

## **The Company Law of the People's Republic of China**

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## **Chapter 1**

### **General Provisions**

#### **Article 1**

This Law is formulated to standardize the organization and activities of companies, to protect the lawful rights and interests of companies, shareholders and creditors, to safeguard the social and economic order, and to promote the development of the socialist market economy.

#### **Article 2**

For the purposes of this Law, the term "companies" shall mean limited liability companies and companies limited by shares established according to this Law within the PRC.

#### **Article 3**

Companies shall be enterprise legal persons and shall have independent corporate property and enjoy corporate property rights. Companies shall be liable for its debts to the extent of all their assets. Shareholders of a limited liability company shall be liable to the company to the extent of the capital contributions they have made, and shareholders of a company limited by shares shall be liable to the company to the extent of the shares they have subscribed for.

#### **Article 4**

Shareholders of a company shall enjoy rights and interest according to law, such as gaining benefits from its assets, making major decisions and selecting managerial personnel.

#### **Article 5**

When engaging in business operations, companies shall abide by laws and administrative regulations, observe social morality and professional ethics, uphold principles of good faith under the supervision of the government and the public, and assume social responsibilities.

The legal rights and interests of a company shall enjoy protection under the law and shall not be infringed upon.

#### **Article 6**

When a company is to be established, an application for registration of its establishment shall be made to the company registration authority according to law. If the establishment of a company satisfies the conditions as prescribed in this Law, the company registration authority shall register it as a limited liability company or a company limited by shares. If the establishment of a company fails to satisfy the conditions as prescribed in this Law, the

company shall not be registered as a limited liability company or a company limited by shares.

If laws or administrative regulations provide that the establishment of a company shall be subject to examination and approval, the examination and approval procedures shall be carried out according to law prior to such company's registration.

The public may make inquiries to the company registration authority about any particulars of the registration of a company and the company registration authority shall provide services to investigate such registration.

### **Article 7**

The company registration authority shall issue a business license to a company established according to law. The date of issuance of the business license of a company shall be the date of establishment of the company. The business license of a company shall note such items as the name, domicile, registered capital, paid-up capital and business scope of the company and the name of its legal representative. If any changes occur in the items noted in the business license of a company, the company shall carry out the procedure of registration modification according to law and the company registration authority shall reissue a business license to the company.

### **Article 8**

A limited liability company established in accordance with this Law shall carry the words "limited liability company" or "limited company" in its name.

A company limited by shares established in accordance with this Law shall carry the words "company limited by shares" or "stock company" in its name.

### **Article 9**

If a limited liability company is to be transformed into a company limited by shares, it shall satisfy the conditions of a company limited by shares as prescribed in this Law. If a company limited by shares is to be transformed into a limited liability company, it shall meet the conditions of a limited liability company as prescribed in this Law. When a limited liability company is to be transformed into a company limited by shares or a company limited by shares is to be transformed into a limited liability company, the claims and liabilities the company acquired or incurred before its transformation shall be inherited by the company into which it has been transformed.

### **Article 10**

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

**Article 11**

If a company is to be established, its articles of association shall be formulated according to law. The articles of association of a company shall be binding on the company and its shareholders, directors, supervisors and senior officers.

**Article 12**

The scope of business of a company shall be prescribed in its articles of association and shall be registered according to law. A company may change its scope of business by making revisions in its articles of association, provided that it shall carry out the procedure of registration modification.

If any items in the scope of business of a company is subject to approval according to laws or administrative regulations, it shall carry out the procedure of approval according to law.

**Article 13**

The position of the legal representative of a company shall be held by the chairman of the board of directors, the executive director or the manager in accordance with the provisions of its articles of association and shall be registered according to law. If a company is to change its legal representative, it shall carry out the procedure of registration modification.

**Article 14**

A company may establish branches. If a company is to establish any branch, it shall make an application to the company registration authority for registration of establishment of such branch and obtain a business license for such branch. A branch of a company shall not have the status of a legal person and its civil liability shall be assumed by the company.

A company may establish subsidiaries, which shall have the status of a legal person and shall independently assume civil liability according to law.

**Article 15**

A company may make investments in other enterprises, provided that it shall not become an investor that assumes joint and several liability for any debts the company in which it has made an investment has incurred, except as otherwise provided in law.

**Article 16**

If a company is to make an investment in any other enterprise or provide security for others, a resolution thereon shall be passed at a meeting of the board of directors, a shareholders'

meeting or a shareholders' general meeting. If the articles of association of a company impose any limit on the total amount of all the investments or security or on the amount of a single item of investment or security, such specified limit shall not be exceeded. If a company is to provide security for any of its shareholders or its de facto controlling person, a resolution thereon shall be passed at a shareholders' meeting or a shareholders' general meeting.

The shareholder as referred to in the preceding paragraph or any shareholder under the control of the de facto controlling person, as referred to in the preceding paragraph shall not take part in the vote on such resolution referred to in the preceding paragraph. Such resolution shall be passed by a majority of the voting rights held by the other shareholders who attend the meeting.

### **Article 17**

A company shall protect the legal rights and interests of its employees, enter into labor contracts with them according to law, take part in social insurance, improve labor protection, and make production safe.

A company shall take various measures to improve the professional education and on-the-job training of its employees so as to enhance their quality.

### **Article 18**

Employees of a company shall organize a trade union in accordance with the *Trade Union Law of the People's Republic of China* to conduct trade union activities and protect the legal rights and interests of the employees of the company. A company shall provide its trade union with necessary facilities to conduct its activities. The trade union of a company shall represent the employees of the company in entering into a collective contract with such company, according to law, with respect to such matters as labor remuneration, working hours, welfare benefits, insurance, and labor safety and hygiene.

A company shall, in accordance with the provisions of the Constitution and other relevant laws, though the convening of an employees representatives' meeting or through other means, implement a system of democratic management.

When a company is considering a decision on its transformation or on any major matters concerning its business operations or is formulating any major rules or regulations, it shall canvas the opinions of its trade union and seek opinions and suggestions from its employees through the convening of an employees representatives' meeting or through other means.

### **Article 19**

An organization of the Chinese Communist Party shall be set up to conduct Party activities in

a company in accordance with the provisions of the constitution of the Chinese Communist Party. A company shall provide the Party organization with necessary facilities for its activities.

#### **Article 20**

Shareholders of a company shall abide by laws, administrative regulations and its articles of association and exercise their shareholder's rights according to law and shall not abuse their shareholder's rights to do any damage to the interests of the company or any other shareholders or abuse the independent corporate status of the company and the limited liability of the shareholder to do any damage to the interests of the creditors of the company.

If any shareholder of a company causes any losses to the company or any other shareholder as a result of abuse of its shareholder's rights, it shall make compensation for such losses according to law.

If any shareholder of a company abuses the independent corporate status of the company and the limited liability of the shareholder to evade any creditor of the company, thus causing serious damage to the interests of such creditor, it shall jointly and severally liable for the debts of the company.

#### **Article 21**

The controlling shareholder, the de facto controlling person, directors, supervisors or officers of a company shall not take advantage of any affiliation it has to do damage to the interests of the company and shall pay compensation for any such losses that the company may suffer as a result of violation of this provision.

#### **Article 22**

If any resolution passed at a shareholders' meeting, a shareholders' general meeting, or a meeting of the board of directors of a company is in violation of any law or administrative regulation, such resolution shall be null and void.

