当支付丧葬费、死者生前扶养的人必要的生活费等费用。

第一百二十条 公民的姓名权、肖像权、名誉权、荣誉权受到侵害的，有权要求停止侵害，恢复名誉，消除影响，赔礼道歉，并可以要求赔偿损失。

法人的名称权、名誉权、荣誉权受到侵害的，适用前款规定。

第一百二十一条 国家机关或者国家机关工作人员在执行职务，侵犯公民、法人的合法权益造成损害的，应当承担民事责任。

第一百二十二条 因产品质量不合格造成他人财产、人身损害的，产品制造者、销售者应当依法承担民事责任。运输者仓储者对此负有责任的，产品制造者、销售者有权要求赔偿损失。

第一百二十三条 从事高空、高压、易燃、易爆、剧毒、放射性、高速运输工具等对周围环境有高度危险的作业造成他人损害的，应当承担民事责任；如果能够证明损害是由受害人故意造成的，不承担民事责任。

第一百二十四条 违反国家保护环境防止污染的规定，污染环境造成他人损害的，应当依法承担民事责任。

第一百二十五条 在公共场所、道旁或者通道上挖坑、修缮安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担民事责任。



第一百二十六条 建筑物或者其他设施以及建筑物上的搁置物、悬挂物发生倒塌、脱落、坠落造成他人损害的，它的所有人或者管理人应当承担民事责任，但能够证明自己没有过错的除外。

第一百二十七条 饲养的动物造成他人损害的，动物饲养人或者管理人应当承担民事责任；由于受害人的过错造成损害的，动物饲养人或者管理人不承担民事责任；由于第三人的过错造成损害的，第三人应当承担民事责任。

第一百二十八条 因正当防卫造成损害的，不承担民事责任。正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的民事责任。

第一百二十九条 因紧急避险造成损害的，由引起险情发生的人承担民事责任。如果危险是由自然原因引起的，紧急避险人不承担民事责任或者承担适当的民事责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

第一百三十条 二人以上共同侵权造成他人损害的，应当承担连带责任。

第一百三十一条 受害人对于损害的发生也有过错的，可以减轻侵害人的民事责任。

第一百三十二条 当事人对造成损害都没有过错的，可以根据实际情况，由当事人分担民事责任。

第一百三十三条 无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担民事责任。监护人尽了监护责任的，可以适当减轻他的民事责任。

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用。不足部分，由监护人适当赔偿，但单位担任监护人的除外。

#### 第四节 承担民事责任的方式

第一百三十四条 承担民事责任的方式主要有：

- (一) 停止侵害；
- (二) 排除妨碍；
- (三) 消除危险；
- (四) 返还财产；
- (五) 恢复原状；
- (六) 修理、重作、更换；
- (七) 赔偿损失；
- (八) 支付违约金；
- (九) 消除影响、恢复名誉；
- (十) 赔礼道歉。

以上承担民事责任的方式，可以单独适用，也可以合并适用。

人民法院审理民事案件，除适用上述规定外，还可以予以训诫、责令具结悔过，收缴进行非法活动的财物和非法所得，并可以依照法律规定处以罚款、拘留。

## 第七章 诉讼时效

第一百三十五条 向人民法院请求保护民事权利的诉讼时效期间为二年，法律另有规定的除外。

第一百三十六条 下列的诉讼时效期间为一年：

- (一) 身体受到伤害要求赔偿的；
- (二) 出售质量不合格的商品未声明的；
- (三) 延付或者拒付租金的；
- (四) 寄存财物被丢失或者损毁的。

第一百三十七条 诉讼时效期间从知道或者应当知道权利被侵害时起计算。但是，从权利被侵害之日起超过二十年的，人民法院不予保护。有特殊情况的，人民法院可以延长诉讼时效期间。

第一百三十八条 超过诉讼时效期间，当事人自愿履行的，不受诉讼时效限制。

第一百三十九条 在诉讼时效期间的最后六个月内，因不可抗力或者其他障碍不能行使请求权的，诉讼时效中止。从中止时效的原因消除之日起，诉讼时效期间继续计算。

第一百四十条 诉讼时效因提起诉讼、当事人一方提出要求或者同意履行义务而中断。从中断时起，诉讼时效期间重新计算。

第一百四十一条 法律对诉讼时效另有规定的，依照法律规定。

## 第八章 涉外民事关系的法律适用

第一百四十二条 涉外民事关系的法律适用，依照本章的规定确定。

中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

第一百四十三条 中华人民共和国公民定居国外的，他的民事行为能力可以适用定居国法律。

第一百四十四条 不动产的所有权，适用不动产所在地法律。

第一百四十五条 涉外合同的当事人可以选择处理合同争议所适用的法律，法律另有规定的除外。

涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

第一百四十六条 侵权行为的损害赔偿，适用侵权行为地法律。当事人双方国籍相同或者在同一国家有住所的，也可以适用当事人本国法律或者住所地法律。

中华人民共和国法律不认为在中华人民共和国领域外发生的行为是侵权行为的，不作为侵权行为处理。

第一百四十七条 中华人民共和国公民和外国人结婚适用婚姻缔结地法律，离婚适用受理案件的法院所在地法律。

第一百四十八条 扶养适用与被扶养人有最密切联系的国家的法律。

第一百四十九条 遗产的法定继承，动产适用被继承人死亡时住所地法律，不动产适用不动产所在地法律。

第一百五十条 依照本章规定适用外国法律或者国际惯例的，不得违背中华人民共和国的社会公共利益。

## 第九章 附 则

第一百五十一条 民族自治地方的人民代表大会可以根据本法规定的原则，结合当地民族的特点，制定变通的或者补充的单行条例或者规定。自治区人民代表大会制定的，依照法律规定报全国人民代表大会常务委员会批准或者备案；自治州，自治县人民代表大会制定的，报省，自治区人民代表大会常务委员会批准。

