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## COMPANIES LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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Standing Committee of the National People's Congress

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## CHAPTER I GENERAL PROVISIONS

### Article 1

This Law is enacted in order to standardize the organization and behavior of companies, to protect the legitimate rights and interests of companies, shareholders and creditors, to maintain the socio-economic order and to promote the development of the socialist market economy.

### Article 2

For the purposes of this Law, the term company refers to a company with limited liability or a company limited by shares incorporated within the territory of the People's Republic of China in accordance with this Law.

### Article 3

A company is an enterprise legal person, which has independent property of a legal person and enjoys the property rights of a legal person. The company shall be liable for its debts to the extent of its entire property.

Shareholders of a company with limited liability shall assume liability towards the company to the extent of the capital contributions subscribed respectively by them; and the shareholders of a company limited by shares shall assume liability towards the company to the extent of the shares subscribed respectively by them.

### Article 4

The shareholders of a company shall, in accordance with law, enjoy such rights as benefiting from the assets of the company, participation in making major decisions and selection of managerial personnel.

### Article 5

In its operational activities, a company shall abide by laws and administrative regulations, observe social morals and commercial ethics, persist in honesty and good faith, accept supervision by the government and the public, and assume social responsibility.

The legitimate rights and interests of companies shall be protected by law, and shall be inviolable.

### Article 6

Where an entity intends to incorporate a company, it shall, in accordance with law, apply to a com-

pany registration authority for registration of such incorporation. Where the conditions for incorporation provided for by this Law are met, the company registration authority shall have the company registered as a company with limited liability or a company limited by shares; and where the said conditions are not met, the company shall not be registered as one with limited liability or as one limited by shares.

Where laws or administrative regulations provide that approval is required for incorporation of a company, the procedures of approval shall be completed according to law prior to registration of the company.

The public may apply to the company registration authority for inquiry about the items registered by a company, and the authority shall provide services for such inquiry.

### Article 7

The company registration authority shall issue a business license to a company incorporated according to law. The date on which the business license is issued shall be the date on which a company is incorporated.

In the business license of a company shall clearly be stated such items as the name, domicile, registered capital, actually received capital, scope of business and name of the legal representative of the company.

Where the items stated in the business license of a company are altered, the company shall have the alterations registered according to law, and the company registration authority shall renew its business license.

### Article 8

A company with limited liability incorporated according to this Law shall have the words "company with limited liability" or "limited company" indicated in its name.

A company limited by shares incorporated according to this Law shall have the words "company limited by shares" or "company by shares" indicated in its name.

### Article 9

Where a company with limited liability is to be changed into a company limited by shares, it shall meet the conditions of a company limited by shares provided for by this Law. Where a company limited

by shares is to be changed into a company with limited liability, it shall meet the conditions of a company with limited liability provided for by this Law. Where a company with limited liability is changed into a company limited by shares, or a company limited by shares is changed into a company with limited liability, the rights of credit and the debts of the company prior to the change shall be inherited by the company after the change.

#### **Article 10**

The domicile of a company shall be the place where its main administrative organization is located.

#### **Article 11**

Articles of association shall be formulated according to law when a company is incorporated. The articles of association of a company shall have binding force on the company, its shareholders, directors, supervisors and senior managers.

#### **Article 12**

The business scope of a company shall be defined in the company's articles of association, and shall be registered according to law. A company may revise its articles of association and alter its scope of business, but shall have such revision and alteration registered.

The items within the scope of business of a company that are subject to approval as provided for by laws and administrative regulations shall be submitted for approval according to law.

#### **Article 13**

The chairman of the board of directors, the executive director or the manager shall, in accordance with the provisions of a company's articles of association, serve as the legal representative of the company, which shall be registered according to law. Where the legal representative of a company is replaced, the company shall have such replacement registered.

#### **Article 14**

A company may establish branches. Where a company intends to establish a branch, it shall apply for registration to the company registration authority, in order to obtain a business license for the branch. However, such a branch shall not possess the status of a legal person, and its civil liabilities shall be borne by the company.

A company may establish subsidiaries, which shall possess the status of legal persons, and shall independently bear civil liabilities according to law.

#### **Article 15**

A company may invest in other enterprises; however, it shall not become the investor that assumes joint and several liability for the debts of the enterprises in which it invests, except where otherwise provided for by law.

#### **Article 16**

Where a company intends to invest in another enterprise or provide guarantee for another entity, the matter shall, in accordance with the provisions of the company's articles of association, be subject to a resolution adopted by the board of directors or the shareholders assembly or the shareholders general assembly; and where norms for the gross amount of investments or guarantees and for the amount of a single investment or guarantee are specified in the company's articles of association, such norms shall not be exceeded.

Where a company intends to provide a guarantee for its shareholder or its actual controller, the matter shall be subject to a resolution adopted by its shareholders assembly or shareholders general assembly.

The shareholder specified in the preceding paragraph or the shareholder dominated by the actual controller specified in the preceding paragraph shall not participate in the vote on the matter specified in the preceding paragraph. The resolution on such matter shall be adopted if it is voted for by other shareholders present at the meeting who hold more than half of the voting rights.

#### **Article 17**

Companies shall protect the lawful rights and interests of their staff and workers, sign labor contracts with them according to law, participate in social insurance, and improve occupational protection so as to achieve safety in production.

Companies shall, in various forms, improve vocational education and on-the-job training among their staff and workers so as to enhance their quality.

#### **Article 18**

The staff and workers of a company shall, in accordance with the Trade Union Law of the People's Republic of China, organize a trade union to carry out

trade union activities and protect the lawful rights and interests of the staff and workers. The company shall provide the trade union of the company with the conditions necessary for carrying out its activities. The trade union of a company shall represent the staff and workers to sign with the company collective contracts on such items as the payment for work done, working hours, welfare and insurance benefits as well as occupational safety and health of the staff and workers according to law.

Companies shall, through the conference of the representatives of the staff and workers or other forms, carry out democratic management in accordance with the provisions of the Constitution and relevant laws.

When a company discusses to make decisions on structural reform or on major issues in business operation, or formulate important rules and regulations, it shall listen to the opinions of the trade union, and shall listen to the opinions and proposals of the staff and workers through the conference of the representatives of staff and workers or other forms.

#### **Article 19**

In companies, Communist Party organizations shall, in accordance with the provisions of the Constitution of the Communist Party of China, be set up to carry out activities of the Party. Companies shall provide the necessary conditions for the Party organizations to carry out their activities.

#### **Article 20**

The shareholder of a company shall observe laws, administrative regulations and the company's articles of association, exercise the rights of a shareholder according to law, and shall not abuse his rights to damage the interests of the company or other shareholders; and he shall not abuse the independent status of the company as a legal person or the limited liability of shareholders to damage the interests of the creditors of the company.

Where the shareholder of a company abuses the rights of shareholders and thus causes losses to the company or other shareholders, he shall be liable for compensation according to law.

Where the shareholder of a company abuses the independent status of the company as a legal person or the limited liability of shareholders, evades debts and thus seriously damages the interests of the creditors of the company, he shall assume joint

and several liability for the debts of the company.

#### **Article 21**

Proprietary shareholders, the actual controllers, directors, supervisors and senior managers of a company shall not take advantage of their affiliated relations to damage the interests of the company.

A person who, in violation of the provisions of the preceding paragraph, causes losses to a company shall be liable for compensation.

#### **Article 22**

The resolution adopted by the shareholders assembly or the shareholders general assembly or the board of directors of a company, which in content violates laws or administrative regulations, shall be invalid.

Where the procedures for convening the meeting of the shareholders assembly or the shareholders general assembly, or the board of directors, or the voting formulas are against laws, administrative regulations or the articles of association of a company, or the content of the resolution adopted is against the company's articles of association, the shareholders may, within 60 days from the date the resolution is adopted, request the people's court to rescind the resolution.

Where shareholders take legal proceedings in accordance with the provisions of the preceding paragraph, the people's court may, upon request of the company, demand the shareholders to provide appropriate guarantee.

Where a company has registered for alteration in accordance with the resolution adopted by the shareholders assembly, the shareholders general assembly or the board of directors, and the people's court declares the resolution invalid or rescinds it, the company shall apply for cancellation of the registration for such alteration.

## **CHAPTER II INCORPORATION AND ORGANIZATIONAL STRUCTURE OF A COMPANY WITH LIMITED LIABILITY**

### **Section 1 Incorporation**

#### **Article 23**

The following conditions shall be met for the incorporation of a company with limited liability:

(1) The number of shareholders conforms to the statutory number;

- (2) The capital contributions of the shareholders reach the statutory minimum amount of capital;
- (3) The shareholders have jointly formulated the articles of association;
- (4) The company has its name and has established an organizational structure in conformity with the requirements for a company with limited liability; and
- (5) The company has its own domicile.

#### **Article 24**

A company with limited liability shall be jointly invested in and incorporated by not more than 50 shareholders.

#### **Article 25**

The articles of association of a company with limited liability shall specify the following items:

- (1) the name and domicile of the company;
- (2) the scope of business of the company;
- (3) the registered capital of the company;
- (4) the names or titles of the shareholders;
- (5) the forms of capital contributions, the amounts and dates of capital contributions made by shareholders;
- (6) the bodies of the company, and the measures for their establishment, their functions and powers, as well as the rules of procedure;
- (7) the legal representative of the company; and
- (8) other items which the shareholders assembly deems necessary to be specified.

The shareholders shall sign their names on and affix their seals to the company's articles of association.

#### **Article 26**

The registered capital of a company with limited liability shall be the amount of capital contributions subscribed for by all of its shareholders, as is registered with the company registration authority. The amount of the initial capital contributions made by all of the shareholders of the company shall be not less than 20 percent of the company's registered capital, or not less than the statutory minimum amount of the registered capital either, and the remainder shall be paid for in full by the shareholders within two years from the date the company is established; and in the case of an investment company, it may pay for the remainder in full within five years.

The minimum amount of the registered capital of a company with limited liability shall be RMB 30,000 yuan. Where a greater amount is provided for by

laws or administrative regulations, such provision shall prevail.

#### **Article 27**

A shareholder may make his capital contributions in currency or do so by contributing such non-currency property as material objects, intellectual property rights and land-use rights that can be evaluated in currency and can be transferred according to law, except for the property that is not allowed to be used as capital contributions, as is provided for by laws or administrative regulations.

Non-currency property used for capital contributions shall be evaluated and verified, and shall not be overvalued or undervalued. Where laws or administrative regulations provide otherwise, those provisions shall prevail.

The amount of capital contributions made by all of the shareholders in currency shall not be less than 30 percent of the registered capital of a company with limited liability.

#### **Article 28**

A shareholder shall pay, on schedule and in full, the amount of the capital contributions subscribed for in accordance with the provisions of the articles of association of a company. Where a shareholder makes capital contributions in currency, he shall deposit the full amount of such capital contributions in currency in the bank account opened by the company with limited liability; and where a shareholder makes capital contributions with non-currency property, he shall, according to law, go through the formalities for the transfer of his property rights.

Where a shareholder fails to make capital contributions in accordance with the provisions of the preceding paragraph, in addition to paying to the company of his portion of the capital contributions in full, he shall be liable for breach of contract towards the shareholders who have, on schedule and in full, made their capital contributions.