If the procedure for convening a shareholders' meeting, a shareholders' general meeting, or a meeting of the board of directors or the manner of voting at such meeting is in violation of any law or administrative regulation or the articles of association of the company, or if any resolution passed at such meeting is in violation of the articles of association of the company, within sixty (60) days after such resolution is passed, the shareholders of the company may petition the people's court to revoke such resolution.

If the shareholders of a company initiate legal proceedings in the people's court in accordance with the provisions of the preceding paragraph, at the request of the company the people's court may require the shareholders to provide appropriate security.

If a company has carried out the procedure of registration modification in accordance with a resolution passed at a shareholders' meeting, a shareholders' general meeting, or a meeting of the board of directors, the company shall make an application to the company registration authority for cancellation of such registration modification after the people's court has declared such resolution null and void or revoked such resolution.

## **Chapter 2**

### **Establishment and Organizational Structure of Limited Liability Companies**

#### **Section 1**

#### **Establishment**

#### **Article 23**

The establishment of a limited liability company shall satisfy the following conditions:

- (1) the company shall have the statutory number of shareholders;
- (2) the capital contributions made by the shareholders shall reach the minimum amount of legal capital;
- (3) the shareholders shall have jointly formulated the articles of association of the company;
- (4) the company shall have a name and shall have established an organizational structure that meets the requirements for limited liability companies; and
- (5) the company shall have a domicile.

#### **Article 24**

A limited liability company shall be established with capital contributions made by no more than fifty shareholders

**Article 25** The articles of association of a limited liability company shall specify the following matters:

- (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 of the shareholders;
- (5) the method and amount of capital contribution made by each of the shareholders and the time such contribution is made;
- (6) the organs of the company and their methods of establishment, functions and powers, and rules of procedure;
- (7) the legal representative of the company; and
- (8) other matters that the shareholders deem necessary to be specified.

The shareholders of a company shall affix their signatures and seals to the articles of association of the company.

#### **Article 26**

The registered capital of a limited liability company shall be the total amount of the capital contributions as made by all the shareholders and registered with the company registration authority. The total amount of the first installments of capital contributions made by all the shareholders of a company shall not be less than either twenty percent (20%) of the registered capital of the company or the statutory minimum amount of the registered capital of a company, and the balance of the registered capital shall be paid up by the shareholders within two (2) years of establishment of the company or, in the case of an investment company, within five (5) years. The minimum amount of the registered capital of a limited liability company shall be RMB thirty thousand (30,000). If any provision of laws or administrative regulations specifies a higher minimum amount of the registered capital of a limited liability company, such provision shall prevail.

#### **Article 27**

The shareholders of a company may make their capital contributions in currency or by converting into currency such non-currency property as material goods, intellectual property rights, and land use rights that can be evaluated in terms of currency and transferred according to law, except for such property as laws and administrative regulations provide shall be not contributed as capital.

Non-currency property to be contributed as capital shall be evaluated in terms of currency and verified, and such property shall not be overvalued or undervalued. If any law or administrative regulation contains a provision on such evaluation, such provision shall prevail.

The capital contributions made by all the shareholders of a limited liability company in

currency shall not be less than thirty percent of the registered capital of the company.

### **Article 28**

The shareholders of a company shall pay in full and according to schedule the capital contributions they have respectively committed themselves to making in the articles of association of the company. If a shareholder of a limited liability company makes its capital contribution in currency, it shall deposit the full amount of such capital contribution in currency in the bank account opened by the company. If a shareholder makes its capital contribution in the form of non-currency property, it shall carry out the procedure for transfer of its property rights according to law. If a shareholder fails to make its capital contribution in accordance with the preceding provision, in addition to payment of its capital contribution in full, it shall be liable for breach of contract to the other shareholders that have paid their respective capital contributions in full and according to schedule.

### **Article 29**

After a shareholder has made a capital contribution, such capital contribution shall be verified by a lawfully-established capital verification institution, which shall issue a certificate of capital verification to such shareholder.

### **Article 30**

After the first installments of capital contributions made by the shareholders of a company have been verified by a lawfully-established capital verification institution, the representative designated by all the shareholders or the agent jointly authorized by all the shareholders shall submit to the company registration authority such documents as the application for registration of the company, the articles of association of the company and the certificates of capital verification, on the strength of which the representative or agent shall make an application for registration of the establishment of the company.

### **Article 31**

If it is discovered after establishment of a limited liability company that the actual value of the non-currency property that was contributed as capital to the establishment of the company is markedly lower than the value as fixed in the articles of association of the company, the shareholder that made such capital contribution shall make up the difference and those who were shareholders of the company at the time it was established shall assume joint and several liability for such difference.

### **Article 32**

After a limited liability company has been established, it shall issue certificates of capital contributions to its shareholders.

Certificates of capital contributions shall specify the following particulars:

- (1) the name of the company;
- (2) the date of establishment of the company;
- (3) the registered capital of the company;
- (4) the name of the shareholder and the amount and date of its capital contribution; and
- (5) the serial number and date of issuance of the certificate of capital contribution.

The company shall affix its seal to the certificates of capital contributions.

### **Article 33**

A limited liability company shall establish a register of shareholders, in which the following particulars shall be recorded:

- (1) the names and domiciles of the shareholders;
- (2) the amounts of capital contributions of the shareholders; and
- (3) the serial numbers of the certificates of capital contributions.

The shareholders recorded in the register of shareholders may claim and exercise their shareholder's rights on the strength of the register of shareholders.

The company shall register the names of the shareholders and the amounts of their capital contributions with the company registration authority. If any change occurs in the items of such registration, the procedure of registration modification shall be carried out. If any shareholder fails to carry out such registration or registration modification, it shall not contest claims of any third party.

### **Article 34**

The shareholders of a company shall have the right to look into and make copies of the articles of association of the company, minutes of meetings of the board of directors, resolutions passed at meetings of the board of directors and the board of supervisors, and financial and accounting reports of the company.

The shareholders of a company may request access to the accounting books of the company. If any shareholder of a company requests access to the accounting books of the company,

such shareholder shall make a written request to the company, in which it shall state its purpose. If the company has any justifiable ground to believe that such shareholder has an improper purpose for looking into the accounting books of the company, which may cause damage to the lawful interests of the company, it may refuse such request, provided that, within fifteen (15) days of submission of such written request, the company shall give a written reply to such shareholder, stating the reason for its refusal. If a company refuses any of its shareholder access to its accounting books, such shareholder may petition the people's court to require the company to provide such access.

### **Article 35**

The shareholders shall receive dividends in proportion to their respective paid-in capital contributions. When a company increases its capital, shareholders of the company shall have the right of first refusal to subscribe for contributions to such increase in proportion to their respective paid-in capital contributions, except as all the shareholders agree that dividends will not be distributed in proportion to their respective capital contributions or that contributions to any increase in the capital of the company will not be subscribed for on a priority basis in proportion to their respective capital contributions.

### **Article 36**

After a company has been established, the shareholders of the company shall not withdraw their capital contributions.

## **Section 2 Organizational Structure**

### **Article 37**

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

### **Article 38**

The shareholders' meeting shall exercise the following functions and powers:

- (1) to decide on the business policy and investment plans of the company;
- (2) to elect and replace any director or supervisor the position of which is not held by a representative of the employees and to decide on matters concerning the remuneration of the directors or supervisors;
- (3) to consider and approve reports of the board of directors;

- (4) to consider and approve reports of the board of supervisors or the supervisors;
- (5) to consider and approve the proposed annual financial budgets and final accounts of the company;
- (6) to consider and approve the profit distribution plans and plans for making up losses of the company;
- (7) to pass resolutions on the increase or reduction of the registered capital of the company;
- (8) to pass resolutions on the issue of bonds by the company;
- (9) to pass resolutions on matters such as the merger, split, restructuring, dissolution or liquidation of the company;
- (10) to amend the articles of association of the company.
- (11) other functions and powers as provided for in the articles of association of the company.