第一百五十二条 本法生效以前，经省、自治区、直辖市以上主管机关批准开办的全民所有制企业，已经向工商行政管理机关登记的，可以不再办理法人登记，即具有法人资格。

第一百五十三条 本法所称的“不可抗力”，是指不能预见、不能避免并不能克服的客观情况。

第一百五十四条 民法所称的期间按照公历年、月、日、小时计算。

规定按照小时计算期间的，从规定时开始计算。规定按照日、月、年计算期间的，开始的当天不算入，从下一天开始计算。

期间的最后一天是星期日或者其他法定休假日的，以休假日的次日为期间的最后一天。

期间的最后一天的截止时间为二十四点。有业务时间的，到停止业务活动的时间截止。

第一百五十五条 民法所称的“以上”、“以下”、“以内”、“届满”，包括本数；所称的“不满”、“以外”，不包括本数。

第一百五十六条 本法自一九八七年一月一日起施行。

## **General Principles of the Civil Law of the People's Republic of China**

**(Adopted at the Fourth Session of the Sixth National People's Congress, promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986, effective as of January 1, 1987, and revised on August 27, 2009)**

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#### CHAPTER I Basic Principles

Article 1. This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2. The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3. Parties to a civil activity shall have equal status.

Article 4. In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5. The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6. Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7. Civil activities shall have respect for social ethics and shall not harm the public interest or disrupt social economic order.

Article 8. The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

#### CHAPTER II Citizen (Natural Person)

#### Section I Capacity for Civil Rights and Capacity for Civil Conduct



Article 9. A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10. All citizens are equal as regards their capacity for civil rights.

Article 11. A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labor shall be regarded as a person with full capacity for civil conduct.

Article 12. A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13. A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14. The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15. The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

## Section II Guardianship

Article 16. The parents of a minor shall be his guardians.

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

(1) paternal or maternal grandparent;

(2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighborhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighborhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this article is available to be the guardian, the units of the minor's parents, the neighborhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17. A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

(1) spouse;

(2) parent;

(3) adult child;

(4) any other near relative;

(5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighborhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighborhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighborhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18. A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardians's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19. A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

### Section III Declarations of Missing Persons and Death

Article 20. If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21. A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

Article 22. In the event that a person who has been declared missing reappears or his whereabouts are ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23. Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

- (1) if the citizen's whereabouts have been unknown for four years or
- (2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24. In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25. A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items no longer exist. Section IV Individual Businesses and Lease-holding Farm Households

Article 26. "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27. "Lease-holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28. The legitimate rights and interests of individual businesses and lease-holding farm households shall be protected by law.

Article 29. The debts of an individual business or a lease-holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family. Section V Individual Partnership

Article 30. "Individual partnership" refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31. Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32. The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33. An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and

registered.

Article 34. The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35. A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

### CHAPTER III Legal Persons

#### Section I General Stipulations

Article 36. A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.

A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37. A legal person shall have the following qualifications:

- (1) establishment in accordance with the law;
- (2) possession of the necessary property or funds;
- (3) possession of its own name, organization and premises; and
- (4) ability to independently bear civil liability.

Article 38. In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.

Article 39. A legal person's domicile shall be the place where its main administrative office is located.

Article 40. When a legal person terminates, it shall go into liquidation in accordance with the law.

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and discontinue all other activities.

## Section II Enterprise as Legal Person

Article 41. An enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the state; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority.

A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42. An enterprise as legal person shall conduct operations within the range approved and registered.

Article 43. An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44. If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it.

When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45. An enterprise as legal person shall terminate for any of the following reasons:

- (1) if it is dissolved by law;
- (2) if it is disbanded;
- (3) if it is declared bankrupt in accordance with the law; or
- (4) for other reasons.

Article 46. When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47. When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48. An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49. Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) conducting illegal operations beyond the range approved and registered by the registration authority;
- (2) concealing facts from the registration and tax authorities and practicing fraud;
- (3) secretly withdrawing funds or hiding property to evade repayment of debts;
- (4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;
- (5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;
- (6) Engaging in other activities prohibited by law, damaging the interests of the state or the public interest.

### Section III Official Organ, Institution and Social Organization as Legal Person

Article 50. An independently funded official organ shall be qualified as a legal person on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established, if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

### Section IV Economic Association

Article 51. If a new economic entity is formed by enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52. If the enterprises or an enterprise and an institution that engage in economic

association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53. If the contract for economic association of enterprises of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

#### CHAPTER IV Civil Juristic Acts and Agency

##### Section I Civil Juristic Acts

Article 54. A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55. A civil juristic act shall meet the following requirements:

- (1) the actor has relevant capacity for civil conduct;
- (2) the intention expressed is genuine; and
- (3) the act does not violate the law or the public interest.

Article 56. A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57. A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58. Civil acts in the following categories shall be null and void:

- (1) those performed by a person without capacity for civil conduct;
- (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;
- (3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;
- (4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;
- (5) those that violate the law or the public interest; and



(6) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59. A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

- (1) those performed by an actor who seriously misunderstood the contents of the acts;
- (2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60. If part of a civil act is null and void, it shall not affect the validity of other parts.

Article 61. After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party.

Article 62. A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met. Section II Agency

Article 63. Citizens and legal persons may perform civil juristic acts through agents.

An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency.

Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64. Agency shall include entrusted agency, statutory agency and appointed agency.

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65. A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal.

If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66. The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it, if a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given.

An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal.

If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable.

If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67. If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68. If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69. An entrusted agency shall end under any of the following circumstances:

- (1) when the period of agency expires or when the tasks entrusted are completed;
- (2) when the principal rescinds the entrustment or the agent declines the entrustment;
- (3) when the agent dies;
- (4) when the principal loses his capacity for civil conduct; or

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(5) when the principal or the agent ceases to be a legal person.

Article 70. A statutory or appointed agency shall end under any of the following circumstances:

- (1) When the principal gains or recovers capacity for civil conduct;
- (2) When the principal or the agent dies;
- (3) When the agent loses capacity for civil conduct;
- (4) When the people's court or the unit that appointed the agent rescinds the appointment; or
- (5) When the guardian relationship between the principal and the agent ends for other reasons.