#### **Article 29**

After the shareholders of a company have fully subscribed to the amount of capital contribution prescribed by the company's articles of association, the representative designated by all shareholders or the agent authorized by all shareholders shall apply for registration of the establishment of the company by submitting the written company registration application, the company's articles of asso-



ciation and other documents to the relevant company registration authority.

#### **Article 30**

After the establishment of a limited liability company, if the actual value of any capital contribution made in the form of non-monetary property is found to be apparently lower than the value specified in the company's articles of association, the shareholder who has made the said capital contribution shall pay up the difference, with the other shareholders at the time of establishment of the company bearing joint and several liability.

#### **Article 31**

Upon the establishment of a limited liability company, a capital contribution certificate shall be issued to each of the shareholders.

The capital contribution certificate shall set forth the following matters:

- (1) Name of the company;
- (2) Date of establishment of the company;
- (3) Registered capital of the company;
- (4) Names of the shareholders, amount of their respective capital contributions, and the date on which the capital contributions are made; and
- (5) Serial number and date of issuance of the capital contribution certificate.

The capital contribution certificate shall be affixed with the seal of the company.

#### **Article 32**

A limited liability company shall prepare and make available a shareholder register, with the following items specified therein:

- (1) Names and domiciles of the shareholders;
- (2) Amount of capital contributions made by each of the shareholders; and
- (3) Serial number of each capital contribution certificate.

The shareholders who are recorded in the shareholder register may exercise the shareholder's rights on the strength of the shareholder register. A company shall register the names of the shareholders with the relevant company registration authority. In the case of change of any registered item, the formalities for change of registration shall be completed. A company that fails to go through the

formalities for registration or change of registration shall not set up a defense against any third party.

#### **Article 33**

The shareholders of a company shall be entitled to inspect and duplicate the company's articles of association, the minutes of the shareholders' meetings, the resolutions of the board of directors, the resolutions of the board of supervisors, and the financial and accounting reports of the company. The shareholders may request to inspect the accounting books of the company. Where a shareholder so requests, a written request shall be submitted to the company, with the purposes indicated therein. If the company has reasons to believe that the shareholder's request to inspect the accounting books is for any improper purpose and may prejudice the legitimate interests of the company, the company may reject the request and shall, within 15 days after the shareholder submits the written request, give a written reply to the shareholder and state the reasons therefor. Where the company refuses to allow inspection by the shareholder, the shareholder may request the competent people's court to require the company to provide the access to inspection.

#### **Article 34**

The dividends shall be distributed to shareholders in proportion to the actual capital contributions paid up by them, unless otherwise agreed upon by all the shareholders. In the event of capital increase of the company, the shareholders shall have the priority to subscribe for capital contribution proportionate to their actual paid-up capital contributions, unless otherwise agreed upon by all the shareholders.

#### **Article 35**

After the establishment of a company, its shareholders shall not withdraw their paid-up capital contributions.

### **Section 2: Organizational Structure**

#### **Article 36**

The shareholders' meeting of a limited liability company shall be composed of all shareholders. The shareholders' meeting is the company's governing body, and shall exercise its powers in accordance with this Law.

#### **Article 37**

The shareholders' meeting of a company shall exercise the following powers:

- (1) Making decisions on the company's operation guidelines and investment plans;
- (2) Electing and replacing the directors and supervisors who are not the representatives of the staff members, and making decisions on the matters concerning the remunerations of the directors and supervisors;
- (3) Approving the reports of the board of directors through deliberation;
- (4) Approving the reports of the board of supervisors or those of the supervisors through deliberation;
- (5) Approving the annual financial budget plans and final accounts of the company through deliberation;
- (6) Approving the profit distribution plans and loss recovery plans of the company through deliberation;
- (7) Making resolutions on the increase or decrease of the company's registered capital;
- (8) Making resolutions on the issuance of corporate bonds;
- (9) Making resolutions on the merger, division, dissolution or liquidation of the company or on the conversion of the corporate form;
- (10) Modifying the company's articles of association; and
- (11) Exercising other powers specified in the articles of association.

Where all the shareholders have reached a written consensus on a matter listed in the preceding Paragraph, a decision may be directly made without convening a shareholders' meeting, provided that all the shareholders shall affix their signatures and seals to the decision document.

#### **Article 38**

The first shareholders' meeting shall be convened and presided over by the shareholder who has made the largest proportion of capital contributions, and shall exercise its powers in accordance with this Law.

#### **Article 39**

The shareholders' meetings are classified into regular meetings and interim meetings.  
Regular meetings shall be held as scheduled under

the company's articles of association. An interim meeting shall be held if so proposed by the shareholders representing more than one tenth of the voting rights, more than one third of the directors, the board of supervisors, or in the absence thereof, the supervisors.

#### **Article 40**

Where a limited liability company has established a board of directors, the shareholders' meetings shall be convened by the board of directors and be presided over by the chairman of the board of directors. If the said chairman is unable to or fails to perform the duties thereof, the shareholders' meetings shall be presided over by the vice chairman of the board of directors. If the vice chairman of the board of directors is unable to or fails to perform the duties thereof, the shareholders' meeting shall be presided over by a director elected jointly by more than half of all the directors..

Where a limited liability company has no board of directors, the shareholders' meetings shall be convened and presided over by an executive director. If the board of directors or the executive director is unable to or fails to perform the duties of convening the shareholders' meetings, the board of supervisors or, in the absence thereof in the company, the supervisors, shall convene and preside over such meetings. If the board of supervisors or the supervisors fail to convene or preside over such meetings, the shareholders representing more than one tenth of the voting rights may convene and preside over such meetings at their own discretion.

#### **Article 41**

A notice shall be given to all the shareholders of a company 15 days before a shareholders' meeting is held, unless otherwise specified in the company's articles of association or otherwise agreed upon by all the shareholders. Minutes shall be prepared by the shareholders' meeting for the decisions on the matters deliberated at each of the shareholders' meetings.

Shareholders present at such meetings shall affix their signatures thereto.

#### **Article 42**

The shareholders of a company shall exercise their voting rights at shareholders' meetings in proportion to their respective capital contributions, unless otherwise specified in the company's articles of association.



#### **Article 43**

The rules of procedure and voting procedures of the shareholders' meeting of a company shall be set forth in the company's articles of association, unless otherwise specified in this Law. Any resolutions made at a shareholders' meeting on the amendment of the company's articles of association, increase or decrease of the registered capital and on the merger, division, dissolution, or conversion of the company, shall be adopted by the shareholders representing more than two thirds of the voting rights.

#### **Article 44**

A limited liability company shall have a board of directors that is to be composed of 3 to 13 members, unless otherwise specified in Article 50 of this Law. In the case of a limited liability company established with investment from two or more State-owned enterprises or two or more other types of State-owned investing parties, the members of its board of directors shall include the representatives of the staff members of the company; in the case of any other limited liability company, the members of its board of directors may include representatives of the staff members of the company. The representatives of the staff members in the board of directors shall be elected democratically through a general meeting of the representatives of the staff members, general meeting of staff members, or in other forms. The board of directors shall have one chairman, and may have several vice chairmen. The methods for election of the chairman and vice chairmen shall be specified in the company's articles of association.

#### **Article 45**

The term of office of a director of a company shall be specified in the company's articles of association, subject to a maximum of three years. The term of office of a director may be renewed upon expiry thereof in the case of successful re-election. Where a new election is not held in a timely manner upon expiry of the term of office of a director, or where the number of the members of the board of directors is less than the quorum due to the resignation of one or more directors during their term of office, such former director(s) shall continue to perform the director's duties in accordance with laws, administrative regulations and the company's articles of association until the newly-elected director(s) take office.

#### **Article 46**

The board of directors of a company shall be accountable to the shareholders' meeting and exercise the following powers:

- (1) Convening the shareholders' meetings and reporting to the shareholders' meeting;
- (2) Executing the resolutions of the shareholders' meeting;
- (3) Making decisions on the operation plans and investment plans of the company;
- (4) Formulating the annual financial budget plans and final accounts of the company;
- (5) Formulating the profit distribution plans and loss recovery plans of the company;
- (6) Formulating the plans on the increase or reduction of the registered capital of the company, and on the issuance of corporate bonds;
- (7) Formulating the plans on the merger, division, dissolution, or conversion of the company;
- (8) Making decisions on the set-up of the internal management bodies of the company;
- (9) Making decisions on the employment or dismissal of the manager of the company and matters related to the remuneration thereof, and making decisions, according to the manager's nomination, on the employment or dismissal of the vice manager(s) and the personnel in charge of financial issues and the matters related to their remunerations;
- (10) Formulating the fundamental management systems of the company; and
- (11) Exercising other powers specified in the company's articles of association.

#### **Article 47**

The meetings of the board of directors shall be convened and presided over by the chairman of the board of directors. If the chairman is unable to or fails to perform his/her duties, the meetings shall be convened or presided over by the vice chairman of the board of directors. If the vice chairman is unable to or fails to perform his/her duties, the meetings shall be convened or presided over by a director jointly elected by more than half of all the directors.

#### **Article 48**

The rules of procedure and voting procedures of the board of directors of a company shall be set forth in the company's articles of association, unless otherwise specified in this Law. Minutes shall be prepared by the board of directors for the de-

cisions made on the matters discussed [at each of the meetings of the board of directors]. The directors present at such meetings shall affix their signatures thereto. In voting on a resolution of the board of directors, one person shall be entitled to only one vote.

#### **Article 49**

A limited liability company may have a manager whose employment or dismissal shall be subject to the decision of the board of directors. The manager shall be accountable to the board of directors and shall exercise the following powers:

- (1) Taking charge of the management of the production and business operations of the company, and organizing the implementation of the resolutions of the board of directors;
- (2) Organizing the implementation of the annual operation plans and investment plans of the company;
- (3) Drafting the plans on the set-up of the internal management bodies of the company;
- (4) Drafting the fundamental management systems of the company;
- (5) Formulating specific regulations of the company;
- (6) Proposing to employ or dismiss the vice manager(s) or personnel in charge of financial issues of the company;
- (7) Making decisions on the employment or dismissal of the persons in charge of management other than those whose employment or dismissal shall be subject to the decision of the board of directors; and
- (8) Exercising other powers conferred by the board of directors.

Provisions on the powers of the manager otherwise specified in the company's articles of association shall prevail. The manager shall attend meetings of the board of directors as a non-voting participant.

#### **Article 50**

A limited liability company with relatively few shareholders or of a relatively small size may have one executive director instead of a board of directors. The executive director may concurrently hold the post of the manager of the company. The powers of the executive director shall be specified by the company's articles of association.

#### **Article 51**

A limited liability company shall have a board of supervisors that is to be composed of at least three

members. A limited liability company with relatively few shareholders or of a relatively small size may have one or two supervisors instead of a board of supervisors. The board of supervisors shall include representatives of the shareholders and an appropriate proportion of representatives of the staff members of the company. The specific proportion of the latter shall be specified in the company's articles of association, subject to a minimum of one-third. The representatives of the staff members in the board of supervisors shall be elected democratically by the staff members of the company through a general meeting of the representatives of the staff members, a general meeting of staff members, or in other forms. The board of supervisors shall have one chairman who is to be elected by more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman is unable to or fails to perform his/her duties, such meetings shall be convened or presided over by a supervisor jointly elected by more than half of all the supervisors.