If all the shareholders agree in writing to any of the matters listed above, a resolution on such matter may be directly made instead of convening a shareholders' meeting and all the shareholders shall affix their signatures and seals to such resolution.

### **Article 39**

The first shareholders' meeting shall be convened and presided over by the shareholder that made the largest capital contribution and such shareholder shall exercise its functions and powers according to this Law.

### **Article 40**

Shareholders' meetings shall be divided into regular meetings and interim meetings. Regular meetings shall be convened according to the schedule as prescribed in the articles of association of the company. If the shareholders representing more than one tenth of the voting rights, more than one third of the directors, the board of supervisors, or the supervisors of any company that has not established a board of supervisors propose the convening of an interim shareholders' meeting, such interim meeting shall be convened.

### **Article 41**

Shareholders' meetings of any limited liability company that has established a board of

directors shall be convened by the board of directors and presided over by the chairman of the board. When the chairman of the board is unable to or fails to perform his duties, the vice chairman of the board shall preside over the shareholders' meetings; when the vice chairman of the board is also unable to or fails to perform such duties, a director shall be elected by the affirmative votes of more than half of the directors to preside over such meetings.

Shareholders' meeting of any limited liability company that has not established a board of directors shall be convened and presided over by the executive director.

When the board of directors or the executive director is unable to or fails to perform the function of convening shareholders' meetings, the board of supervisors or the supervisors of a company that has not established a board of supervisors shall convene and preside over such meetings; if the board of supervisors or the supervisors fail to convene and preside over such meetings, the shareholders that represent more than one ten of the voting rights may convene and preside over such meeting at their own discretion.

#### **Article 42**

All the shareholders shall be notified of the convening of a shareholders' meeting fifteen (15) days in advance, except as otherwise provided in the articles of association of the company or otherwise agreed by all the shareholders of the company.

The shareholders' meeting shall draw up minutes of decisions made on matters it has considered at such meetings and the shareholders present at such meetings shall affix their signatures to the minutes of such meetings.

#### **Article 43**

The shareholders shall exercise their right to vote at the shareholders' meetings in proportion to their respective capital contributions, except as otherwise provided in the articles of association of the company.

#### **Article 44**

Except as otherwise provided in this Law, the rules of procedure and voting procedure of the shareholders' meeting shall be provided for in the articles of association of the company.

Resolutions on an amendment to the articles of association of a company, on the increase or reduction of the registered capital of a company, or on the merger, split, dissolution, or restructuring of a company shall be adopted at the shareholders' meeting only if they receive the affirmative votes of the shareholders that represent more than two thirds of the voting rights.

#### **Article 45**

A limited liability company shall have a board of directors composed of three to thirteen members, except as otherwise provided in Article 51 of this Law.

The board of directors of a limited liability company established with investments made by two or more state-owned enterprises or two or more other state-owned investment entities shall have representatives of the employees of the company among its members and the board of directors of other limited liability companies may have representatives of the employees of the company among its members. The representatives of the employees on the board of directors shall be democratically elected by the employees of the company through the convening of an employees representatives' meeting, a general meeting of the employees or through other means.

The board of directors shall have a chairman and may have a vice chairman. The method of selecting the chairman and vice chairman of the board shall be provided for in the articles of association of the company.

#### **Article 46**

The term of office of the directors of the board shall be specified in the articles of association of the company, provided that each term shall not exceed three years. If re-elected upon expiration of his term of office, a director may serve consecutive terms. If a new director fails to be elected upon expiration of the term of office of any director or the board of directors has less members than the statutory number as a result of the resignation of any director during his term of office, such director shall perform his functions in accordance with laws, administrative regulations and the articles of association of the company before a new director is elected and takes his position.

#### **Article 47**

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

- (1) to be responsible for convening shareholders' meetings and to report on its work to the shareholders' meeting;
- (2) to implement the resolutions of the shareholders' meeting;
- (3) to decide on the business plans and investment plans of the company;
- (4) to formulate the proposed annual financial budgets and final accounts of the company;
- (5) to formulate the profit distribution plans and plans for making up losses of the company;

- (6) to formulate plans for the increase or reduction of the registered capital of the company and for issue of bonds by the company;
- (7) to draft plans for the merger, split, restructuring or dissolution of the company;
- (8) to decide on the establishment of the company's internal management organization;
- (9) to decide on the appointment or dismissal of the manager of the company and on matters concerning his remuneration, and to decide on the appointment or dismissal of the deputy manager(s) and chief financial officer as proposed by the manager and on matters concerning their remuneration;
- (10) to formulate the basic management system of the company; and
- (11) other functions and powers as prescribed in the articles of association of the company.

#### **Article 48**

Meetings of the board of directors shall be convened and presided over by the chairman of the board. When the chairman of the board is unable to or fails to perform his duties, the vice chairman of the board shall convene and preside over meetings of the board of directors; when the vice chairman of the board is also unable to or fails to perform such duties, a director shall be elected by the affirmative votes of more than half of the directors to convene and preside over such meetings.

#### **Article 49**

Except as otherwise provided in this Law, the rules of procedure and voting procedure of the board of directors shall be provided for in the articles of association of the company.

The board of directors shall draw up minutes of decisions made on matters it has considered at its meetings, to which the directors present at such meetings shall affix their signatures.

Each director of the board shall have only one vote when a resolution of the board of directors is put to a vote.

#### **Article 50**

A limited liability company may have a manager, who shall be appointed or dismissed by the board of directors. The manager shall be accountable to the board of directors and shall exercise the following functions and powers:

- (1) to be in charge of the management of the production and business operations of the

company and to organize the implementation of the resolutions of the board of directors;

- (2) to organize the implementation of the company's annual business plans and investment plans;
- (3) to draft the plan for establishment of the company's internal management organization;
- (4) to draft the company's basic management system;
- (5) to formulate the specific rules and regulations of the company;
- (6) to propose the appointment or dismissal of the deputy manager(s) and chief financial officer of the company;
- (7) to decide on the appointment or dismissal of management personnel other than those appointed or dismissed by the board of directors; and
- (8) other functions and powers as granted by the board of directors.

If the articles of association of a company have any other provisions on the functions and powers of the manager, such provisions shall prevail. The manager shall attend meetings of the board of directors as a non-voting attendee.

#### **Article 51**

If the shareholders of a limited liability company are comparatively few in number and it is comparatively small in scale, such company may have an executive director rather than a board of directors. The executive director may concurrently serve as manager of the company.

The functions and powers of the executive director shall be provided for in the articles of association of the company.

#### **Article 52**

A limited liability company shall have a board of supervisors that shall be composed of no less than three members. If the shareholders of a limited liability company are comparatively few in number and the limited liability company is comparatively small in scale, such company may have one or two supervisors rather than a board of supervisors. The board of supervisors shall consist of representatives of the shareholders and representatives of the employees, who shall account for no less than one third of the board of supervisors, and the specific proportion of representatives of the employees shall be provided for in the articles of

association of the company. The representatives of the employees on the board of supervisors shall be democratically elected by the employees of the company through the convening of an employees representatives' meeting, a general meeting of the employees or through other means. The board of supervisors shall have a chairman, who shall be elected by the affirmative votes of more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over meetings of the board of supervisors. If the chairman of the board of supervisors is unable to or fails to perform his duties, a supervisor shall be elected by the affirmative votes of more than half of the supervisors to convene and preside over such meetings.