## CHAPTER V Civil Rights

### Section I Property Ownership and Related Property Rights

Article 71. "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72. Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

Article 73. State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74. Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

- (1) Land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;
- (2) Property of collective economic organizations;
- (3) Collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific, cultural, health, sports and other facilities; and

(4) Other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villager committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants of the township (town).

Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 75. A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects d'art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property.

A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 76. Citizens shall have the right of inheritance under the law.

Article 77. The lawful property of social organizations, including religious organizations, shall be protected by law.

Article 78. Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property.

Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal.

Article 79. If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80. State-owned land may be used according to law by units under ownership by the whole people; it may also be lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect

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and properly use the land

The right of citizens and collectives to contract for management of land under collective ownership or of state-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81. State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by unit under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are lawfully owned by collective may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82. Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law.

Article 83. In the spirit of helping production, making things convenient for people's lives, enhancing unity and mutual assistance, and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damage to his neighbor, shall stop the infringement, eliminate the obstruction and compensate for the damage.

## Section II Creditors' Rights

Article 84. A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions. Article 85. A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86. When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87. When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88. The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

- (1) if quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply;
- (2) if the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor;
- (3) if the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations;
- (4) if the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific and

technological research achievements, the parties shall all have the right to use such achievements.

Article 89. In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90. Legitimate loan relationships shall be protected by law.

Article 91. If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92. If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93. If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

### Section III Intellectual Property Rights

Article 94. Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in

accordance with the law.

Article 95. The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96. The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97. Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological research shall have the right to apply for and receive certificates of honor, bonuses or other awards.

#### Section IV Personal Rights

Article 98. Citizens shall enjoy the rights of life and health.

Article 99. Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with usurpation of and false representation of personal names shall be prohibited.

Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100. Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profit without his consent shall be prohibited.

Article 101. Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102. Citizens and legal persons shall enjoy the right of honor. It shall prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103. Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104. Marriage, the family, old people, mothers and children shall be protected by law.

The lawful rights and interests of the handicapped shall be protected by law.



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Article 105. Women shall enjoy equal civil rights with men.

## CHAPTER VI Civil Liability

### Section I General Stipulations

Article 106. Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107. Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108. Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by instalments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109. If a person suffers damages from preventing or stopping encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110. Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

### Section II Civil Liability for Breach of Contract

Article 111. If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112. The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it shall pay the other party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

Article 113. If both parties breach the contract, each party shall bear its respective civil liability.

Article 114. If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115. A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116. If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

### Section III Civil Liability for Infringement of Rights

Article 117. Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price.

Anyone who damages the property of the state, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well.

Article 118. If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119. Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120. If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses.

The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor.

Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil

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liability.

Article 122. If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123. If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124. Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125. Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damage to others shall bear civil liability.

Article 126. If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damage to others, its owner or manager shall bear civil liability, unless he can prove himself not at fault.

Article 127. If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128. A person who causes harm in exercising justifiable defense shall not bear civil liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129. If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130. If two or more persons jointly infringe upon another person's rights and cause him damage, they shall bear joint liability. Article 131. If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced.

Article 132. If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances.

Article 133. If a person without or with limited capacity for civil conduct causes damage to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit.

Section IV Methods of Bearing Civil Liability

Article 134. The main methods of bearing civil liability shall be:

- (1) cessation of infringements;
- (2) removal of obstacles;
- (3) elimination of dangers;
- (4) return of property;
- (5) restoration of original condition;
- (6) repair, reworking or replacement;
- (7) compensation for losses;
- (8) payment of breach of contract damages;
- (9) elimination of ill effects and rehabilitation of reputation; and
- (10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently.

When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

#### CHAPTER VII Limitation of Action

Article 135. Except as otherwise stipulated by law, the limitation of action regarding applications to people's court for protection of civil rights shall be two years.

Article 136. The limitation of action shall be one year in cases concerning the following:

- (1) Claims for compensation for bodily injuries;
- (2) Sales of substandard goods without proper notice to that effect;
- (3) Delays in paying rent or refusal to pay rent; or
- (4) Loss of or damage to property left in the care of another person.

Article 137. A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may extend the limitation of action.

Article 138. If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139. A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140. A limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141. If the law has other stipulations concerning limitation of action, those stipulations shall apply.

#### CHAPTER VIII Application of Law in Civil Relations with Foreigners

Article 142. The application of law in civil relations with foreigners shall be determined by the provisions in this chapter.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China

has any provisions.

Article 143. If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144. The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145. The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146. The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.

An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147. The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148. Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149. In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150. The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

#### CHAPTER IX Supplementary Provisions

Article 151. The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to

the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152. If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically qualify as a legal person without having to re-register as such.

Article 153. For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154. Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours.

When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day.

If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day.

The last day shall end at 24:00 hours. If business hours are applicable, the last day shall end at closing time.

Article 155. In this Law, the terms "not less than," "not more than," "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure.

Article 156. This Law shall come into force on January 1, 1987.