The directors or senior management personnel shall not concurrently hold the posts of supervisors.

#### **Article 52**

The term of office of a supervisor shall be three years. The term of office of a supervisor may be renewed upon expiry thereof in the case of successful re-election. If a new election is not held in a timely manner upon the expiry of the term of office of a supervisor, or if the number of the members of the board of supervisors is less than the quorum due to the resignation of one or more supervisors during their term of office, such former supervisor(s) shall continue to perform supervisor's duties in accordance with laws, administrative regulations, and the company's articles of association until the newly elected supervisor(s) take(s) office.

#### **Article 53**

The board of supervisors or, in the absence thereof in a company, the supervisors shall exercise the following powers:

- (1) Conducting inspection of the financial issues of the company;
- (2) Supervising the performance of duties by the directors and senior management personnel, and submitting a proposal on the removal of any director or senior management person who violates

laws or administrative regulations, the company's articles of association, or any resolution of the shareholders' meeting;

(3) Requiring the directors or senior management personnel to correct their conducts that prejudice the interests of the company;

(4) Proposing to convene interim shareholders' meetings, and convening and presiding over shareholders' meetings when the board of directors fails to perform the duties of convening and presiding over shareholders' meetings as specified in this Law;

(5) Putting forward proposals to the shareholders' meeting;

(6) Filing actions against the directors or senior management personnel in accordance with Article 151 of this Law; and

(7) Exercising other powers specified in the company's articles of association.

#### **Article 54**

The supervisors of a company may attend the meetings of the board of directors as non-voting participants, and may raise questions or suggestions on the matters decided by the board of directors. The board of supervisors or, in the absence thereof in a company, the supervisors may conduct investigation when discovering any abnormality in the operating conditions of the company, and, where necessary, may engage an accounting firm and others to provide assistance, with relevant expenses borne by the company.

#### **Article 55**

The board of supervisors shall convene a meeting at least once a year, and the supervisors may propose to convene an interim meeting of the board of supervisors. The rules of procedure and voting procedures of the board of supervisors of a company shall be set forth in the company's articles of association, unless otherwise specified in this Law. A resolution of the board of supervisors shall be passed by more than half of all the supervisors. Minutes shall be prepared by the board of supervisors for the decisions on the matters discussed [at each of the meetings of the board of supervisors]. The supervisors present at such meetings shall affix their signatures thereto.

#### **Article 56**

The necessary expenses incurred by the board of supervisors or, in the absence thereof in a com-

pany, the supervisors for exercise of their powers shall be borne by the company.

### **Section 3: Special Provisions on One-Person Limited Liability Companies**

#### **Article 57**

This Section shall be applicable to the establishment and the organizational structure of a one-person limited liability company. In the absence of pertinent provisions in this Section, Section 1 and Section 2 of this Chapter shall apply. For the purpose of this Law, a one-person limited liability company shall refer to a limited liability company comprising only one natural person shareholder or one legal person shareholder.

#### **Article 58**

One natural person can only establish one one-person limited liability company which is prohibited from investing in the establishment of another one-person limited liability company.

#### **Article 59**

A one-person limited liability company shall indicate, in its company registration, whether it is wholly owned by a natural person or a legal person. The same shall also be stated in the business license of the company.

#### **Article 60**

The articles of association of a one-person limited liability company shall be formulated by the shareholder.

#### **Article 61**

A one-person limited liability company has no shareholders' meeting. Where the shareholder makes a decision listed in Paragraph 1 of Article 37 of this Law, the decision shall be made in writing, and shall be prepared and made available at the company after the shareholder has affixed his/her signature thereto.

#### **Article 62**

A one-person limited liability company shall prepare financial and accounting reports at the end of each fiscal year, and such reports shall be audited by an accounting firm.

#### **Article 63**

Where the shareholder of a one-person limited lia-

bility company is unable to prove that the property of the company is independent of his/her own property, the shareholder shall bear joint and several liabilities for the debts of the company.

#### **Section 4: Special Provisions on Wholly State-Owned Companies**

##### **Article 64**

This Section shall be applicable to the establishment and the organizational structure of a wholly State-owned company. In the absence of pertinent provisions in this Section, Section 1 and Section 2 of this Chapter shall apply. For the purpose of this Law, a wholly State-owned company shall refer to a limited liability company to which the capital contribution is solely made by the State and for which the State Council or the State-owned assets supervision and administration authority, authorized by the local people's government at the same level, performs the duties of the capital contributing party.

##### **Article 65**

The articles of association of a wholly State-owned company shall be formulated by the relevant State-owned assets supervision and administration authority, or be formulated by the board of directors and be reported to the relevant State-owned assets supervision and administration authority for approval.

##### **Article 66**

A wholly State-owned company has no shareholders' meeting, and the relevant State-owned assets supervision and administration authority shall exercise the powers of the shareholders' meeting. The State-owned assets supervision and administration authority may authorize the board of directors of the company to exercise part of the powers of the shareholders' meeting, and to make decisions on material matters of the company. However, the merger, division, and dissolution of the company, the increase or reduction of the registered capital, or issuance of corporate bonds shall be subject to the decision of the State-owned supervision and administration authority. The merger, division, and dissolution of, or application for bankruptcy by, an important wholly State-owned company shall, after the examination and verification of the State-owned assets supervision and administration authority, be reported to the people's government at the

same level for approval. For the purpose of the preceding Paragraph, an important wholly State-owned company shall be determined in accordance with relevant provisions of the State Council.

##### **Article 67**

A wholly State-owned company shall have a board of directors which shall exercise its powers in accordance with Article 46 and Article 66 of this Law. The term of office of a director shall not exceed three years. The members of the board of directors shall include representatives of the staff members of the company. The members of the board of directors shall be appointed by the relevant State-owned assets supervision and administration authority. However, the representatives of the staff members in the board of directors shall be elected by the staff members of the company through a general meeting of the representatives of the staff members. The board of directors shall have one chairman and may have several vice chairmen. The chairman and vice chairmen of the board of directors shall be appointed from among the members of the board by the relevant State-owned assets supervision and administration authority.

##### **Article 68**

A wholly State-owned company may have a manager whose employment or dismissal shall be at the decision of the board of directors. The manager shall exercise his/her powers pursuant to Article 49 of this Law. Subject to the consent of the relevant State-owned assets supervision and administration authority, a member of the board of directors may concurrently hold the post of the manager of the company.

##### **Article 69**

The chairman, vice chairmen, and directors of the board of directors and the senior management personnel of a wholly State-owned company shall not, without the consent of the relevant State-owned assets supervision and administration authority, concurrently hold any position at any other limited liability company, company limited by shares, or any other economic organization.

##### **Article 70**

The board of supervisors of a wholly State-owned company shall comprise at least five members, among whom the proportion of the representati-

ves of the staff members shall not be less than one third, and the specific proportion shall be specified in the company's articles of association. The members of the board of supervisors shall be appointed by the relevant State-owned assets supervision and administration authority, provided that the representatives of the staff members in the board of supervisors shall be elected through a general meeting of the representatives of the staff members. The chairman of the board of supervisors shall be appointed from among the members of the board of supervisors by the State-owned assets supervision and administration authority.

The board of supervisors shall exercise the powers specified in Item (1) through to Item (3) of Article 53 of this Law and other powers provided for by the State Council.

### **CHAPTER 3: EQUITY TRANSFER OF A LIMITED LIABILITY COMPANY**

#### **Article 71**

The shareholders of a limited liability company may transfer all or part of their equity among each other. The proposed transfer of equity by a shareholder to any non-shareholder party shall be subject to the consent of more than half of the other shareholders. The shareholder shall notify the other shareholders in writing of the matters on the proposed equity transfer for their consent.

Failure to reply by any of the other shareholders within 30 days upon receipt of the written notice shall be deemed as consent to the transfer. Where more than half of the other shareholders do not consent to the transfer, such non-consenting shareholders shall purchase the equity to be transferred; failure to purchase the equity shall be deemed as consent to the transfer. With respect to any equity to be transferred with the consent of the shareholders, those shareholders other than the transferring party shall have the preemptive right under the same conditions.

Where two or more shareholders claim to exercise their preemptive right, they shall determine the proportional ratio for purchase through consultation. Where the consultation fails, the preemptive right shall be exercised in proportion to their respective capital contribution at the time of the transfer.

The provisions on equity transfer otherwise prescribed by the articles of association of a company shall prevail.

#### **Article 72**

A people's court shall, when transferring a shareholder's equity pursuant to the mandatory enforcement procedures under the law, notify the company and all the shareholders that the other shareholders have the preemptive right under the same conditions. The other shareholders who fail to exercise their preemptive right within 20 days of such notification shall be deemed to have waived their preemptive right.

#### **Article 73**

After transfer of any equity pursuant to Article 71 and Article 72 of this Law, the company concerned shall deregister the capital contribution certificate of the original shareholder, issue a capital contribution certificate to the new shareholder, and modify the records on the shareholder and the capital contributions thereof in the company's articles of association and the shareholder register accordingly. The shareholders' meeting is not required to vote on the said modification to the company's articles of association.

#### **Article 74**

Under any of the following circumstances, a shareholder of a company who votes against a resolution of the shareholders' meeting may request the company to acquire the equity thereof at a reasonable price:

- (1) Where the company fails to distribute any profit to its shareholders for five consecutive years, while being profitable during those five consecutive years and satisfying the conditions on profit distribution specified in this Law;
- (2) Where the company is merged or divided, or it transfers its primary property; or
- (3) Where upon the expiration of the term of operation specified in the company's articles of association or the occurrence of any other cause of dissolution specified therein, a resolution is adopted at a shareholders' meeting to modify the articles of association to the effect that the company continues to exist.

If the shareholder fails to reach an agreement with the company on equity acquisition within 60 days after the resolution of the shareholders' meeting is adopted, the shareholder may file an action with a competent people's court within 90 days after the resolution of the shareholders' meeting is adopted.



#### **Article 75**

After the death of a natural person shareholder of a company, the lawful successor thereof may succeed to the shareholder capacity, unless otherwise specified in the company's articles of association.

### **CHAPTER 4: ESTABLISHMENT AND ORGANIZATIONAL STRUCTURE OF A COMPANY LIMITED BY SHARES**

#### **Section 1: Establishment**

#### **Article 76**

To establish a company limited by shares, the following conditions shall be satisfied:

- (1) The number of promoters meets the statutory quorum;
- (2) The total share capital subscribed to by all promoters or total amount of paid-up share capital raised meets the requirements of the company's articles of association
- (3) The issuance of shares and the preparatory work are in compliance with the law;
- (4) The company's articles of association is formulated by the promoters, or is adopted at the inaugural meeting if the company is established by means of stock flotation;
- (5) The company has a name, and has established an organization structure that conforms to the requirements on a company limited by shares; and
- (6) The company has a domicile.