The directors and senior officers shall not concurrently serve as supervisors.

### **Article 53**

Each term of office of a supervisor shall be three years. If re-elected upon expiration of his term of office, a supervisor may serve consecutive terms. If a new supervisor fails to be elected upon expiration of the term of office of any director or the board of supervisors has less members than the statutory number as a result of the resignation of any supervisor during his term of office, such supervisor shall perform his functions in accordance with laws, administrative regulations and the articles of association of the company before a new supervisor is elected and takes his position.

### **Article 54**

The board of supervisors or the supervisors of any company that has not established a board of supervisors shall exercise the following functions and powers:

- (1) to check up on the financial affairs of the company;
- (2) to exercise supervision over the performance by the directors and senior officers of their official duties and to propose the dismissal of any director or senior officer who is in violation of laws, administrative regulations, the articles of association of the company, or resolutions of the shareholders' meeting;
- (3) to require a director or senior officer to rectify any of his acts that is harmful to the interests of the company;
- (4) to propose the convening of interim shareholders' meetings and to convene and preside over shareholders' meetings when the board of directors fails to perform its function of convening and presiding over such meetings as provided in this Law.
- (5) to propose draft resolutions to the shareholders' meeting;
- (6) to initiate legal proceedings against any director or senior officer in accordance with

the provisions of Article 152 of this Law; and

- (7) other functions and powers as provided for in the articles of association of the company.

#### **Article 55**

The supervisors may attend meetings of the board of directors as non-voting attendees and make inquiries or suggestions about matters on which the board of directors has passed resolutions.

If the board of supervisors or the supervisor(s) of a company that has not established a board of supervisors has found that the business operations of the company are in an abnormal state, the board of supervisors or the supervisor(s) may make an investigation thereof, and engage such an institution as an accounting firm to assist him in his work at the expense of the company if necessary.

#### **Article 56**

The board of supervisors shall convene at least one meeting each year and the supervisors may propose that an interim meeting of the board of supervisors be convened.

Except as otherwise provided in this Law, the rules of procedure and voting procedure of the board of supervisors shall be provided for in the articles of association of the company.

Resolutions of the board of supervisors shall be passed by the affirmative votes of more than half of the supervisors. The board of supervisors shall draw up minutes of decisions made on matters it has considered at its meetings, to which the supervisors present at such meetings shall affix their signatures.

#### **Article 57**

Necessary expenses the board of supervisors or the supervisor(s) of a company that has not established a board of supervisors may incur in connection with the exercise of their functions and powers shall be borne by the company

### **Section 3**

#### **Special Provisions on One-person Limited Liability Companies**

#### **Article 58**

The provisions of this Section shall be applicable to the establishment and organizational structure of a one-person limited liability company and the provisions of Sections 1 and 2 of this Chapter shall be applicable to any matters uncovered in this Section.

A one-person limited liability company as referred to in this Law shall mean a limited liability company that has only one natural person shareholder or one legal person shareholder.

#### **Article 59**

The minimum amount of the registered capital of a one-person limited liability company shall be RMB 100,000 and the shareholder shall pay in one lump the capital contribution as provided for in the articles of association of the company.

One natural person shall invest in the establishment of only one one-person limited liability company and such one-person limited liability company shall not invest in the establishment of any new one-person limited liability company.

#### **Article 60**

Sole proprietorship by a natural person or a legal person shall be noted in the company registration and business license of a one-person limited liability company.

#### **Article 61**

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

#### **Article 62**

A one-person limited liability company shall not have a board of directors. When the shareholder of a one-person limited liability company makes any of the decisions as listed in Paragraph 1 of Article 38 of this Law, such decision shall be in writing and kept in the files of the company after the shareholder has affixed its signature thereto.

#### **Article 63**

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

#### **Article 64**

If the shareholder of a one-person limited liability company is unable to prove that the assets of the company is independent from his own assets, he shall be jointly and severally liable for the debts of the company.

### **Section 4**

## **Special Provisions on Wholly State-Owned Companies**

### **Article 65**

The provisions of this Section shall be applicable to the establishment and organizational structure of a wholly state-owned company and the provisions of Sections 1 and 2 of this Chapter shall be applicable to any matters uncovered in this Section.

A wholly state-owned company as referred to in this Law shall mean a limited liability company established by the state as a sole investor, the functions of which shall be performed by the state-asset supervisory and regulatory institution under the local people's government with authorization from the State Council or the local people's government at the same level.

### **Article 66**

The articles of association of a wholly state-owned company shall be formulated by the state-asset supervisory and regulatory institution, or formulated by the board of directors and submitted to the state-asset supervisory and regulatory institution for approval.

### **Article 67**

A wholly state-owned company shall not have a shareholders' meeting, the functions and powers of which shall be exercised by the state-asset supervisory and regulatory institution. The state-asset supervisory and regulatory institution may authorize the board of directors of the company to exercise part of the functions and powers of a shareholders' meeting and to decide on major matters of the company, provided that the merger, split, dissolution, increase or reduction of the registered capital of the company and the issue of bonds by the company shall be decided on by the state-asset supervisory and regulatory institution, and the merger, split, or dissolution of major wholly state-owned companies or the application for bankruptcy of such companies shall be submitted to the local people's government for approval after the same has been examined and verified by the state-asset supervisory and regulatory institution at the same level. Major wholly state-owned companies as referred to above shall be determined in accordance with the provisions formulated by the State Council

### **Article 68**

A wholly state-owned company shall have a board of directors, which shall exercise its functions and powers in accordance with the provisions of Articles 47 and 67 of this Law. Each term of office of a director shall not exceed three (3) years. Members of the board of directors shall include representatives of the employees of the company. Members of the board of directors shall be appointed by the state-owned asset supervisory and regulatory institution, but the representatives of the employees on the board of directors shall be elected through the convening of an employees representatives' meeting. The board of directors shall have a chairman and may have a vice chairman. The chairman and vice chairman shall

be designated from the members of the board of directors by the state-owned asset supervisory and regulatory institution.

#### **Article 69**

A wholly state-owned company shall have a manager, who shall be appointed or dismissed by the board of directors. The manager shall exercise his functions and powers in accordance with the provisions of Article 50 of this Law. Subject to approval by the state-owned asset supervisory and regulatory institution, a member of the board of directors may concurrently serve as manager of the company.

#### **Article 70**

Without approval by the state-owned asset supervisory and regulatory institution, the chairman, vice chairman, directors or senior officers of a wholly state-owned company shall not concurrently hold any position in any other limited liability company, company limited by shares, or economic organization.

#### **Article 71**

The board of supervisors of a wholly state-owned company shall be composed of no less than five (5) members, at least one third of whom shall be representatives of the employees, and the specific proportion of representatives of the employees of the company shall be provided for in the articles of association of the company.

Members of the board of supervisors shall be appointed by the state-owned asset supervisory and regulatory institution, but representatives of the employees on the board of supervisors shall be elected through the convening of an employees representatives' meeting. The chairman of the board of supervisors shall be designated from members of the board of supervisors by the state-owned asset supervisory and regulatory institution. The board of supervisors shall exercise the functions and powers as provided for in Item (1) to Item (3) of Article 54 of this Law and the other functions and powers as prescribed by the State Council.

### **Chapter 3 Transfer of Equity in Limited Liability Companies**

#### **Article 72**

Shareholders of a limited liability company may transfer all or part of their equity in the company to each other.