## 中华人民共和国民法通则(2009年修订)

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## 第一章 基本原则

第一条 为了保障公民、法人的合法的民事权益，正确调整民事关系，适应社会主义现代化建设事业发展的需要，根据宪法和我国实际情况，总结民事活动的实践经验，制定本法。

第二条 中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。

第三条 当事人在民事活动中的地位平等。

第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

第五条 公民、法人的合法的民事权益受法律保护，任何组织和个人不得侵犯。

第六条 民事活动必须遵守法律，法律没有规定的，应当遵守国家政策。

第七条 民事活动应当尊重社会公德，不得损害社会公共利益，扰乱社会经济秩序。

第八条 在中华人民共和国领域内的民事活动，适用中华人民共和国法律，法律另有规定的除外。

本法关于公民的规定，适用于在中华人民共和国领域内的外国人、无国籍人，法律另有规定的除外。

## 第二章 公 民（自然人）

### 第一节 民事权利能力和民事行为能力

第九条 公民从出生时起到死亡时止，具有民事权利能力，依法享有民事权利，承担民事义务。

第十条 公民的民事权利能力一律平等。

第十一条 十八周岁以上的公民是成年人，具有完全民事行为能力，可以独立进行民事活动，是完全民事行为能力人。

十六周岁以上不满十八周岁的公民，以自己的劳动收入为主要生活来源的，视为完全民事行为能力人。

第十二条 十周岁以上的未成年人是限制民事行为能力人,可以进行与他的年龄、智力相适应的民事活动; 其他民事活动由他的法定代理人代理, 或者征得他的法定代理人的同意。

不满十周岁的未成年人是无民事行为能力人,由他的法定代理人代理民事活动。

第十三条 不能辨认自己行为的精神病人是无民事行为能力人, 由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人,可以进行与他的精神健康状况相适应的民事活动; 其他民事活动由他的法定代理人代理, 或者征得他的法定代理人的同意。

第十四条 无民事行为能力人、限制民事行为能力人的监护人是他的法定代理人。

第十五条 公民以他的户籍所在地的居住地为住所, 经常居住地与住所不一致的, 经常居住地视为住所。

## 第二节 监 护

第十六条 未成年人的父母是未成年人的监护人。

未成年人的父母已经死亡或者没有监护能力的, 由下列人员中有监护能力的人担任监护人:

(一) 祖父母、外祖父母；

(二) 兄、姐；

(三) 关系密切的其他亲属、朋友愿意承担监护责任，经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款、第二款规定的监护人的，由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十七条 无民事行为能力或者限制民事行为能力的精神病人，由下列人员担任监护人：

(一) 配偶；

(二) 父母；

(三) 成年子女；

(四) 其他近亲属；

(五) 关系密切的其他亲属、朋友愿意承担监护责任，经精神病人的所在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的，由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的，由人民法院裁决。

没有第一款规定的监护人的，由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十八条 监护人应当履行监护职责，保护被监护人的人身、财产及其他合法权益，除为被监护人的利益外，不得处理被监护人的财产。

监护人依法履行监护的权利，受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的，应当承担责任；给被监护人造成财产损失的，应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请，撤销监护人的资格。

第十九条 精神病人的利害关系人，可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的，根据他健康恢复的状况，经本人或者利害关系人申请，人民法院可以宣告他为限制民事行为能力人或者完全民事行为能力人。

### 第三节 宣告失踪和宣告死亡

第二十条 公民下落不明满二年的，利害关系人可以向人民法院申请宣告他为失踪人。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十一条 失踪人的财产由他的配偶、父母、成年子女或者关系密切的其他亲属、朋友代管。代管有争议的，没有以上规定的人或者以上规定的人无力代管的，由人民法院指定的人代管。

失踪人所欠税款、债务和应付的其他费用，由代管人从失踪人的财产中支付。

第二十二条 被宣告失踪的人重新出现或者确知他的下落，经本人或者利害关系人申请，人民法院应当撤销对他的失踪宣告。

第二十三条 公民有下列情形之一的，利害关系人可以向人民法院申请宣告他死亡：

- (一) 下落不明满四年的；
- (二) 因意外事故下落不明，从事故发生之日起满二年的。

战争期间下落不明的，下落不明的时间从战争结束之日起计算。

第二十四条 被宣告死亡的人重新出现或者确知他没有死亡，经本人或者利害关系人申请，人民法院应当撤销对他的死亡宣告。

有民事行为能力人在被宣告死亡期间实施的民事法律行为有效。

第二十五条 被撤销死亡宣告的人有权请求返还财产。依照继承法取得他的财产的公民或者组织，应当返还原物；原物不存在的，给予适当补偿。

#### 第四节 个体工商户，农村承包经营户

第二十六条 公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

第二十七条 农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

第二十八条 个体工商户，农村承包经营户的合法权益，受法律保护。

第二十九条 个体工商户，农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

## 第五节 个 人 合 伙

第三十条 个人合伙是指两个以上公民按照协议，各自提供资金、实物、技术等，合伙经营、共同劳动。

第三十一条 合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项，订立书面协议。

第三十二条 合伙人投入的财产，由合伙人统一管理和使用。

合伙经营积累的财产，归合伙人共有。

第三十三条 个人合伙可以起字号，依法经核准登记，在核准登记的经营范围内从事经营。

第三十四条 个人合伙的经营活动，由合伙人共同决定，合伙人有执行或监督的权利。

合伙人可以推举负责人。合伙负责人和其他人员的经营活动，由全体合伙人承担民事责任。

第三十五条 合伙的债务，由合伙人按照出资比例或者协议的约定，以各自的财产承担清偿责任。

合伙人对合伙的债务承担连带责任，法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人，有权向其他合伙人追偿。

### 第三章 法 人

#### 第一节 一般规定

第三十六条 法人是具有民事权利能力和民事行为能力，依法独立享有民事权利和承担民事义务的组织。

法人的民事权利能力和民事行为能力，从法人成立时产生，到法人终止时消灭。

第三十七条 法人应当具备下列条件：

(一) 依法成立；



(二) 有必要的财产或者经费;

(三) 有自己的名称、组织机构和场所;