#### **Article 77**

A company limited by shares may be established through promotion or stock flotation. Establishment of a company through promotion shall mean that the promoters of a company establish the company by subscribing for all of the shares that shall be issued by the company. Establishment of a company through stock flotation shall mean the promoters of a company establish the company by subscribing for part of the shares that shall be issued by the company and offering the remaining shares to the public or particular investors for subscription.

#### **Article 78**

To establish a company limited by shares, there shall be not less than two but not more than 200 promoters, of whom more than half shall have domiciles within the territory of China.

#### **Article 79**

The promoters of a company limited by shares shall be responsible for the establishment preparatory work of the company. They shall conclude a promoters' agreement to clarify their respective rights and obligations during the course of establishment of the company.

#### **Article 80**

Where a company limited by shares is established by way of promotion, its registered capital shall be the total amount of share capital subscribed to by all promoters as registered with the relevant company registration authority.

The said company is not allowed to offer shares to others for subscription before the shares subscribed to by its promoters are fully paid up.

Where a company limited by shares is established through stock flotation, the registered capital thereof shall be the actual total paid-up share capital registered at the relevant company registration authority.

The provisions otherwise prescribed by laws, administrative regulations and the decisions of the State Council on the actual payment of registered capital and the minimum registered capital of a company limited by shares shall prevail.

#### **Article 81**

The articles of association of a company limited by shares shall set forth the following matters:

- (1) Name and domicile of the company;
- (2) Business scope of the company;
- (3) Form of establishment of the company;
- (4) Total shares, price per share, and registered capital of the company;
- (5) Names of the promoters, number of shares they have subscribed for, and forms and schedule of their capital contributions;
- (6) Composition, authorities and rules of procedure of the board of directors;
- (7) Legal representative of the company;
- (8) Composition, authorities and rules of procedure of the board of supervisors;
- (9) Methods for profit distribution of the company;
- (10) Causes for dissolution, and methods for liquidation, of the company;
- (11) Methods of notification and public announcement by the company; and
- (12) Any other matters deemed as necessary to be specified by the general meeting.



#### **Article 82**

Article 27 of this Law shall be applicable to the forms of capital contribution by promoters.

#### **Article 83**

Where a company limited by shares is established by way of promotion, its promoters shall subscribe, in writing, to all shares that they are required to subscribe to under the company's articles of association, and make capital contributions pursuant to the company's articles of association. Where capital contributions are made with non-monetary assets, the promoters shall go through the procedures for transfer of property rights pursuant to the law. In the event of a promoter's failure to make capital contributions in accordance with the preceding Paragraph, the promoter shall bear the liabilities for breach of contract pursuant to the promoters' agreement. After the promoters have fully subscribed to the capital contribution prescribed by the company's articles of association, the board of directors and the board of supervisors of the company shall be elected, and the board of directors shall apply for registration of the establishment of the company by submitting the company's articles of association and other documents prescribed by laws and administrative regulations to the relevant company registration authority.

#### **Article 84**

Where a company limited by shares is established through stock flotation, the shares subscribed for by the promoters shall not be less than 35 percent of the total shares of the company, unless otherwise prescribed by laws or administrative regulations.

#### **Article 85**

The promoters of a company limited by shares shall announce a prospectus and prepare a share subscription form if they publicly offer shares for subscription. The share subscription form shall state the items listed in Article 86 of this Law. The subscribers shall fill out the number and value of their subscribed shares and their domiciles, accompanied by their signatures or seals. The subscribers shall pay for the shares according to the number of their subscribed shares.

#### **Article 86**

The prospectus shall be accompanied by the company's articles of association formulated by the pro-

motors, and shall set forth the following matters:

- (1) Number of shares subscribed for by the promoters;
- (2) Par value and issuing price per share;
- (3) Total number of bearer stocks issued;
- (4) Purposes of the funds raised;
- (5) Rights and obligations of the subscribers; and
- (6) Commencement and ending dates of the share offering, and a statement that the subscribers may withdraw their subscriptions if the shares are not fully subscribed upon the expiry of the share offer.

#### **Article 87**

The public share offering of promoters shall be underwritten by a lawfully established securities company, and an underwriting agreement shall be concluded.

#### **Article 88**

When conducting a public share offering, the promoters shall conclude an agreement with a bank whereby the latter shall collect the payment for shares on behalf of the former. The receiving bank shall collect and hold the payments for shares in accordance with the agreement, issue receipts to subscribers who have paid for their share subscriptions, and is under the obligation to provide the relevant department with the certificates for payment receipt.

#### **Article 89**

The payments for the issued shares shall, after being fully made, be subject to capital verification and issuance of a certification by a lawfully-established capital verification agency. The promoters shall convene a meeting to found the company within 30 days after the payments for the shares are fully made. The attendees at the inaugural meeting shall comprise the promoters and subscribers. If the shares issued are not fully subscribed upon the expiry of the time limit specified in the prospectus, or if the promoters fail to convene an inaugural meeting within 30 days after the payments for the issued shares are fully made, the subscribers may require the promoters to refund their payments for the shares plus the interest calculated according to the bank deposit interest rate for that corresponding period.

#### **Article 90**

The promoters shall notify each and every subscriber of the date of the inaugural meeting or make a

public announcement thereon 15 days before the meeting is held. Only when the promoters and subscribers representing more than half of the total shares are present may the inaugural meeting be held. The inaugural meeting shall exercise the following powers:

- (1) Deliberating the report of the promoters on the establishment preparatory work of the company;
- (2) Adopting the company's articles of association;
- (3) Electing the members of the board of directors;
- (4) Electing the members of the board of supervisors;
- (5) Examining and verifying the expenses incurred for the establishment of the company;
- (6) Examining and verifying the valuation of the property contributed by the promoters in lieu of payments for shares; and
- (7) Reaching a resolution on non-establishment of the company, as permitted in the occurrence of any force majeure event or material change to operating conditions that directly affects the establishment of the company.

The resolutions on any of the matters listed in the preceding Paragraph shall be passed by the subscribers who represent more than half of the voting rights of all subscribers present at the meeting.

#### **Article 91**

The promoters and subscribers shall not withdraw their share capital after making payments for the shares or otherwise making capital contributions in lieu of payments for shares, except where the issued shares are not fully subscribed by the specified deadline, the promoters fail to convene the inaugural meeting as scheduled, or the inaugural meeting reaches a resolution on non-establishment of the company.

#### **Article 92**

The board of directors of a company limited by shares shall, within 30 days after the conclusion of the inaugural meeting, file an application for establishment registration with the relevant company registration authority by submitting the following documents:

- (1) A written application for company registration;
- (2) Minutes of the inaugural meeting;
- (3) Articles of association of the company;
- (4) Capital verification proofs;
- (5) Appointment documents and identity documents of the legal representative, directors, and supervisors;

- (6) Certifications of the legal person or natural person status of the promoters; and
- (7) Certification on the domicile of the company.

Where a company limited by shares established through stock flotation publicly issues shares, the approval document issued by the securities regulatory authority of the State Council shall also be submitted to the relevant company registration authority.

#### **Article 93**

After the establishment of a company limited by shares, if a promoter fails to make full payment for the capital contribution as specified in the company's articles of association, the promoter shall make good the due amount, and the other promoters shall bear joint and several liabilities. After the establishment of a company limited by shares, if the actual value of the non-monetary property used as capital contribution for the establishment of the company is found to be significantly lower than the value specified in the company's articles of association, the promoter who has made the said capital contribution shall pay up the difference, and the other promoters shall bear joint and several liabilities.

#### **Article 94**

The promoter of a company limited by shares shall bear:

- (1) joint and several liabilities for the debts and expenses resulting from the activities for establishment of the company, in the event of failure to establish the company;
- (2) joint and several liabilities for refunding the subscribers' payments for shares plus interest calculated according to the bank deposit interest rate for the corresponding period, in the event of failure to establish the company; and
- (3) the liability for compensation to the company, in the event that the interests of the company are prejudiced due to the negligence of the promoter during the course of establishment of the company.

#### **Article 95**

Where a limited liability company converts to a company limited by shares, the total actual paid-up capital converted shall not be more than the company's net assets. Where a limited liability company converts to a company limited by shares, the public

offering of shares for capital increase purpose shall be conducted in accordance with the law.

#### **Article 96**

A company limited by shares shall make available, at the company, its articles of association, shareholder register, counterfoils of corporate bonds, minutes of the general meetings, minutes of the meetings of the board of directors, minutes of the meetings of the board of supervisors, and financial and accounting reports.

#### **Article 97**

The shareholders of a company shall be entitled to inspect the company's articles of association, shareholder register, counterfoils of corporate bonds, minutes of the general meetings, minutes of the meetings of the board of directors, minutes of the meetings of the board of supervisors, and financial and accounting reports, and to put forward proposals or raise questions concerning the business operations of the company.

### **Section 2: General Meeting**

#### **Article 98**

The general meeting of a company limited by shares shall be composed of all the shareholders. The general meeting is the company's governing body, and shall exercise powers in accordance with this Law.

#### **Article 99**

The provisions on the powers of the shareholders' meeting of a limited liability company under Paragraph 1 of Article 37 of this Law shall be applicable to the general meeting of a company limited by shares.

#### **Article 100**

The general meeting of a company shall hold an annual meeting once every year. An extraordinary general meeting shall be held within two months in the event of any of the following circumstances:

- (1) Where the number of directors is less than two thirds of the number specified in this Law or the company's articles of association;
- (2) Where the unrecovered losses of the company amount to one third of the total paid-up share capital;
- (3) Where the extraordinary general meeting is requested by one shareholder who holds, or several shareholders who jointly hold, at least ten percent of the shares of the company;

- (4) Where the board of directors deems it necessary to hold the extraordinary general meeting;
- (5) Where the extraordinary general meeting is proposed by the board of supervisors; or
- (6) Where there are any other circumstances set forth in the company's articles of association.

#### **Article 101**

The general meeting of a company shall be convened by the board of directors and presided over by the chairman of the board of directors. If the chairman is unable to or fails to perform his/her duties, the meeting shall be presided over by the vice chairman of the board of directors. If the vice chairman is unable to or fails to perform his/her duties, the meeting shall be presided over by a director jointly elected by more than half of all the directors. If the board of directors is unable to or fails to perform its duty of convening the general meeting, the board of supervisors shall convene and preside over the meeting in a timely manner. If the board of supervisors fails to convene or preside over the meeting, one shareholder who holds, or several shareholders who jointly hold, at least ten percent of the shares of the company for at least 90 consecutive days may convene and preside over the meeting at their own discretion.

#### **Article 102**

To convene a general meeting of a company, each shareholder shall be notified, 20 days before the meeting is held, of the time and venue of the meeting and the matters to be deliberated. To convene an extraordinary general meeting, each shareholder shall be notified 15 days before the meeting is held. Where bearer stocks are to be issued, the time and venue of the general meeting and the matters to be deliberated shall be announced 30 days before the meeting is held. One shareholder who holds, or several shareholders who jointly hold, three percent or more of the shares of the company may submit an interim proposal in writing to the board of directors ten days before the general meeting is held. The board of directors shall, within two days upon receipt of the proposal, notify the other shareholders, and submit the said interim proposal to the general meeting for deliberation. The contents of the interim proposal shall fall within the scope of powers of the general meeting, and the proposal shall have a clear agenda and specific matters on which resolutions are to be made. The general

meeting shall not make resolutions on matters that are not clearly listed in the notices mentioned in the preceding two paragraphs. If holders of bearer stocks attend a general meeting, they shall have their stocks kept at the company from five days before the meeting is held till the conclusion of the meeting.