If any shareholder is to transfer its equity to any other party than the shareholders, such transfer shall be subject to consent of more than half of the other shareholders. Such

shareholder shall obtain consent from the other shareholders by notifying them in writing of matters concerning the transfer of its equity and the other shareholders shall be deemed to have granted consent to such transfer if they fail to give a reply within thirty (30) days of receipt of such written notice. If more than half of the other shareholders refuse their consent to such transfer, such shareholders shall purchase the equity to be transferred; if they fail to make such purchase, they shall be deemed to have granted consent to such transfer. On the same terms the other shareholders shall have the right to first refusal to purchase the equity to the transfer of which the shareholders have granted consent. If two or more than two shareholders propose to exercise such right of first refusal, they shall determine through consultation the proportions of the equity they may purchase, respectively; if such consultation proves unsuccessful, they shall exercise their right of first refusal in proportion to the capital contributions they have made by the time of such transfer.

If the articles of association of the company contains any other provisions on the equity transfer, such provisions shall prevail.

### **Article 73**

If the people's court is to transfer the equity of any shareholder according to the procedure for enforcement as prescribed in laws, it shall notify the company and all the shareholders of such transfer and the other shareholders shall have the right of first refusal to purchase such equity on the same terms. If the other shareholders fail to exercise their right of first refusal within twenty (20) days after the people's court serves such notice, they shall be deemed to have waived such right of first refusal.

### **Article 74**

After any equity has been transferred in accordance with Articles 72 and 73 of this Law, the company shall revoke the certificate of capital contribution of the original shareholder, issue a certificate of capital contribution to the new shareholder, and make appropriate modifications of records of the shareholders and the amounts of their capital contributions in the articles of association and the register of shareholders. Such amendments to the articles of association of the company need not be put to a vote at the shareholders' meeting.

### **Article 75**

Those shareholders that have cast a vote against the relevant resolution made by the shareholders' meeting may request that the company purchase their equity for a reasonable price if any of the following events occurs:

- (1) if the company has not distributed any profit to the shareholders for five consecutive years when the company has been making profit consecutively for these five years and the company satisfies the conditions of profit distribution as prescribed in this Law;

- (2) if the company is to merge or split or to transfer its major assets; or
- (3) if, upon expiration of the term of operation as prescribed in the articles of association of the company or upon occurrence of any of the other events in which the company shall be dissolved as provided in the articles of association, the shareholders' meeting has passed a resolution to make amendments to the articles of association so that the company may continue to exist.

If such shareholders and the company fail to reach an equity purchase agreement within sixty (60) days after the resolution is passed at the shareholders' meeting, such shareholders may initiate legal proceedings in the people's court within ninety (90) days after the resolution is passed at the shareholders' meeting.

#### **Article 76**

In the event of the death of a natural person shareholder, his lawful heir may inherit the status of the shareholder, except as otherwise provided in the articles of association of the company.

### **Chapter 4 Establishment and Organizational Structure of Companies Limited by Shares**

#### **Section 1 Establishment**

#### **Article 77**

The establishment of a company limited by shares shall satisfy the following conditions:

- (1) the number of promoters shall conform to the statutory number;
- (2) the share capital subscribed for and raised by the promoters shall reach the minimum amount of legal capital;
- (3) the share issue and preparations therefor shall be in compliance with the provisions of laws;
- (4) the promoters shall have formulated the articles of association of the company, which shall have been adopted at the founding meeting if the company is established by means of share offer;
- (5) the company shall have a name and shall have established an organizational structure that satisfy the requirements for companies limited by shares; and

(6) the company shall have a domicile.

### **Article 78**

Companies limited by shares may be established by means of promotion or by means of share offer.

The term "establishment by means of promotion" shall mean establishment of a company by means of subscription by the promoters for all the shares to be issued by the company.

The term "establishment by means of share offer" means establishment of a company by means of subscription by the promoters for a portion of the shares to be issued by the company and offer of the balance to the public or the specified targets.

### **Article 79**

If a company limited by shares is to be established, its promoters shall number more than two but less than two hundred, of which more than half shall have their domiciles within the PRC.

### **Article 80**

The promoters of a company limited by shares shall undertake preparations for the establishment of the company. The promoters shall enter into a promoters' agreement, which shall define their respective rights and obligations in connection with the establishment of the company.

### **Article 81**

If a company limited by shares is established by means of promotion, its registered capital shall be the total share capital subscribed for by all the promoters as registered with the company registration authority. The first installments of capital contributions made by all the promoters of the company shall account for no less than twenty percent of the registered capital and the balance shall be paid in by the promoters within two (2) years after the date of establishment of the company or within five (5) years in the case of an investment company. No capital shall be raised by means of share offer until all the registered capital is paid in.

If a company limited by shares is established by means of share offer, its registered capital shall be the total paid-in capital as registered with the company registration authority. The minimum amount of the registered capital of a company limited by shares shall be RMB 5 million. If any law or administrative regulation provides for a higher minimum amount of the registered capital of a company limited by shares, such provision shall prevail.

### **Article 82**

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

- (1) the name and domicile of the company;
- (2) the scope of business of the company;
- (3) the method of establishment of the company;
- (4) the total number of shares, the price per share and the registered capital of the company;
- (5) the names of the promoters and the numbers of shares subscribed for and the manners and times of capital contributions made by them;
- (6) the composition, functions, powers, term and rules of procedure of the board of directors;
- (7) the legal representative of the company;
- (8) the composition, functions, powers, term and rules of procedure of the board of supervisors;
- (9) the method of profit distribution of the company;
- (10) the reasons for dissolution of the company and method of its liquidation;
- (11) the methods for notices and announcements of the company; and
- (12) other matters that the shareholders' general meeting considers need to be specified.

### **Article 83**

The provisions of Article 27 of this Law shall be applicable to the method of capital contributions of the promoters.

### **Article 84**

If a company limited by shares is established by means of promotion, the promoters shall subscribe in writing for the full numbers of shares as specified in the articles of association of the company. If any promoter is to make its capital contribution in one lump, such promoter shall promptly make its capital contribution in full; if any promoter is to make its capital contribution in installments, such promoter shall promptly make the first installment of its capital contribution. If any promoter is to make its capital contribution in non-currency assets, such promoter shall carry out the procedure of transfer of its property rights according

to law.

If any promoter fails to make its capital contribution in accordance with the provisions of the preceding paragraph, such promoter shall be liable for breach of contract in accordance with the provisions of the promoters' agreement.

After the promoters have made the first installments of their capital contributions, they shall elect the board of directors and the board of supervisors and the board of directors shall submit the articles of association of the company to the company registration authority and make an application for registration of establishment of the company to such authority on the strength of an capital verification certificate issued by a lawfully-established capital verification institution and other documents as specified in laws and administrative regulations.

#### **Article 85**

If a company limited by shares is to be established by means of share offer, the promoters shall subscribe for no less than thirty-five percent of the total number of shares of the company, except as otherwise provided in laws or administrative regulations.

#### **Article 86**

When the promoters are to offer shares to the public, they shall publish the share prospectus and prepare subscription forms. The subscription forms shall specify the matters as listed in Article 87 of this Law and the subscribers shall enter the number and value of shares they are to subscribe for and their domiciles on the forms, and shall affix their signatures and seals to such forms. The subscribers shall pay subscription monies according to the number of shares they have subscribed for.