(四) 能够独立承担民事责任。

第三十八条 依照法律或者法人组织章程规定，代表法人行使职权的负责人，是法人的法定代表人。

第三十九条 法人以它的主要办事机构所在地为住所。

第四十条 法人终止，应当依法进行清算，停止清算范围外的活动。

## 第二节 企 业 法 人

第四十一条 全民所有制企业、集体所有制企业有符合国家规定的资金数额，有组织章程、组织机构和场所，能够独立承担民事责任，经主管机关核准登记，取得法人资格。

在中华人民共和国领域内设立的中外合资经营企业，中外合作经营企业和外资企业，具备法人条件的，依法经工商行政管理机关核准登记，取得中国法人资格。

第四十二条 企业法人应当在核准登记的经营范围内从事经营。

第四十三条 企业法人对它的法定代表人和其他工作人员的经营活动，承担民事责任。

第四十四条 企业法人分立、合并上或有其他重要事项变更，应当向登记机关办理登记并公告。

企业法人分立、合并，它的权利和义务由变更后的法人享有和承担。

第四十五条 企业法人由于下列原因之一终止：

- (一) 依法被撤销；
- (二) 解散；
- (三) 依法宣告破产；
- (四) 其他原因。

第四十六条 企业法人终止，应当向登记机关办理注销登记并公告。

第四十七条 企业法人解散，应当成立清算组织，进行清算。企业法人被撤销、被宣告破产的，应当由主管机关或者人民法院组织有关机关和有关人员成立清算组织，进行清算。

第四十八条 全民所有制企业法人以国家授予它经营管理的财产承担民事责任。集体所有制企业法人以企业所有的财产承担民事责任。中外合资经营企业法人、中外合作经营企业法人和外资企业法人以企业所有的财产承担民事责任，法律另有规定的除外。

第四十九条 企业法人有下列情形之一的，除法人承担责任外，对法定代表人可以给予行政处分、罚款，构成犯罪的，依法追究刑事责任：

- (一) 超出登记机关核准登记的经营范围从事非法经营的；

- (二) 向登记机关、税务机关隐瞒真实情况、弄虚作假的;
- (三) 抽逃资金、隐匿财产逃避债务的;
- (四) 解散、被撤销、被宣告破产后,擅自处理财产的;
- (五) 变更、终止时不及时申请办理登记和公告,使利害关系人遭受重大损失的;
- (六) 从事法律禁止的其他活动,损害国家利益或者社会公共利益的。

### 第三节 机关、事业单位和社会团体法人

第五十条 有独立经费的机关从成立之日起,具有法人资格。

具备法人条件的事业单位、社会团体,依法不需要办理法人登记的,从成立之日起,具有法人资格;依法需要办理法人登记的,经核准登记,取得法人资格。

### 第四节 联 营

第五十一条 企业之间或者企业、事业单位之间联营,组成新的经济实体,独立承担民事责任,具备法人条件的,经主管机关核准登记,取得法人资格。

第五十二条 企业之间或者企业、事业单位之间联营，共同经营、不具备法人条件的，由联营各方按照出资比例或者协议的约定，以各自所有的或者经营管理的财产承担民事责任。依照法律的规定或者协议的约定负连带责任的，承担连带责任。

第五十三条 企业之间或者企业、事业单位之间联营，按照合同的约定各自独立经营的，它的权利和义务由合同约定，各自承担民事责任。

#### 第四章 民事法律行为和代理

##### 第一节 民事法律行为

第五十四条 民事法律行为是公民或者法人设立、变更、终止民事权利和民事义务的合法行为。

第五十五条 民事法律行为应当具备下列条件：

- (一) 行为人具有相应的民事行为能力；
- (二) 意思表示真实；
- (三) 不违反法律或者社会公共利益。

第五十六条 民事法律行为可以采用书面形式、口头形式或者其他形式。法律规定用特定形式的，应当依照法律规定。

第五十七条 民事法律行为从成立时起具有法律约束力。行为人非依法律规定或者取得对方同意，不得擅自变更或者解除。

第五十八条 下列民事行为无效：

- (一) 无民事行为能力人实施的；
- (二) 限制民事行为能力人依法不能独立实施的；
- (三) 一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下所为的；
- (四) 恶意串通，损害国家、集体或者第三人利益的；
- (五) 违反法律或者社会公共利益的；
- (六) 以合法形式掩盖非法目的的；

无效的民事行为，从行为开始起就没有法律约束力。

第五十九条 下列民事行为，一方有权请求人民法院或者仲裁机关予以变更或者撤销：

- (一) 行为人对行为内容有重大误解的；
- (二) 显失公平的。

被撤销的民事行为从行为开始起无效。

第六十条 民事行为部分无效，不影响其他部分的效力的，其他部分仍然有效。

第六十一条 民事行为被确认为无效或者被撤销后，当事人因该行为取得的财产，应当返还给受损失的一方。有过错的一方应当赔偿对方因此所受的损失，双方都有过错的，应当各自承担相应的责任。

双方恶意串通，实施民事行为损害国家的、集体的或者第三人的利益的，应当追缴双方取得的财产，收归国家、集体所有或者返还第三人。

第六十二条 民事法律行为可以附条件，附条件的民事法律行为在符合所附条件时生效。

## 第二节 代 理

第六十三条 公民、法人可以通过代理人实施民事法律行为。

代理人在代理权限内，以被代理人的名义实施民事法律行为。被代理人对代理人的代理行为，承担民事责任。

依照法律规定或者按照双方当事人约定，应当由本人实施的民事法律行为，不得代理。

第六十四条 代理包括委托代理、法定代理和指定代理。

委托代理人按照被代理人的委托行使代理权，法定代理人依照法律的规定行使代理权，指定代理人按照人民法院或者指定单位的指定行使代理权。

第六十五条 民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。

书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或盖章。

委托书授权不明的，被代理人应当向第三人承担民事责任，代理人负连带责任。

第六十六条 没有代理权、超越代理权或者代理权终止后的行为，只有经过被代理人的追认，被代理人才承担民事责任。未经追认的行为，由行为人承担民事责任。本人知道他人以本人名义实施民事行为而不作否认表示的，视为同意。