#### **Article 103**

A shareholder of a company present at a general meeting shall have one voting right for each share held, provided that the company shall have no voting right for the shares held by itself. Any resolution of the general meeting shall be passed by the shareholders representing more than half of the voting rights of all shareholders present at the meeting. However, a resolution of the general meeting on modification of the articles of association, increase or reduction of the registered capital, merger, division or dissolution, or the conversion of the company shall be passed by the shareholders representing more than two thirds of the voting rights of all shareholders present at the meeting.

#### **Article 104**

With regard to any matter that shall be subject to a resolution by the general meeting of a company as specified in this Law and the company's articles of association, such as the company's transfer of any substantial assets to, or acceptance of the transfer of the same from, another party, or the company's provision of guarantee for an external party, the board of directors shall convene a general meeting in a timely manner for the latter to vote on any such matter.

#### **Article 105**

The general meeting of a company shall elect directors and supervisors and may, in accordance with the company's articles of association or a resolution of the general meeting, adopt a cumulative voting system. For the purpose of this Law, a cumulative voting system shall mean that, in the election of directors or supervisors by the general meeting, the number of voting rights under each share is the same as the number of directors or supervisors to be elected, and that the shareholders may cast all of their votes for a single candidate.

#### **Article 106**

A shareholder of a company may authorize a proxy

to attend a general meeting. The proxy shall submit to the company a power of attorney issued by the shareholder, and shall exercise voting rights within the authorized scope.

#### **Article 107**

Minutes shall be prepared by the general meeting for the decisions on the matters discussed [at each of the general meetings]. The chairman of the meeting and the directors present at the meeting shall affix their signatures thereto. The minutes shall be kept together with the book of signatures of the shareholders present as well as the documents of the power of attorney for the proxies present.

### **Section 3: Board of Directors; Managers**

#### **Article 108**

A company limited by shares shall have a board of directors that is to be composed of 5 to 19 members. The board of directors may include representatives of the staff members of the company who shall be elected democratically through a general meeting of the representatives of the staff members, a general meeting of staff members, or in other forms. The provisions of Article 45 of this Law on the term of office of the directors of a limited liability company shall be applicable to the directors of a company limited by shares. The provisions of Article 46 of this Law on the powers of the board of directors of a limited liability company shall be applicable to the board of directors of a company limited by shares.

#### **Article 109**

The board of directors shall have one chairman and may have one or more vice chairmen. The chairman and vice chairmen of the board of directors shall be elected by more than half of all the directors. The chairman of the board of directors shall convene and preside over the meetings of the board of directors to inspect the implementation of the resolutions of the board of directors. The vice chairmen shall assist the chairman's work. If the chairman is unable to or fails to perform his/her duties, a vice chairman shall perform the duties instead. If the vice chairman is unable to or fails to perform his/her duties, a director jointly elected by more than half of all the directors shall perform the duties.

#### **Article 110**

The board of directors shall convene at least two

meetings annually. All the directors and supervisors shall be notified ten days before a meeting is held. Shareholders representing more than one tenth of the voting rights, more than one third of all directors, or the board of supervisors may propose to convene an interim meeting of the board of directors. The chairman of the board of directors shall convene and preside over an interim meeting of the board of directors within ten days upon receipt of the proposal. The ways and time limit of notification for convening an interim meeting of the board of directors may be decided separately.

#### **Article 111**

A meeting of the board of directors may be held only when more than half of all the directors are present. A resolution of the board of directors shall be passed by more than half of all the directors. In voting on a resolution of the board of directors, one person shall be entitled to only one vote.

#### **Article 112**

The directors shall attend the meetings of the board of directors in person. Any director who is unable to attend a meeting for a certain reason may authorize, in writing, another director to attend the meeting as a proxy, and the scope of authority shall be stated in the power of attorney. Minutes shall be prepared by the board of directors for the decisions on the matters discussed [at each of the meetings of the board of directors]. The directors present at the meeting shall affix their signatures thereto. The directors shall be liable for the resolutions of the board of directors. If a resolution of the board of directors is in violation of laws, administrative regulations, the company's articles of association or a resolution of its general meeting, and causes heavy losses to the company, the directors who participate in adopting the resolution shall be liable for compensation, provided that a director may be exempted from liabilities if it is proved that he/she has expressed objections at the time of voting and such objections are recorded in the meeting minutes.

#### **Article 113**

A company limited by shares shall have a manager whose employment and dismissal shall be decided by the board of directors. The provisions of Article 49 of this Law on the authorities of the manager of a limited liability company shall apply to the manager of a company limited by shares.

#### **Article 114**

The board of directors of a company may decide to appoint a member of the board of directors to concurrently hold the post of the manager of the company.

#### **Article 115**

A company shall not, either directly or through any of its subsidiaries, provide loans to any director, supervisor or senior management personnel.

#### **Article 116**

A company shall regularly disclose to its shareholders information on the remunerations obtained by the directors, supervisors and senior management personnel from the company.

### **Section 4: Board of Supervisors**

#### **Article 117**

A company limited by shares shall have a board of supervisors that is to be composed of at least three members. The board of supervisors shall include representatives of the shareholders and an appropriate proportion of representatives of the staff members of the company.

The specific proportion of the representatives of the staff members shall be specified in the company's articles of association, subject to a minimum of one third. The representatives of the staff members on the board of supervisors shall be elected democratically by the staff members through a general meeting of the representatives of the staff members, a general meeting of staff members, or in other forms.

The board of supervisors shall have one chairman and one or more vice chairmen. The chairman and vice chairmen of the board of supervisors shall be elected by more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meetings of the board of supervisors. If the chairman of the board of supervisors is unable to or fails to perform his/her duties, the meeting may be convened and presided over by a vice chairman. If the vice chairman is unable to or fails to perform his/her duties, the meeting may be convened and presided over by a supervisor jointly elected by more than half of all the supervisors. No director or senior management personnel may concurrently hold the post of a supervisor.

The provisions on the term of office of the super-



visors of a limited liability company as specified in Article 52 of this Law shall be applicable to the supervisors of a company limited by shares.

#### **Article 118**

The provisions on the powers of the board of supervisors of a limited liability company under Article 53 and Article 54 of this Law shall be applicable to the board of supervisors of a company limited by shares. The necessary expenses incurred by the board of supervisors for exercise of its powers shall be borne by the company.

#### **Article 119**

The board of supervisors of a company shall hold at least one meeting every six months. The supervisors may propose to convene interim meetings of the board of supervisors. The rules of procedure and voting procedures of the board of supervisors shall be set forth in the company's articles of association, unless otherwise specified in this Law. A resolution of the board of supervisors shall be passed by more than half of all the supervisors. Minutes shall be prepared by the board of supervisors for the decisions on the matters discussed [at each of the meetings of the board of supervisors]. The supervisors present at the meeting shall affix their signatures thereto.

### **Section 5: Special Provisions on the Organizational Structure of a Listed Company**

#### **Article 120**

For the purpose of this Law, a listed company shall refer to a company limited by shares whose stocks are listed and traded on a securities exchange.

#### **Article 121**

Where the value of the purchase or sale of any substantial assets by a listed company or the provision of guarantee exceeds 30 percent of the total asset value of the listed company within a given year, a resolution shall be made by the general meeting, and shall be passed by the shareholders representing more than two thirds of the voting rights of all the shareholders present at the meeting.

#### **Article 122**

A listed company shall have independent directors. Detailed measures in this regard shall be specified by the State Council.

#### **Article 123**

A listed company shall have a secretary of the board of directors to be responsible for such matters as preparing for general meetings and the meetings of the board of directors, properly keeping documents, managing the data on the company's shareholders, and disclosing relevant information.

#### **Article 124**

Any director of a listed company who is affiliated with any enterprise involved in the matters under any resolution made at a meeting of the board of directors shall be prohibited from exercising voting rights concerning that resolution, nor may that director vote on behalf of any other directors. The meeting of the board of directors may be held with the presence of more than half of all the non-affiliated directors. A resolution made at such meeting of the board of directors shall be passed by more than half of all the non-affiliated directors. If the number of nonaffiliated directors present is less than three, the matter shall be submitted to the general meeting of the listed company for deliberation.

### **CHAPTER 5: ISSUANCE AND TRANSFER OF SHARES HELD OF A COMPANY LIMITED BY SHARES**

#### **Section 1: Issuance of Shares**

#### **Article 125**

The capital of a company limited by shares shall be divided into shares, and each share shall have the same value. The shares of the company are represented in stocks. Stocks are certificates issued by the company to certify the shares held by its shareholders.

#### **Article 126**

Shares shall be issued in accordance with the principles of fairness and impartiality. Each share of the same class shall be entitled to the same rights. With regard to the shares of the same class that are issued at the same time, the issuing conditions and price for each share shall be the same. Any entity or individual shall pay the same price for each of the shares subscribed for.

#### **Article 127**

The issuing price of a share may be at or above the par value, but shall not be below the par value.



#### **Article 128**

Stocks shall be in paper form or in other forms specified by the securities regulatory authority of the State Council. A stock shall set forth the following major matters:

- (1) Name of the company;
- (2) Date of establishment of the company;
- (3) Class and par value of the stock, and the number of shares that it represents; and
- (4) Serial number of the stock. Stocks shall bear the signature of the legal representative and the seal of the company.

The stocks for promoters shall be marked with the characters “发起人股票” (promoters’ stocks).

#### **Article 129**

The shares issued by a company may be either registered stocks or bearer stocks. The stocks issued by a company to a promoter or a legal person shall be registered stocks, with the name of the promoter or legal person recorded thereon. Such stocks shall not be registered under any other name or in the name of a representative.

#### **Article 130**

A company that issues registered stocks shall prepare and make available a shareholder register to record the following matters:

- (1) Names and domiciles of the shareholders;
- (2) Number of shares held by each shareholder;
- (3) Serial numbers of the stocks held by each shareholder; and
- (4) Date on which each shareholder obtains the shares.

A company that issues bearer stocks shall record the volume and the serial numbers of the stocks issued, and the issuance date of each of the stocks.

#### **Article 131**

The State Council may separately formulate provisions on the issuance of shares of classes other than those provided for in this Law.

#### **Article 132**

Once a company limited by shares is established, its stocks shall be formally delivered to the shareholders. No stocks may be delivered to the shareholders prior to the establishment of the company.

#### **Article 133**

Where a company issues new shares, a resolution on the following matters shall be made by the general meeting:

- (1) Type and number of the new shares;
- (2) Issuing price of the new shares;
- (3) Commencement and ending dates for the issuance of the new shares; and
- (4) Class and number of the new shares to be issued to the existing shareholders.