#### **Article 87**

A share prospectus shall have the articles of association of the company formulated by the promoters attached and shall specify the following matters:

- (1) the number of shares subscribed for by the promoters;
- (2) the face value and issue price of each share;
- (3) the total number of bearer shares issued;
- (4) the use of the capital to be raised;
- (5) the rights and obligations of the subscribers; and

- (6) the term of the share offer and a statement to the effect that the subscribers may withdraw their share subscriptions if all the shares are not taken up within the term of the share offer.

### **Article 88**

If the promoters are to offer shares to the public, the shares shall be underwritten by a lawfully-established securities company, with which the promoters shall enter into an underwriting agreement.

### **Article 89**

If the promoters are to offer shares to the public, they shall enter into an agreement with a bank on the collection of subscription monies on behalf of the company.

The bank that collects subscription monies on behalf of the company shall collect and keep the subscription monies on behalf of the company in accordance with the agreement and issue receipts to the subscribers that have paid their subscription monies. In addition, the bank shall have an obligation to issue certificates of receipt of subscription monies to the relevant authority.

### **Article 90**

After the subscription monies for a share issue have been paid in full, a lawfully-established capital verification institution shall carry out a capital verification and issue a capital verification certificate. Within thirty (30) days, the promoters shall convene and preside over the founding meeting of the company, which shall be composed of the subscribers. If the shares issued are not fully taken up by the closing date as specified in the share prospectus or if the promoters fail to convene the founding meeting within thirty (30) days after the subscription monies for the share issue have been paid in full, the subscribers may lodge a claim against the promoters for a refund of the subscription monies the subscribers have paid plus any bank interest calculated at the deposit rate for the same period.

### **Article 91**

The promoters shall notify all the subscribers or make an announcement of the date of the founding meeting fifteen (15) days in advance. The founding meeting shall be convened only if it is attended by the subscribers representing more than half of the total number of shares. The founding meeting shall exercise the following functions and powers:

- (1) to deliberate the report of the promoters on preparations for the establishment of the company;
- (2) to adopt the articles of association of the company;

- (3) to elect the members of the board of directors;
- (4) to elect the members of the board of supervisors;
- (5) to examine and verify the expenses incurred in connection with the establishment of the company;
- (6) to examine and verify the evaluation of the assets the promoters substituted for subscription monies; and
- (7) to make a resolution not to establish the company in the event of occurrence of any *force majeure* or any major change in business conditions that has had a direct effect on the establishment of the company.

A resolution on any of the matters as listed in the preceding paragraph shall be passed at the founding meeting only if it receives the affirmative votes of the subscribers present at such meeting that represent more than half of the voting rights.

#### **Article 92**

After the promoters and subscribers have paid their subscription monies or have made their capital contributions as substitutes for subscription monies, they shall not withdraw their share capital, except where the shares are not fully taken up according to schedule, the promoters have failed to convene the founding meeting according to schedule or a resolution not to establish the company is adopted at the founding meeting.

#### **Article 93**

Within thirty (30) days after the end of the founding meeting, the board of directors shall submit the following documents to the company registration authority and make an application for registration of establishment of the company to such authority:

- (1) the application for registration of the company;
- (2) the minutes of the founding meeting;
- (3) the articles of association of the company;
- (4) the capital verification certificates;
- (5) the certificates of appointment and certificates of identity of the legal representative, directors and supervisors;

- (6) the certificates of legal person status or certificates of natural person identity of the promoters ; and
- (7) the certificate of domicile of the company.

If any company limited by shares established by means of share offer is to issue shares to the public, it shall submit to the company registration authority the certificate of approval issued by the securities supervisory and regulatory institution under the State Council.

#### **Article 94**

If, after establishment of a company limited by shares, any promoter fails to make its capital contribution in the full amount as specified in the articles of association of the company, it shall make up the difference and the other promoters shall be jointly and severally liable for such difference.

If, after establishment of a company limited by shares, it is discovered that the actual value of the non-currency assets contributed as capital to the establishment of the company is markedly lower than their value as fixed in the company's articles of association, the promoter that has made such capital contribution shall make up the difference and the other promoters shall be jointly and severally liable for such difference.

#### **Article 95**

The promoters of a company limited by shares shall bear the following liabilities:

- (1) joint and several liability for the debts and expenses incurred in connection with the establishment of the company in the event of the company's failure to be established;
- (2) joint and several liability for refunding the subscription monies the subscribers have paid plus any bank interest calculated at the deposit rate for the same period in the event of the company's failure to be established; and
- (3) liability for compensation to the company if, during the course of establishment of the company, any damage is caused to the interests of the company through any fault on the part of the promoters.

#### **Article 96**

When a limited liability company is transformed into a company limited by shares, the total amount of the paid-in share capital converted shall not be greater than the value of the net assets of the company. When a company limited by shares transformed from a limited liability company is to issue shares to the public in order to increase its capital, such issue shall be carried out according to law.

**Article 97**

A company limited by shares shall keep in its files the articles of association of the company, the register of shareholders, counterfoils of bonds of the company, minutes of shareholders' general meetings, minutes of meetings of the board of directors and the board of supervisors, and financial and accounting reports.

**Article 98**

The shareholders of a company limited by shares shall have the right to look into the articles of association of the company, the register of shareholders, counterfoils of bonds of the company, minutes of shareholders' general meetings, resolutions of meetings of the board of directors and the board of supervisors, and financial and accounting reports and to make suggestions or inquiries about the business operations of the company.

**Section 2**  
**Shareholders' General Meetings**

**Article 99**

A shareholders' general meeting of a company limited by shares shall consist of all the shareholders of the company, shall be the organ of authority of the company and shall exercise its functions and powers according to this Law.

**Article 100**

The provisions of Paragraph 1 of Article 38 of this Law on the functions and powers of the shareholders' meeting of a limited liability company shall be applicable to the shareholders' general meeting of a company limited by shares.

**Article 101**

An annual shareholders' general meeting shall be convened each year. An interim shareholders' general meeting shall be convened within two months of occurrence of any of the following events:

- (1) if the number of directors is fewer than two thirds of the number as prescribed in this Law or in the articles of association of the company;
- (2) if the losses of the company that have not been made up account for one third of the total amount of the paid-in share capital;
- (3) if such meeting is requested by the shareholders that individually or collectively hold

more than ten percent of the shares of the company;

- (4) if the board of directors considers such meeting necessary;
- (5) if the board of supervisors proposes that such meeting be convened; or
- (6) other events as specified in the articles of association of the company.

### **Article 102**

Shareholders' general meetings shall be convened by the board of directors and presided over by the chairman of the board. When the chairman of the board is unable to or fails to perform his duties, the vice chairman of the board shall preside over such meetings; when the vice chairman of the board is also unable to or fails to perform such duties, a director shall be elected by the affirmative votes of more than half of the directors to preside over such meetings.

When the board of directors is unable to or fails to perform its function of convening a shareholders' general meeting, the board of supervisors shall promptly convene and preside over such meeting; when the board of supervisors also fails to convene and preside over such meeting, the shareholders that have individually or collectively held more than ten percent of the shares of the company for more than ninety (90) consecutive days may convene and preside over such meeting at their own discretion.

### **Article 103**

All the shareholders shall be notified of the time and place of a shareholders' general meeting and the matters to be considered at such meeting twenty (20) days prior to the convening of such meeting; all the shareholders shall be notified of an interim shareholders' general meeting fifteen (15) days prior to the convening of such meeting; and, if any bearer shares are to be issued, the time and place of the meeting and the matters to be considered at such meeting shall be announced thirty (30) days prior to the convening of such meeting.