代理人不履行职务而给被代理人造成损害的，应当承担民事责任。

代理人和第三人串通、损害被代理人的利益的，由代理人和第三人负连带责任。

第三人知道行为人没有代理权、超越代理权或者代理权已终止还与行为人实施民事行为给他人造成损害的，由第三人和行为人负连带责任。

第六十七条 代理人知道被委托代理的事项违法仍然进行代理活动的，或者被代理人知道代理人的代理行为违法不表示反对的，由被代理人 and 代理人负连带责任。

第六十八条 委托代理人为被代理人的利益需要转托他人代理的，应当事先取得被代理人的同意。事先没有取得被代理人同意的，应当在事后及时告诉被代理人，如果被代理人不同意，由代理人对自己所转托的人的行为负民事责任，但在紧急情况下，为了保护被代理人的利益而转托他人代理的除外。

第六十九条 有下列情形之一的，委托代理终止：

- (一) 代理期间届满或者代理事务完成;
- (二) 被代理人取消委托或者代理人辞去委托;
- (三) 代理人死亡;
- (四) 代理人丧失民事行为能力;
- (五) 作为被代理人或者代理人的法人终止。

第七十条 有下列情形之一的，法定代理或者指定代理终止：

- (一) 被代理人取得或者恢复民事行为能力;
- (二) 被代理人或者代理人死亡;
- (三) 代理人丧失民事行为能力;
- (四) 指定代理的人民法院或者指定单位取消指定;
- (五) 由其他原因引起的被代理人和代理人之间的监护关系消灭。

## 第五章 民事权利

### 第一节 财产所有权和与财产所有权有关的财产权



第七十一条 财产所有权是指所有人依法对自己的财产享有占有、使用、收益和处分的权利。

第七十二条 财产所有权的取得，不得违反法律规定。按照合同或者其他合法方式取得财产的，财产所有权从财产交付时起转移，法律另有规定或者当事人另有约定的除外。

第七十三条 国家财产属于全民所有。

国家财产神圣不可侵犯，禁止任何组织或者个人侵占、哄抢、私分、截留、破坏。

第七十四条 劳动群众集体组织的财产属于劳动群众集体所有，包括：

- (一) 法律规定为集体所有的土地和森林、山岭、草原、荒地、滩涂等；
- (二) 集体经济组织的财产；
- (三) 集体所有的建筑物、水库、农田水利设施和教育、科学、文化、卫生、体育等设施；
- (四) 集体所有的其他财产。

集体所有的土地依照法律属于村农民集体所有，由村农业生产合作社等农业集体经济组织或者村民委员会经营、管理。已经属于乡（镇）农民集体经济组织所有的，可以属于乡（镇）农民集体所有。

集体所有的财产受法律保护，禁止任何组织或者个人侵占、哄抢、私分、破坏或者非法查封、扣押、冻结、没收。

第七十五条 公民的个人财产，包括公民的合法收入、房屋、储蓄、生活用品、文物、图书资料、林木、牲畜和法律允许公民所有的生产资料以及其他合法财产。

公民的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破坏或者非法查封、扣押、冻结、没收。

第七十六条 公民依法享有财产继承权。

第七十七条 社会团体包括宗教团体的合法财产受法律保护。

第七十八条 财产可以由两个以上的公民、法人共有。

共有分为按份共有和共同共有。按份共有人按照各自的份额，对共有财产分享权利，分担义务。共同共有人对共有财产享有权利，承担义务。

按份共有财产的每个共有人有权要求将自己的份额分出或者转让。但在出售时，其他共有人在同等条件下，有优先购买的权利。

第七十九条 所有人不明的埋藏物、隐藏物，归国家所有。接收单位应当对上缴的单位或者个人，给予表扬或者物质奖励。

拾得遗失物、漂流物或者失散的饲养动物，应当归还失主，因此而支出的费用由失主偿还。

第八十条 国家所有的土地，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

公民、集体依法对集体所有的或者国家所有由集体使用的土地的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

土地不得买卖、出租、抵押或者以其他形式非法转让。

第八十一条 国家所有的森林、山岭、草原、荒地、滩涂、水面等自然资源，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

国家所有的矿藏，可以依法由全民所有制单位和集体所有制单位开采，也可以依法由公民采挖。国家保护合法的采矿权。

公民、集体依法对集体所有的或者国家所有由集体使用森林、山岭、草原、荒地、滩涂、水面的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

国家所有的矿藏、水流，国家所有的和法律规定属于集体所有的林地、山岭、草原、荒地、滩涂不得买卖、出租、抵押或者以其他形式非法转让。

第八十二条 全民所有制企业对国家授予它经营管理的财产依法享有经营权，受法律保护。

第八十三条 不动产的相邻各方，应当按照有利生产、方便生活、团结互助、公平合理的精神，正确处理截水、排水、通行、通风、采光等方面的相邻关系。给相邻方造成妨碍或者损失的，应当停止侵害，排除妨碍，赔偿损失。

## 第二节 债 权

第八十四条 债是按照合同的约定或者依照法律的规定，在当事人之间产生的特定的权利和义务关系。享有权利的人是债权人，负有义务的人是债务人。

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

第八十五条 合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。

第八十六条 债权人为二人以上的，按照确定的份额分享权利。债务人为二人以上的，按照确定的份额分担义务。

第八十七条 债权人或者债务人一方人数为二人以上的，依照法律的规定或者当事人的约定，享有连带权利的每个债权人，都有权要求债务人履行义务；负有连带义务的每个债务人，都负有清偿全部债务的义务，履行了义务的人，有权要求其他负有连带义务的人偿付他应当承担的份额。

第八十八条 合同的当事人应当按照合同的约定，全部履行自己的义务。

合同中有关质量、期限、地点或者价款约定不明确，按照合同有关条款内容不能确定，当事人又不能通过协商达成协议的，适用下列规定：

（一）质量要求不明确的，按照国家质量标准履行，没有国家质量标准的，按照通常标准履行。

（二）履行期限不明确的，债务人可以随时向债权人履行义务，债权人也可以随时要求债务人履行义务，但应当给对方必要的准备时间。

（三）履行地点不明确，给付货币的，在接受给付一方的所在地履行，其他标的在履行义务一方的所在地履行。

(四) 价格约定不明确,按照国家规定的价格履行;没有国家规定价格的,参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的,完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的,当事人都有使用的权利。