#### **Article 134**

Where a company issues new shares to the public upon verification and approval of the securities regulatory authority of the State Council, the company shall release the prospectus for the new shares and its financial and accounting reports, and prepare a share subscription form. Article 87 and Article 88 of this Law shall be applicable to the public offering of new shares by a company.

#### **Article 135**

A company that issues new shares may, according to its operational and financial conditions, determine a plan for the pricing of the shares.

#### **Article 136**

A company shall, upon receipt of all the payments for its newly issued shares, go through the formalities for change of registration with the relevant company registration authority and make public the same.

### **Section 2: Transfer of Shares**

#### **Article 137**

The shares held by shareholders are transferrable under the law.

#### **Article 138**

Shareholders shall transfer their shares at lawfully-established securities exchanges or by other means provided for by the State Council.

#### **Article 139**

Registered stocks shall be transferred through endorsement by the relevant shareholder or by any other means specified in laws or administrative regulations. After the transfer, the company concerned shall record the transferee’s name and domicile in the shareholder register. Within 20 days

before the general meeting is held, or within five days prior to the benchmark date determined by the company for dividend distribution, the formalities for change of registration of the shareholder register specified in the preceding Paragraph shall not be effected, unless otherwise prescribed by laws on the change of registration of the shareholder register of a listed company.

#### **Article 140**

The transfer of bearer stocks shall become valid upon the delivery of the said stocks to the transferee by the relevant shareholder.

#### **Article 141**

The shares of a company by the promoters thereof shall not be transferred within one year of the date of establishment of the company. The shares issued before the public offering of shares by the company shall not be transferred within one year of the date on which the stocks of the company are listed and traded on a securities exchange. The directors, supervisors, and senior management personnel of the company shall declare, to the company, information on their holdings of the shares of the company and the changes thereto.

The shares transferrable by them during each year of their term of office shall not exceed 25 percent of their total holdings of the shares of the company. The shares that they held in the company shall not be transferred within one year of the date on which the stocks of the company are listed and traded.

The aforesaid persons shall not transfer their shares of the company within six months of their departure from the company.

The company's articles of association may set forth other restrictive provisions on the transfer of the shares of the company held by the directors, supervisors, and senior management personnel.

#### **Article 142**

A company shall be prohibited from acquiring its own shares, except as under any of the following circumstances:

- (1) The company reduces the registered capital thereof;
- (2) The company merges with another company that holds its shares;
- (3) The company rewards its staff members with shares; or
- (4) Any shareholder of the company raises

objections to a resolution made by the general meeting on the merger or division of the company, and therefore requests the company to acquire its holdings of shares.

The acquisition of its own shares by the company under Item (1) through to Item (3) of the preceding Paragraph shall be subject to a resolution of the general meeting. After the company has acquired its own shares in accordance with the preceding Paragraph, it shall deregister such shares within ten days of the date of acquisition, if the acquisition falls under Item (1); or transfer or deregister such shares within six months, if the acquisition falls under Item (2) or Item (4). Where a company acquires its own shares under Item (3) of Paragraph 1, the shares to be acquired shall not exceed five percent of the total outstanding shares of the company. The funds for the acquisition shall be sourced from the after-tax profit of the company. The shares so acquired shall be transferred to its staff members within one year. A company shall not accept any pledge with its own stocks as the subject matter.

#### **Article 143**

Where any registered stocks are stolen, lost or damaged, the shareholder concerned may, pursuant to the procedures of public notice for assertion of claim provided for in the Civil Procedure Law of the People's Republic of China, request a competent people's court to declare the stocks invalid. After the people's court has so declared, the said shareholder may apply to the company concerned for re-issuance of the stocks.

#### **Article 144**

The stocks of a listed company shall be listed and traded in accordance with relevant laws, administrative regulations and the trading rules of the securities exchange concerned.

#### **Article 145**

A listed company shall, in accordance with laws and administrative regulations, disclose its financial position, operational conditions and material lawsuits, and publish its financial and accounting reports once every six months in each accounting year.

### **CHAPTER 6: QUALIFICATIONS AND OBLIGATIONS OF THE DIRECTORS, SUPERVISORS,**

## **AND SENIOR MANAGEMENT PERSONNEL OF A COMPANY**

### **Article 146**

Whoever is under any of the following circumstances is not allowed to assume the post of a director, supervisor, or senior management person of a company:

- (1) He/she has no or limited civil capacity;
- (2) He/she has been sentenced to criminal punishments due to corruption, bribery, embezzlement of property, misappropriation of property, or disrupting the order of the socialist market economy, and less than five years have elapsed since the punishments are fully executed; or he/she has been deprived of political rights due to any criminal offense, and less than five years have elapsed since the punishment is fully executed;
- (3) He/she has served as a director, factory manager or manager of a company or enterprise that is bankrupt and liquidated, and is personally liable for the bankruptcy of the company or enterprise, and less than three years have elapsed since the date of completion of the bankruptcy liquidation of the company or enterprise;
- (4) He/she has served as the legal representative of a company or enterprise that has its business license revoked and is ordered to close down due to violations of the law, and is personally liable for such punishment, and less than three years have elapsed since the date of revocation of the business license of the company or enterprise; or
- (5) He/she has a relatively large amount of overdue debts. If the company elects or appoints any director or supervisor, or engages any senior management personnel in violation of the preceding Paragraph, the election, appointment or engagement shall be invalid.

The company shall remove a director, supervisor or senior management person from his/her post if he/she falls under any of the circumstances described in Paragraph 1 of this Article during the term of office.

### **Article 147**

The directors, supervisors and senior management personnel of a company shall abide by laws, administrative regulations and the company's articles of association.

They shall be faithful and diligent to the company. No director, supervisor or senior management per-

sonnel may, by abusing their powers, take any bribe or other illegal gains, or encroach on the property of the company.

### **Article 148**

A director or senior management person of a company is prohibited from any of the following acts:

- (1) Misappropriating the funds of the company;
- (2) Opening an account in his/her own name or the name of any other individual to deposit the funds of the company;
- (3) Without the consent of the shareholders' meeting, the general meeting or the board of directors, loaning the funds of the company to others or using the company's property to provide guarantee for others in violation of the company's articles of association;
- (4) Concluding contracts or making deals with the company in violation of the company's articles of association or without the consent of the shareholders' meeting or the general meeting;
- (5) Without the consent of the shareholders' meeting or the general meeting, seeking, for the benefit of his/her own or others, any business opportunity that belongs to the company by taking advantage of his/her powers, and operating for his/her own or for others any business that is of the same type with that of the company that he/she serves;
- (6) Accepting, and keeping in his/her possession, commissions for the transactions between others and the company;
- (7) Disclosing the company's secrets without authorization; or
- (8) Committing other acts in violation of his/her obligation of loyalty to the company.

The income gained by the director or senior management person from any of the acts listed in the preceding Paragraph shall belong to the company.

### **Article 149**

Where any director, supervisor or senior management person of a company violates laws, administrative regulations or the company's articles of association during the performance of duties, he/she shall be liable for compensation if any loss is caused to the company.

### **Article 150**

Where a director, supervisor or senior management person of a company is required to attend a shareholders' meeting or a general meeting as

a non-voting participant, the director, supervisor or senior management person shall do so and accept the inquiries from shareholders. The directors and senior management personnel shall truthfully provide relevant information and materials to the board of supervisors or, in the absence thereof in a limited liability company, to the supervisors, and shall not hinder the board of supervisors or the supervisors from exercising their powers.

#### **Article 151**

Where a director or senior management person falls under any of the circumstances specified in Article 149 of this Law, the shareholder(s) of a limited liability company, or one shareholder of a company limited by shares who holds, or several shareholders thereof who jointly hold, at least one percent stake in the company for at least 180 consecutive days may submit a written request to the board of supervisors or, in the absence thereof in the limited liability company, to the supervisors, to file an action with the competent people's court.

Where a supervisor falls under any of the circumstances specified in Article 149 of this Law, the aforesaid shareholder(s) may submit a written request to the board of directors or, in the absence thereof in the limited liability company, to the executive directors to file an action with the competent people's court.

Where the board of supervisors or, in the absence thereof in the limited liability company, the supervisors refuse to, or if the board of directors or the executive directors refuse to, file an action upon receipt of the shareholders' written request specified in the preceding Paragraph, or fail to file an action within 30 days upon receipt thereof, or where the failure to immediately file an action in an emergency case will cause irreparable damage to the interests of the company, the shareholder(s) specified in the preceding Paragraph may, in their own name, directly file an action to the competent people's court for the interest of the company.

Where any other person infringes upon the legitimate rights and interests of the company and causes losses thereto, the shareholder(s) specified in Paragraph 1 of this Article may file an action with the competent people's court pursuant to the provisions of the preceding two paragraphs.

#### **Article 152**

Where a director or senior management person of

a company violates laws, administrative regulations or the company's articles of association, thereby damaging the interests of the shareholder(s), the shareholder(s) may file an action with the competent people's court.

### **CHAPTER 7: CORPORATE BONDS**

#### **Article 153**

For the purpose of this Law, corporate bonds shall refer to the marketable securities issued by a company pursuant to statutory procedures whose principal plus interest shall be serviced within a specific time limit as agreed upon. To issue corporate bonds, a company shall satisfy the issuing conditions provided for in the Securities Law of the People's Republic of China.

#### **Article 154**

After the application of a company for issuing corporate bonds is approved by a department authorized by the State Council, the company shall announce the methods for offering the bonds.

The methods for offering the corporate bonds shall set forth the following major matters:

- (1) Name of the company;
- (2) Purposes of the funds raised through bond issuance;
- (3) Total amount of the corporate bonds and the par value thereof;
- (4) Method for determining the interest rate of the bonds;
- (5) Time limit and method for servicing the principal and interest;
- (6) Information on the guarantee of the bonds;
- (7) Issuing price of the bonds, and commencement and ending dates of the issuance;
- (8) Net asset value of the company;
- (9) Total amount of the outstanding corporate bonds; and
- (10) Underwriters of the corporate bonds.

#### **Article 155**

Where a company issues corporate bonds in the form of physical bonds, such matters as the company name, the par value, interest rate and time limit for repayment of the bonds, etc. shall be stated on the bonds which shall be signed by the legal representative and affixed with the seal of the company.

#### **Article 156**

Corporate bonds may be registered bonds or bearer bonds.

#### **Article 157**

Where a company issues corporate bonds, it shall prepare and make available a book of counterfoils for the corporate bonds. If the company issues registered corporate bonds, its book of counterfoils for the corporate bonds shall record the following matters:

- (1) Names and domiciles of the bondholders;
- (2) Dates on which the bondholders obtain the bonds and the serial numbers of the bonds;
- (3) Total value, par value and interest rate of the bonds, as well as the time limit and method for servicing the principal and interest; and
- (4) Issuance date of the bonds.

Where a company issues bearer corporate bonds, its book of counterfoils for the corporate bonds shall record the total value and interest rate of the bonds, the time limit and method for repayment, issuance date, and the serial numbers of the bonds.

#### **Article 158**

The registration and settlement institutions for registered corporate bonds shall establish relevant systems for the registration, custody, interest payment and redemption of the bonds.