The shareholders that individually or collectively hold more than three percent of the shares of the company may propose provisional draft resolutions and submit the same in writing to the board of directors, which shall notify the other shareholders of such provisional draft resolutions within two (2) days of receipt thereof and present the same to the shareholders' general meeting for consideration. The contents of a provisional draft resolution shall fall within the scope of the functions and powers of the shareholders' general meeting and it shall contain definite topics for consideration and specific matters to be decided on. No resolution shall be passed at a shareholders' general meeting with respect to any matter that is not listed in the notices as referred to in the preceding two paragraphs. Holders of bearer shares that wish to attend a shareholders' general meeting shall deposit their share certificates with the company for a period that begins five days before the convening of such meeting and

lasts up to the end of such meeting.

#### **Article 104**

At a shareholders' general meeting, a shareholder shall have one vote for each of the shares it holds, but the company shall have no vote for any of its own shares the company holds. A resolution shall be adopted at a shareholders' general meeting only if it receives the affirmative votes of the shareholders present at such meeting that hold more than half of the voting rights, but resolutions on amendments to the articles of association of the company, the increase or reduction of the registered capital, or the merger, split, dissolution or restructuring of the company shall be adopted at a shareholders' general meeting only if they receive the affirmative votes of the shareholders present at such meeting that hold more than two thirds of the voting rights.

#### **Article 105**

If this Law and the articles of association of the company provide that such matters as the transfer of any major assets by or to the company or the provision of any security by the company for any outsiders shall be subject to a resolution passed at a shareholders' general meeting, the board of directors shall promptly convene a shareholders' general meeting, at which the aforementioned matters shall be put to a vote.

#### **Article 106**

When any directors or supervisors are elected at a shareholders' general meeting, an accumulative voting system may be implemented in accordance with the provisions of the articles of association of the company or a resolution passed at a shareholders' general meeting. The "accumulative voting system" as referred to in this Law means that, when any directors or supervisors are elected at a shareholders' general meeting, each share shall have the same number of votes as that of the directors or supervisors to be elected and the shareholders may pool their votes when such votes are cast.

#### **Article 107**

A shareholder may appoint a proxy to attend a shareholders' general meeting on his behalf. The proxy shall submit the shareholder's power of attorney to the company and shall exercise his voting rights within the scope of the authority granted by the shareholder.

#### **Article 108**

A shareholders' general meeting shall draw up minutes of decisions made on matters that have been considered at such meeting, to which the presider of such meeting and the directors present at such meetings shall affix their signatures. The minutes of such meetings shall be kept along with the book of signatures of the shareholders present at such meeting and the

powers of attorney of the proxies.

### **Section 3**

#### **Board of Directors and Managers**

##### **Article 109**

The board of directors of a company limited by shares shall be composed of five to nineteen members.

The board of directors may have representatives of the employees among its members. The representatives of the employees on the board of directors shall be democratically elected by the employees of the company through the convening of an employees representatives' meeting, a general meeting of the employees or through other means.

The provisions of Article 46 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 47 of this Law on the functions and 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 110**

The board of directors shall have a chairman and may have a vice chairman. The chairman and vice chairman of the board shall be elected at a meeting of the board of directors by the affirmative votes of more than half of all the directors.

The chairman of the board shall convene and preside over meetings of the board and check up on the implementation of resolutions of the board. The vice chairman shall assist the chairman in his work. When the chairman of the board is unable to or fails to perform his duties, the vice chairman of the board shall perform such duties on his behalf; when the vice chairman of the board is also unable to or fails to perform such duties, a director shall be elected by the affirmative votes of more than half of the directors to perform such duties.

##### **Article 111**

The board of directors shall convene at least two meetings each year and all the directors and supervisors shall be notified of each meeting of the board ten (10) days prior to the convening of such meeting. The shareholders representing more than one tenth of the voting rights, more than one third of the directors, or the board of supervisors may propose the convening of an interim meeting of the board of directors. Within ten (10) days of receipt of such proposal, the chairman of the board shall convene and preside over a meeting of the board. The manner and time of notification of an interim meeting of the board may be provided for

separately.

### **Article 112**

Meetings of the board of directors shall be held only when a quorum of more than half of the directors are present at such meeting. Resolutions shall be adopted at meetings of the board of directors only if they receive the affirmative votes of more than half of all the directors.

Each director shall have one vote when any resolution is put to a vote at a meeting of the board of directors.

### **Article 113**

Meetings of the board of directors shall be attended by the directors in person. If any director is unable to attend a meeting of the board for any reason, he may appoint another director in writing to attend such meeting on his behalf and the power of attorney shall specify the scope of the authorization.

The board of directors shall draw up minutes of decisions made on matters it has considered at its meetings, to which the directors present at such meetings shall affix their signatures. The directors shall bear liability for the resolutions of the board of directors. If a resolution of the board of directors is in violation of any law, administrative regulation, any provision of the articles of association of the company, or any resolution of the shareholders' general meeting, thus causing any serious losses to the company, the directors who took part in making such resolution shall be liable for compensation for such losses of the company. However, if a director is proved to have expressed his objection to such resolution when it was put to a vote, and such objection is recorded in the minutes of the meeting, such director may be released from such liability.

### **Article 114**

A company limited by shares shall have a manager, who shall be appointed or dismissed by the board of directors.

The provisions of Article 50 of this Law on the functions and powers of the manager of a limited liability company shall be applicable to the manager of a company limited by shares.

### **Article 115**

The board of directors of the company may decide that a director shall concurrently act as manager.

### **Article 116**

The company shall not, directly or through its subsidiary, make any loan to any of its directors, supervisors or senior officers.

#### **Article 117**

The company shall, on a regular basis, disclose to its shareholders the remunerations its directors, supervisors and senior officers receive from the company.

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

#### **Article 118**

A company limited by shares shall have a board of supervisors, which shall be composed of not less than three members.

The board of supervisors shall consist of representatives of the shareholders and representatives of the employees, who shall account for no less than one third of the board of supervisors, and the specific proportion of representatives of the employees shall be provided for in the articles of association of the company. The representatives of the employees on the board of supervisors shall be democratically elected by the employees of the company through the convening of an employees representatives' meeting or through other means. The board of supervisors shall have a chairman and may have a vice chairman, and the chairman and vice chairman of the board of supervisors shall be elected by the affirmative votes of more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over meetings of the board of supervisors. If the chairman of the board of supervisors is unable to or fails to perform his duties, the vice chairman of the board of supervisors shall convene and preside over meetings of the board of supervisors; if the vice chairman of the board of supervisors is also unable to or fails to perform such duties, a supervisor shall be elected by the affirmative votes of more than half of the supervisors to convene and preside over such meetings.

The directors and senior officers shall not concurrently serve as supervisors.

The provisions of Article 53 of this Law on the term of office of the supervisors of a limited liability company shall be applicable to the supervisors of a company limited by shares.

#### **Article 119**

The provisions of Article 54 of this Law on the functions and powers of the board of supervisors of a limited liability company shall be applicable to the board of supervisors of a company limited by shares.

Necessary expenses the board of supervisors may incur in connection with the exercise of its

functions and powers shall be borne by the company.

#### **Article 120**

The board of supervisors shall convene at least one meeting every six months. The supervisors may propose that an interim meeting of the board of directors be convened.

Except as otherwise provided in this Law, the rules of procedure and voting procedure of the board of supervisors shall be provided for in the articles of association of the company.

The board of supervisors shall draw up minutes of decisions made on matters it has considered at its meetings, to which the supervisors present at such meetings shall affix their signatures.