第八十九条 依照法律的规定或者按照当事人的约定,可以采用下列方式担保债务的履行:

(一) 保证人向债权人保证债务人履行债务,债务人不履行债务的,按照约定由保证人履行或者承担连带责任;保证人履行债务后,有权向债务人追偿。

(二) 债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的,债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

(三) 当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后,定金应当抵作价款或者收回。给付定金的一方不履行债务的,无权要求返还定金;接受定金的一方不履行债务的,应当双倍返还定金。

(四) 按照合同约定一方占有对方的财产,对方不按照合同给付应付款项超过约定期限的,占有人有权留置该财产,依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

第九十条 合法的借贷关系受法律保护。

第九十一条 合同一方将合同的权利、义务全部或者部分转让给第三人的，应当取得合同另一方的同意，并不得牟利。依照法律规定应当由国家批准的合同，需经原批准机关批准。但是，法律另有规定或者原合同另有约定的除外。

第九十二条 没有合法根据，取得不当利益，造成他人损失的，应当将取得的不当利益返还受损失的人。

第九十三条 没有法定的或者约定的义务，为避免他人利益受损失进行管理或者服务的，有权要求受益人偿付由此而支付的必要费用。

### 第三节 知 识 产 权

第九十四条 公民、法人享有著作权（版权），依法有署名、发表、出版、获得报酬等权利。

第九十五条 公民、法人依法取得的专利权受法律保护。

第九十六条 法人、个体工商户、个人合伙依法取得商标专用权受法律保护。

第九十七条 公民对自己的发现享有发现权。发现人有权申请领取发现证书、奖金或者其他奖励。

公民对自己的发明或者其他科技成果，有权申请领取荣誉证书、奖金或者其他奖励。

#### 第四节 人 身 权

第九十八条 公民享有生命健康权。

第九十九条 公民享有姓名权、有权决定、使用和依照规定改变自己的姓名，禁止他人干涉、盗用、假冒。

法人、个体工商户、个人合伙享有名称权。企业法人、个体工商户、个人合伙有权使用、依法转让自己的名称。

第一百条 公民享有肖像权，未经本人同意，不得以营利为目的使用公民的肖像。

第一百零一条 公民、法人享有名誉权，公民的人格尊严受法律保护，禁止用侮辱、诽谤等方式损害公民、法人的名誉。

第一百零二条 公民、法人享有荣誉权，禁止非法剥夺公民、法人的荣誉称号。

第一百零三条 公民享有婚姻自主权，禁止买卖、包办婚姻和其他干涉婚姻自由的行为。

第一百零四条 婚姻、家庭、老人、母亲和儿童受法律保护。

残疾人的合法权益受法律保护。

第一百零五条 妇女享有同男子平等的民事权利。

## 第六章 民事责任

### 第一节 一般规定

第一百零六条 公民、法人违反合同或者不履行其他义务的，应当承担民事责任。

公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的应当承担民事责任。

没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

第一百零七条 因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

第一百零八条 债务应当清偿。暂时无力偿还的，经债权人同意或者人民法院裁决，可以由债务人分期偿还。有能力偿还拒不偿还的，由人民法院判决强制偿还。

第一百零九条 因防止、制止国家的、集体的财产或者他人的财产、人身遭受侵害而使自己受到损害的，由侵害人承担赔偿责任，受益人也可以给予适当的补偿。

第一百一十条 对承担民事责任的公民、法人需要追究行政责任的，应当追究行政责任；构成犯罪的，对公民、法人的法定代表人应当依法追究刑事责任。



## 第二节 违反合同的民事责任

第一百一十一条 当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

第一百一十二条 当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。

当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

第一百一十三条 当事人双方都违反合同的，应当分别承担各自应负的民事责任。

第一百一十四条 当事人一方因另一方违反合同受到损失的，应当及时采取措施防止损失的扩大；没有及时采取措施致使损失扩大的，无权就扩大的损失要求赔偿。

第一百一十五条 合同的变更或者解除，不影响当事人要求赔偿损失的权利。

第一百一十六条 当事人一方由于上级机关的原因，不能履行合同义务的，应当按照合同约定向另一方赔偿损失或者采取其补救措施，再由上级机关对它因此受到的损失负责处理。

### 第三节 侵权的民事责任

第一百一十七条 侵占国家的、集体的财产或者他人财产的，应当返还财产，不能返还财产的，应当折价赔偿。

损坏国家的、集体的财产或者他人财产的，应当恢复原状或者折价赔偿。

受害人因此遭受其他重大损失的，侵害人并应当赔偿损失。

第一百一十八条 公民、法人的著作权（版权），专利权、商标专用权、发现权、发明权和其他科技成果权受到剽窃、篡改、假冒等侵害的，有权要求停止侵害，消除影响，赔偿损失。

第一百一十九条 侵害公民身体造成伤害的，应当赔偿医疗费、因误工减少的收入、残废者生活补助费等费用；造成死亡的，并应当支付丧葬费、死者生前扶养的人必要的生活费等费用。

第一百二十条 公民的姓名权、肖像权、名誉权、荣誉权受到侵害的，有权要求停止侵害，恢复名誉，消除影响，赔礼道歉，并可以要求赔偿损失。

法人的名称权、名誉权、荣誉权受到侵害的，适用前款规定。

第一百二十一条 国家机关或者国家机关工作人员在执行职务，侵犯公民、法人的合法权益造成损害的，应当承担民事责任。

第一百二十二条 因产品质量不合格造成他人财产、人身损害的，产品制造者、销售者应当依法承担民事责任。运输者仓储者对此负有责任的，产品制造者、销售者有权要求赔偿损失。

第一百二十三条 从事高空、高压、易燃、易爆、剧毒、放射性、高速运输工具等对周围环境有高度危险的作业造成他人损害的，应当承担民事责任；如果能够证明损害是由受害人故意造成的，不承担民事责任。