#### **Article 159**

Corporate bonds are transferable, and the transfer price shall be agreed upon by and between the transferor and the transferee. Corporate bonds listed and traded on a securities exchange shall be transferred in accordance with the trading rules of the securities exchange.

#### **Article 160**

Registered corporate bonds shall be transferred through endorsement by the relevant bondholder or by any other means provided for by laws or administrative regulations. After the transfer, the company concerned shall record the name and domicile of the transferee in its book of counterfoils for the corporate bonds. The transfer of bearer corporate bonds shall come into effect upon the delivery of the said bonds to the transferee by the relevant bondholder.

#### **Article 161**

A listed company may, subject to a resolution of the

general meeting, issue corporate bonds that can be converted to shares, and shall specify the conversion methods in the offering plan of the corporate bonds. The issuance by a listed company of corporate bonds that can be converted to shares shall be subject to the verification and approval of the securities regulatory authority of the State Council. In the event of issuance of corporate bonds that can be converted to shares, such characters as “可转换公司债券” (convertible corporate bonds) shall be indicated thereon, and the number of convertible corporate bonds shall be recorded in the company's book of counterfoils for corporate bonds.

#### **Article 162**

Where corporate bonds that can be converted to shares are issued, a company shall issue shares in exchange for the bonds of the bondholders in accordance with the conversion methods, provided that the bondholders shall have the option as to whether or not to convert their bonds into shares.

### **CHAPTER 8: FINANCE AND ACCOUNTING OF A COMPANY**

#### **Article 163**

A company shall establish its own financial and accounting systems in accordance with laws, administrative regulations and the provisions of the finance department of the State Council.

#### **Article 164**

A company shall, at the end of each accounting year, prepare a financial and accounting report which shall be audited by an accounting firm in accordance with the law. The financial and accounting report shall be prepared in accordance with laws, administrative regulations and the provisions of the finance department of the State Council.

#### **Article 165**

A limited liability company shall submit its financial and accounting report to each shareholder within the time limit specified in the company's articles of association. The financial and accounting report of a company limited by shares shall be made available at the company 20 days before the annual general meeting is held for inspection by shareholders. A company limited by shares that publicly offers shares shall announce its financial and accounting report.



#### **Article 166**

When a company distributes its after-tax profit of the current year, ten percent of the profit shall be allocated to its statutory common reserve fund. The company is not required to do so once the cumulative amount of the statutory common reserve fund reaches 50 percent or more of the company's registered capital.

If the statutory common reserve fund of the company is not sufficient to cover its losses in previous years, the company shall use the profit of the current year to cover the losses before accruing the statutory common reserve fund in accordance with the preceding Paragraph. After the company has accrued the statutory common reserve fund from its after-tax profit, it may, subject to a resolution of the shareholders' meeting or the general meeting, accrue discretionary common reserve fund from the aftertax profit.

After having been used to cover the losses and make allocation to the common reserve fund, the remaining after-tax profit shall be distributed in accordance with Article 34 of this Law, in the case of a limited liability company; or in proportion to the shares held by each shareholder, in the case of a company limited by shares, unless otherwise specified in its articles of association.

Where the shareholders' meeting, general meeting or board of directors violates the preceding Paragraph and distributes profit to shareholders before the company covers the losses and accrues the statutory common reserve fund, the shareholders shall return to the company the profit distributed in violation. A company shall not distribute profits to its holdings of its own shares.

#### **Article 167**

Both the premium obtained by a company limited by shares from issuing shares at a price above the par value thereof, and other incomes that shall be included in the capital reserve fund of the company as required by the finance department of the State Council shall be included in the capital reserve fund of the company.

#### **Article 168**

The common reserve fund of a company shall be used to cover the losses of the company, expand the production operations of the company, or be converted to increase the company's capital. The capital reserve fund shall not be used to cover the

losses of the company. Where the statutory common reserve fund is converted into capital, the amount thereof remaining after the conversion shall not be less than 25 percent of the registered capital of the company before the increase.

#### **Article 169**

The engagement of any accounting firm undertaking the audit of a company, and the termination of the engagement shall, pursuant to the company's articles of association, be decided by the shareholders' meeting, the general meeting or the board of directors. Where the shareholders' meeting, general meeting or board of directors votes on the termination of the engagement of an accounting firm, the accounting firm shall be allowed to present its opinions.

#### **Article 170**

A company shall provide the accounting firm engaged with truthful and complete accounting proofs, account books, financial and accounting reports and other accounting materials, and may not refuse to provide or conceal any required information or make any false statements.

#### **Article 171**

A company shall not establish any account books other than the statutory ones. No company assets may be deposited under any account opened in any individual's name.

### **CHAPTER 9: MERGER, DIVISION OR CAPITAL INCREASE OR REDUCTION OF A COMPANY**

#### **Article 172**

Merger of companies may either be merger by consolidation or merger by incorporation. Merger by consolidation shall mean that a company absorbs other companies while the absorbed companies shall be dissolved. Merger by incorporation shall mean that two or more companies merge into a newly incorporated company while all the merged parties shall be dissolved.

#### **Article 173**

In the case of a merger of companies, the parties thereto shall conclude a merger agreement and prepare the balance sheet and a list of property. The companies shall notify their creditors within ten days after the resolution on merger is made,



and shall publish an announcement in newspapers within 30 days. The creditors may, within 30 days upon receipt of the written notice or, in the case of failure to receive the written notice, within 45 days of the public announcement, request the company to repay the debts or provide the corresponding guaranty.

#### **Article 174**

In the case of a merger of companies, the claims and debts of each of the companies to the merger shall be succeeded to by the company continuing to exist after the merger or the newly incorporated company.

#### **Article 175**

In the case of the division of a company, the property thereof shall be divided accordingly. The balance sheet and a list of property of the company shall be prepared for the division thereof. The company shall notify its creditors within ten days after the resolution on division is made, and shall publish an announcement in newspapers within 30 days.

#### **Article 176**

The companies after the division shall bear joint and several liabilities for the debts of the company prior to the division, unless otherwise agreed upon prior to the division by the company and its creditors in a written agreement concerning the settlement of debts.

#### **Article 177**

Where it is necessary for a company to reduce its registered capital, it shall prepare the balance sheet and a list of property. The company shall notify its creditors within ten days after the resolution on the reduction of the registered capital is made, and shall publish an announcement in newspapers within 30 days. The creditors shall, within 30 days upon receipt of the written notice, or in the case of the failure to receive the written notice, within 45 days after the public announcement, be entitled to request the company to repay the debts or provide the corresponding guaranty.

#### **Article 178**

Where a limited liability company increases its registered capital, the capital contribution subscribed for by its shareholders for the newly increased capital shall be governed by the provisions of this Law

on the capital contribution for the establishment of a limited liability company. Where a company limited by shares issues new shares to increase its registered capital, the subscription of the new shares by its shareholders shall be governed by the provisions of this Law on the payment for shares for the establishment of a company limited by shares.

#### **Article 179**

In the event of merger or division of a company, the formalities for change of registration shall be completed with the relevant company registration authority for changes of any registered item in accordance with the law; the company deregistration formalities shall be completed in accordance with the law if the company is dissolved; and the company establishment registration formalities shall be completed in accordance with the law if a new company is established. In the case of any increase or reduction of a company's registered capital, relevant formalities for change of registration shall be completed with the company registration authority concerned in accordance with the law.

### **CHAPTER 10: DISSOLUTION AND LIQUIDATION OF A COMPANY**

#### **Article 180**

A company may be dissolved for any of the following reasons:

- (1) The term of operation specified in the company's articles of association expires or any of the other causes of dissolution specified in the company's articles of association occurs;
- (2) The shareholders' meeting or the general meeting makes a resolution to dissolve the company;
- (3) Dissolution is required by a merger or division of the company;
- (4) The business license of the company is revoked, or the company is ordered to close down or is removed, in accordance with the law; or
- (5) A people's court decides to dissolve the company pursuant to Article 182 of this Law.

#### **Article 181**

A company under Item (1) of Article 180 of this Law may continue to exist by modifying its articles of association. The modification of the company's articles of association in accordance with the preceding Paragraph shall be passed, in the case of a limited liability company, by the shareholders re-

presenting more than two thirds of the voting rights or, in the case of a company limited by shares, by the shareholders representing more than two thirds of the voting rights of all shareholders present at the general meeting.

#### **Article 182**

Where a company faces difficulty in operations and management such that the interests of its shareholders will suffer heavy losses if the company continues to exist, and there is no other way to resolve the problem, the shareholders representing more than ten percent of the voting rights of all the shareholders of the company may file a request with the competent people's court to dissolve the company.

#### **Article 183**

Where a company is dissolved under Item (1), Item (2), Item (4) or Item (5) of Article 180 of this Law, a liquidation group shall be formed to commence liquidation within 15 days after a cause of dissolution occurs.

The liquidation group shall be composed of shareholders, in the case of a limited liability company; or shall be composed of the candidates determined by the directors or the general meeting, in the case of a company limited by shares. Where a liquidation group is not formed to carry out liquidation within the specified time limit, the creditors may apply to the competent people's court to designate relevant personnel to form a liquidation group for liquidation.

The people's court shall accept the application, and shall promptly organize a liquidation group to carry out liquidation.

#### **Article 184**

The liquidation group of a company may exercise the following powers during liquidation:

- (1) Liquidating the property of the company, and preparing the balance sheet and a list of property;
- (2) Informing the creditors of the company by notice or public announcement;
- (3) Handling the outstanding liquidation-related business of the company;
- (4) Paying off the due and payable taxes and the taxes incurred during the liquidation;
- (5) Liquidating the claims and the debts of the company;
- (6) Handling the property remaining after the full repayment of the debts of the company; and

- (7) Participating in civil litigations on behalf of the company.

#### **Article 185**

The liquidation group of a company shall notify the creditors within ten days upon its formation, and publish an announcement on newspapers within 60 days. The creditors shall declare their claims to the liquidation group within 30 days upon receipt of the written notice or in the case of the failure to receive the written notice, within 45 days of the public announcement.

When declaring the claims, the creditors shall clarify the matters related thereto and provide supporting materials. The liquidation group shall register the claims. During the period for declaration of claims, the liquidation group shall not make any repayment to any of the creditors.

#### **Article 186**

The liquidation group of a company shall, after having liquidated the property of the company and prepared the balance sheet and a list of property, formulate a liquidation plan which shall be submitted to the shareholders' meeting, the general meeting or the competent people's court for confirmation.

After paying off the liquidation expenses, the salaries, social insurance premiums and the statutory compensations of the staff members, the due and payable taxes and the debts of the company, the liquidation group shall distribute the remaining property, in the case of a limited liability company, in proportion to the shareholders' capital contribution or, in the case of a company limited by shares, in proportion to the shares held by each shareholder.

During the liquidation, the company shall continue to exist, but shall not carry out business activities irrelevant to the liquidation. The property of the company shall not be distributed to any shareholder before full payments have been made out of the property in accordance with the preceding Paragraph.

#### **Article 187**

Where the liquidation group of a company discovers, after having liquidated the property of the company and prepared the balance sheet and a list of property, that the property of the company is not sufficient for debt repayment in full, it shall apply to the competent people's court for bankruptcy declaration in accordance with the law. After the

people's court rules to declare the company bankrupt, the liquidation group shall hand over the liquidation matters to the people's court.

#### **Article 188**

After the completion of the liquidation of a company, the liquidation group shall prepare a liquidation report which shall be submitted to the shareholders' meeting, the general meeting or the competent people's court for confirmation, and to the relevant company registration authority for the purpose of applying for the deregistration of the company and the public announcement on the termination of the company.

#### **Article 189**

The members of a liquidation group shall devote themselves to their duties and perform liquidation obligations in accordance with the law. The members of a liquidation group shall not take advantage of their powers to accept bribes or other illegal gains, nor shall they encroach on the property of the company concerned. A member of a liquidation group who has caused any losses to the company or its creditors intentionally or by gross negligence shall be liable for compensation.

#### **Article 190**

Where a company is declared bankrupt pursuant to the law, bankruptcy liquidation shall be carried out in accordance with the laws on enterprise bankruptcy.

### **CHAPTER 11: BRANCHES OF A FOREIGN COMPANY**

#### **Article 191**

For the purpose of this Law, a foreign company shall refer to a company established outside the territory of China under a foreign law.

#### **Article 192**

To establish a branch within the territory of China, a foreign company shall file an application with the competent authority of China and submit relevant documents such as its articles of association and the company registration certificate issued by the authority of the country where it is registered. Upon approval, the foreign company shall go through the registration formalities with the relevant company registration authority in accordance with the law and collect the business license for the branch. Measures for examination

and approval of the branches of a foreign company shall be formulated separately by the State Council.

#### **Article 193**

A foreign company shall, in establishing a branch within the territory of China, designate a representative or an agent within the territory of China to be responsible for the branch, and allocate to the branch the funds commensurate with the business activities in which the branch engages. Other necessary provisions on the minimum amount of the operational funds for a branch of a foreign company shall be separately formulated by the State Council.

#### **Article 194**

A branch of a foreign company shall include, in its name, the country of origin and the form of liability of the foreign company. A branch of a foreign company shall make available, at the branch's premises, the articles of association of the foreign company.

#### **Article 195**

A branch established within the territory of China by a foreign company is not qualified as a Chinese legal person. A foreign company shall bear civil liabilities for the business activities carried out by its branches within the territory of China.

#### **Article 196**

When conducting business activities within the territory of China, branches of foreign companies that are established upon approval shall comply with Chinese laws, and shall not prejudice the social and public interest of China. Their legitimate rights and interests are protected by Chinese laws.

#### **Article 197**

Where a foreign company removes any of its branches within the territory of China, it shall pay off its debts pursuant to the law, and carry out liquidation in accordance with the company liquidation procedures under this Law. The property of the branch shall not be transferred outside the territory of China before the debts are repaid in full.

### **CHAPTER 12: LEGAL LIABILITIES**

#### **Article 198**

Where, in violation of this Law, a company has been registered by false reporting of the registered capi-

tal, submission of false materials, or concealment of any important fact by other fraudulent means, the company registration authority concerned shall order correction to be made. Where a company falsely reports its registered capital, a fine of not less than five percent but not more than 15 percent of the falsely-reported registered capital shall be imposed. Where a company submits false materials or conceals any important facts by other fraudulent means, a fine of not less than RMB 50,000 but not more than RMB 500,000 shall be imposed. Under grave circumstances, the company shall be deregistered or its business license shall be revoked.

#### **Article 199**

Where a promoter or shareholder of a company makes false capital contribution, fails to deliver the monetary amount or the nonmonetary property used as capital contribution, or fails to deliver the same as scheduled, the relevant company registration authority shall order the promoter or shareholder to make correction, and impose thereon a fine of not less than five percent but not more than 15 percent of the amount of the falsely made capital contribution.

#### **Article 200**

Where a promoter or shareholder of a company illegally withdraws its capital contribution after the company is established, the relevant company registration authority shall order the promoter or shareholder to make correction, and impose thereon a fine of not less than five percent but not more than 15 percent, of the capital contribution withdrawn.

#### **Article 201**

Where a company violates this Law and establishes account books other than the statutory ones, the finance department of the relevant people's government at or above the county level shall order the company to make correction, and impose thereon a fine of not less than RMB 50,000 but not more than RMB 500,000.

#### **Article 202**

Where a company makes any false record or conceals any important fact in such materials as the financial and accounting reports that are submitted to the competent authority in accordance with the law, the competent authority shall impose a fine of not less than RMB 30,000 but not more than RMB

300,000 on the primary persons-in-charge subject to direct liabilities and other personnel subject to direct liabilities.

#### **Article 203**

Where a company fails to accrue the statutory common reserve fund in accordance with this Law, the finance department of the relevant people's government at or above the county level shall order the company to make good the accrual, and may impose thereon a fine of up to RMB 200,000.

#### **Article 204**

During the merger, division, reduction of registered capital or liquidation of a company, where the company fails to inform its creditors by notice or public announcement in accordance with this Law, the relevant company registration authority shall order the company to make correction, and impose thereon a fine of not less than RMB 10,000 but not more than RMB 100,000.

During the liquidation of a company, where the company conceals its property or makes any false record in the balance sheet or list of property, or distributes its property prior to the repayment of the debts in full, the relevant company registration authority shall order the company to make correction, impose thereon a fine of not less than five percent but not more than 10 percent of the value of the property that the company has concealed or distributed prior to the repayment of debts in full, and impose a fine of not less than RMB 10,000 but not more than RMB 100,000 on the primary persons-in-charge subject to direct liabilities or other personnel subject to direct liability.

#### **Article 205**

Where a company carries out any business activity irrelevant to the liquidation during the liquidation period, the relevant company registration authority shall issue a warning to the company and confiscate the illegal gains.

#### **Article 206**

Where a liquidation group fails to submit a liquidation report to the relevant company registration authority pursuant to this Law, or where any important fact is concealed or any material omission is found in the liquidation report submitted, the relevant company registration authority shall order the liquidation group to make correction.

Where any member of a liquidation group takes advantage of his/her powers to practice favoritism for personal gains, seek for illegal gains or encroach on any property of the company, the relevant company registration authority shall order the member to return such property of the company, confiscate his/her illegal gains and may impose thereon a fine of not less than one time but not more than five times the illegal gains.

#### **Article 207**

Where an institution that undertakes capital valuation, capital verification or certificate verification provides any false materials, the relevant company registration authority shall confiscate the illegal gains of the institution, and impose thereon a fine of not less than one time but not more than five times the illegal gains.

The competent authority may also, pursuant to the law, order the institution to terminate its business operations, and revoke the qualification certificates of its personnel subject to direct liabilities and the business license of the institution. Where an institution that undertakes capital valuation, capital verification or certificate verification provides a report with material omission out of negligence, the relevant company registration authority shall order the institution to make correction and, under grave circumstances, impose thereon a fine of not less than one time but not more than five times the illegal gains.

The competent authority may also, pursuant to the law, order the institution organization to terminate its business operations, and revoke the qualification certificates of its personnel subject to direct liabilities and the business license of the institution. Where the valuation results, capital verification certification or certificate verification certification issued by an institution that undertakes capital valuation, capital verification or certificate verification is not truthful, thus causing losses to the creditors of the company concerned, the institution shall bear the liability for compensation to the extent of the value affected by its untruthful valuation or certification, unless it can prove that it is not at fault.

#### **Article 208**

Where a company registration authority approves a registration application that fails to satisfy the conditions hereunder, or fails to approve a registration application that satisfies the conditions hereu-

nder, administrative disciplinary measures shall be taken, in accordance with the law, against the primary persons-in-charge subject to direct liabilities and other personnel subject to direct liabilities.

#### **Article 209**

Where a superior department of a company registration authority orders the latter to approve a registration application that fails to satisfy the conditions hereunder or not to approve a registration application that satisfies the conditions hereunder, or where the superior department covers up any illegal registration by the latter, administrative disciplinary measures shall be taken, in accordance with the law, against the primary persons-in-charge subject to direct liabilities and other personnel subject to direct liabilities of the superior department.

#### **Article 210**

Where an entity not registered as a limited liability company or a company limited by shares in accordance with the law fraudulently names itself as such, or where an entity not registered as a branch company of a limited liability company or a company limited by shares in accordance with the law fraudulently names itself as such, the relevant company registration authority shall order the entity to make correction or ban the entity, and may concurrently impose thereon a fine of up to RMB 100,000.

#### **Article 211**

Where a company fails to commence business within six months after its establishment without justifiable reasons, or where a company suspends its business for at least six consecutive months at its own discretion after the commencement of business, the relevant company registration authority may revoke its business license.

Where a company fails to go through the formalities for change of registration of the changes in its registered items in accordance with this Law, the relevant company registration authority shall order the company to go through the registration formalities within a specified time limit; if the company fails to do so by the specified deadline, a fine of not less than RMB 10,000 but not more than RMB 100,000 shall be imposed thereon.

#### **Article 212**

Where a foreign company violates this Law and establishes a branch within the territory of China



without authorization, the relevant company registration authority shall order the foreign company to make correction or close down the branch, and may concurrently impose thereon a fine of not less than RMB 50,000 but not more than RMB 200,000.

#### **Article 213**

The business license of a company shall be revoked if grave illegalities that endanger State security or prejudice social and public interests are committed in the name of the company.

#### **Article 214**

A company that violates this Law shall bear civil liabilities for compensation and pay relevant fines, and shall, in the event that its property is not sufficient to make all payments, bear civil liabilities for compensation first.

#### **Article 215**

Whoever violates this Law shall be investigated for criminal liabilities pursuant to the law if the violation constitutes a criminal offense.

### **CHAPTER 13: SUPPLEMENTARY PROVISIONS**

#### **Article 216**

For the purpose of this Law:

- (1) "senior management personnel" shall refer to the manager, vice managers and the person in charge of financial matters of a company, the secretary of the board of directors of a listed company, and any other personnel specified in the articles of association of a company;
- (2) "controlling shareholder" shall refer to a shareholder whose capital contribution accounts for 50 percent or more of the total capital of a limited liability company, a shareholder whose shares account for 50 percent or more of the total share capital of a company limited by shares, or a shareholder whose voting rights corresponding to the capital contribution or shares thereof are sufficient to exert a material influence on the resolutions of the shareholders' meeting or the general meeting, despite the fact that the shareholder's capital contribution or shares account for less than 50 percent of the total capital or total share capital;
- (3) "actual controller" shall refer to a person who is not a shareholder of a company but who is able to actually control the acts of the company through investment relations, agreements or other arrangements;

ments; and

(4) "affiliation" shall refer to the relationship between a controlling shareholder, actual controller, director, supervisor or senior management person of a company with an enterprise under the direct or indirect control thereof, or any other relationship that may lead to the transfer of the interests of the company, provided that the enterprises in which the State is the controlling shareholder are not necessarily affiliated to each other solely on the ground that the State controls the shares thereof.

#### **Article 217**

This Law shall be applicable to foreign-invested limited liability companies and companies limited by shares. The provisions otherwise prescribed by the laws on foreign investment shall prevail.

#### **Article 218**

This Law shall come into effect on January 1, 2006.

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