第一百二十四条 违反国家保护环境防止污染的规定，污染环境造成他人损害的，应当依法承担民事责任。

第一百二十五条 在公共场所、道旁或者通道上挖坑、修缮安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担民事责任。

第一百二十六条 建筑物或者其他设施以及建筑物上的搁置物、悬挂物发生倒塌、脱落、坠落造成他人损害的，它的所有人或者管理人应当承担民事责任，但能够证明自己没有过错的除外。

第一百二十七条 饲养的动物造成他人损害的，动物饲养人或者管理人应当承担民事责任；由于受害人的过错造成损害的，动物饲养人或者管理人不承担民事责任；由于第三人的过错造成损害的，第三人应当承担民事责任。

第一百二十八条 因正当防卫造成损害的，不承担民事责任。正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的民事责任。

第一百二十九条 因紧急避险造成损害的，由引起险情发生的人承担民事责任。如果危险是由自然原因引起的，紧急避险人不承担民事责任或者承担适当的民事责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

第一百三十条 二人以上共同侵权造成他人损害的，应当承担连带责任。

第一百三十一条 受害人对于损害的发生也有过错的，可以减轻侵害人的民事责任。

第一百三十二条 当事人对造成损害都没有过错的，可以根据实际情况，由当事人分担民事责任。

第一百三十三条 无民事行为能力人、限制民事行为能力人造成他人损害的，由监护人承担民事责任。监护人尽了监护责任的，可以适当减轻他的民事责任。

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用。不足部分，由监护人适当赔偿，但单位担任监护人的除外。

#### 第四节 承担民事责任的方式

第一百三十四条 承担民事责任的方式主要有：

(一) 停止侵害；

(二) 排除妨碍；

(三) 消除危险；

(四) 返还财产；

(五) 恢复原状；

(六) 修理、重作、更换;

(七) 赔偿损失;

(八) 支付违约金;

(九) 消除影响、恢复名誉;

(十) 赔礼道歉。

以上承担民事责任的方式,可以单独适用,也可以合并适用。

人民法院审理民事案件,除适用上述规定外,还可以予以训诫、责令具结悔过,收缴进行非法活动的财物和非法所得,并可以依照法律规定处以罚款、拘留。

## 第七章 诉讼时效

第一百三十五条 向人民法院请求保护民事权利的诉讼时效期间为二年,法律另有规定的除外。

第一百三十六条 下列的诉讼时效期间为一年:

(一) 身体受到伤害要求赔偿的;

(二) 出售质量不合格的商品未声明的;

(三) 延付或者拒付租金的;

(四) 寄存财物被丢失或者损毁的。

第一百三十七条 诉讼时效期间从知道或者应当知道权利被侵害时起计算。但是，从权利被侵害之日起超过二十年的，人民法院不予保护。有特殊情况的，人民法院可以延长诉讼时效期间。

第一百三十八条 超过诉讼时效期间，当事人自愿履行的，不受诉讼时效限制。

第一百三十九条 在诉讼时效期间的最后六个月内，因不可抗力或者其他障碍不能行使请求权的，诉讼时效中止。从中止时效的原因消除之日起，诉讼时效期间继续计算。

第一百四十条 诉讼时效因提起诉讼、当事人一方提出要求或者同意履行义务而中断。从中断时起，诉讼时效期间重新计算。

第一百四十一条 法律对诉讼时效另有规定的，依照法律规定。

## 第八章 涉外民事关系的法律适用

第一百四十二条 涉外民事关系的法律适用，依照本章的规定确定。

中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

第一百四十三条 中华人民共和国公民定居国外的，他的民事行为能力可以适用定居国法律。

第一百四十四条 不动产的所有权，适用不动产所在地法律。

第一百四十五条 涉外合同的当事人可以选择处理合同争议所适用的法律，法律另有规定的除外。

涉外合同的当事人没有选择的，适用与合同有最密切联系的国家的法律。

第一百四十六条 侵权行为的损害赔偿，适用侵权行为地法律。当事人双方国籍相同或者在同一国家有住所的，也可以适用当事人本国法律或者住所地法律。

中华人民共和国法律不认为在中华人民共和国领域外发生的行为是侵权行为的，不作为侵权行为处理。

第一百四十七条 中华人民共和国公民和外国人结婚适用婚姻缔结地法律，离婚适用受理案件的法院所在地法律。

第一百四十八条 扶养适用与被扶养人有最密切联系的国家的法律。

第一百四十九条 遗产的法定继承，动产适用被继承人死亡时住所地法律，不动产适用不动产所在地法律。

第一百五十条 依照本章规定适用外国法律或者国际惯例的，不得违背中华人民共和国的社会公共利益。

## 第九章 附 则

第一百五十一条 民族自治地方的人民代表大会可以根据本法规定的原则，结合当地民族的特点，制定变通的或者补充的单行条例或者规定。自治区人民代表大会制定的，依照法律规定报全国人民代表大会常务委员会批准或者备案；自治州、自治县人民代表大会制定的，报省，自治区人民代表大会常务委员会批准。

第一百五十二条 本法生效以前，经省、自治区、直辖市以上主管机关批准开办的全民所有制企业，已经向工商行政管理机关登记的，可以不再办理法人登记，即具有法人资格。

第一百五十三条 本法所称的“不可抗力”，是指不能预见、不能避免并不能克服的客观情况。

第一百五十四条 民法所称的期间按照公历年、月、日、小时计算。

规定按照小时计算期间的，从规定时开始计算。规定按照日、月、年计算期间的，开始的当天不算入，从下一天开始计算。

期间的最后一天是星期日或者其他法定休假日的，以休假日的次日为期间的最后一天。

期间的最后一天的截止时间为二十四点。有业务时间的，到停止业务活动的时间截止。

第一百五十五条 民法所称的“以上”、“以下”、“以内”、“届满”，包括本数；所称的“不满”、“以外”，不包括本数。

第一百五十六条 本法自一九八七年一月一日起施行。