### **Section 5**

#### **Special Provisions on the Organizational Structure of Listed Companies**

#### **Article 121**

“Listed companies” as referred to in this Law shall mean companies limited by shares the shares of which are listed and traded on stock exchanges.

#### **Article 122**

If a listed company acquires or sell any major assets within one year or the value of the security it provides exceeds thirty percent of the value of its total assets, such transactions or security shall be subject to a resolution of a shareholders’ general meeting, which shall be passed by the shareholders present at such meeting that hold more than two thirds of the voting rights.

#### **Article 123**

A listed company shall have independent directors. The specific method of appointing such independent directors shall be formulated by the State Council.

#### **Article 124**

A listed company shall have a secretary to the board of directors, who shall be responsible for such matters as preparations for shareholders’ general meetings and meetings of the board of directors, safekeeping of the documents, management of the equity of the company, and disclosure of information.

#### **Article 125**

If a director of a listed company has an affiliation with any enterprise that is involved in any resolution passed at a meeting of the board of directors, he shall not exercise his right to vote on such resolution in his own right or as a proxy for any other director. Such meeting of the board of directors may be held only when more than half of the directors who have not such affiliation relationship are present at such meeting and a resolution shall be passed at such meeting only if it receives the affirmative votes of more than half of the directors who have no such affiliation relationship. If less than three directors who have no such affiliation relationship are present at a meeting of the board of directors of a listed company, the relevant matters shall be presented to the shareholders' general meeting of the company for consideration.

## **Chapter 5**

### **Issue and Transfer of Shares of Companies Limited by Shares**

#### **Section 1**

#### **Issue of Shares**

#### **Article 126**

The capital of a company limited by shares shall be divided into shares of equal value.

The shares of a company shall take the form of share certificates, which shall be vouchers signed and issued by the company that evidence the shares held by the shareholders.

#### **Article 127**

Shares shall be issued according to the principle of equitability and fairness and shares of the same class shall have the same rights. Shares of the same issue shall be issued on the same terms and at the same price; and the same price shall be payable for each of the shares subscribed for by any unit or individual.

#### **Article 128**

Shares may be issued at or above par but not below par.

#### **Article 129**

Share certificates shall be of paper or in other forms as prescribed by the securities supervisory and regulatory institution under the State Council.

The following main particulars shall be clearly stated on a share certificate:

- (1) the name of the company;

- (2) the date of establishment of the company;
- (3) the class and face value of the shares and the number of shares the share certificate represents; and
- (4) the serial number of the share certificate.

Share certificates shall be signed by the legal representative of the company and sealed by the company.

The words "promoters' share certificate" shall be clearly indicated on share certificates of promoters.

### **Article 130**

Shares issued by a company may be registered shares or bearer shares.

Shares issued by a company to a promoter or a legal person shall be registered shares and shall bear the name of such promoter or legal person. No separate entry of a different name shall be made for such shares, nor shall such shares be registered in the name of a representative.

### **Article 131**

Companies that issue registered shares shall keep a register of shareholders, in which the following particulars shall be recorded:

- (1) the names and domiciles of the shareholders;
- (2) the number of shares held by each shareholder;
- (3) the serial numbers of the share certificates held by each shareholder; and
- (4) the date each shareholder obtained his shares.

Companies that issue bearer shares shall record the number of such shares and the serial numbers and issue dates of the certificates of such shares.

### **Article 132**

The State Council may formulate separate regulations for the issue by companies of shares of classes other than those provided for in this Law.

### **Article 133**

Immediately upon their establishment, companies limited by shares shall formally deliver the share certificates to their shareholders. Companies shall not deliver any share certificates to their shareholders prior to their establishment.

#### **Article 134**

If a company is to issue new shares, a resolution on the following matters shall be passed at a shareholders' general meeting or a meeting of the board of directors in accordance with the provisions of the articles of association of the company:

- (1) the class and number of the new shares;
- (2) the issue price of the new shares;
- (3) the opening and closing dates of the new share issue; and
- (4) the class and number of new shares issued to the existing shareholders.

#### **Article 135**

When a company issues new shares to the public upon approval of the securities supervisory and regulatory institution under the State Council, it shall announce a prospectus for the new shares and financial and accounting reports and prepare subscription forms.

The provisions of Articles 88 and 89 of this Law shall be applicable to the public issue of new shares by companies.

#### **Article 136**

If a company is to issue new shares, it may determine a pricing plan on the basis of the state of its business operations and its financial position.

#### **Article 137**

After a company has raised the full amount of subscription monies from a new share issue, it shall carry out the procedure of registration modification with the company registration authority and make an announcement thereof.

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

#### **Article 138**

Shares held by shareholders may be transferred according to law.

#### **Article 139**

Shareholders shall transfer their shares at stock exchanges established according to law or by such other means as prescribed by the State Council.

#### **Article 140**

Registered shares shall be transferred through endorsement by the shareholder or by such other means as prescribed by laws and administrative regulations; upon transfer of such shares, the company shall record the name and domicile of the transferee in its register of shareholders. No registration modifications as referred to in the preceding sentence shall be made in the register of shareholders within twenty (20) days prior to the convening of a shareholders' general meeting or within five (5) days prior to the reference date for the distribution of dividends as decided by the company. However, if any law contains any other provisions on modifications of registrations in the register of shareholders of listed companies, such provisions shall prevail.

#### **Article 141**

A transfer of bearer shares shall become effective immediately upon delivery of such shares by the shareholder to the transferee.

#### **Article 142**

Shares of a company held by its promoters shall not be transferred within one year after the date of establishment of the company. Shares issued by a company prior to its public issue of shares shall not be transferred within one year after the date the shares of the company are listed and traded on a stock exchange.

The directors, supervisors and senior officers of a company shall declare to the company the shares of the company they hold and any changes in them; each year during their term of office they shall not transfer more than twenty-five percent of the total of the shares of the company they hold; and they shall not transfer any of the shares of the company they hold within one year after the date the shares of the company are listed and traded. Within half a year after the aforementioned individuals quit the company, they shall not transfer any of the shares of the company they hold. Other restrictions on the transfer by the directors, supervisors and senior officers of a company of the shares of the company they hold may be provided for in the articles of association of the company.

#### **Article 143**

A company may not repurchase its own shares except under any of the following

circumstances:

- (1) if the company reduces its registered capital;
- (2) if the company merges with another company that holds its shares;
- (3) if the company rewards its employees with its shares; or
- (4) if any shareholder requires that the company repurchase the shares it holds since it has objections to any resolution on the merger or split of the company passed at a shareholders' general meeting.

If the company repurchases its own shares for any of the reasons as set forth in Item (1) to Item (3) of the preceding paragraph, such repurchase shall be subject to a resolution passed at a shareholders' general meeting. After the company has repurchased its own shares in accordance with the provisions of the preceding paragraph, in the case of Item (1) it shall have such shares cancelled within ten (10) days of such repurchase and, in the case of Item (2) or Item (4), it shall have such shares transferred or cancelled within six (6) months.

If a company repurchases its own shares in accordance with the provisions of Item (3) of the first paragraph, the shares thus repurchased shall not exceed five percent of the total of its outstanding shares; funds to be used to repurchase such shares shall be paid out of the after-tax profits of the company; and the shares thus repurchased shall be transferred to the employees of the company within one year.

Companies shall not accept the pledge of their own shares as security.

#### **Article 144**

When the certificate of a registered share is stolen, lost or destroyed, the shareholder may petition the people's court to declare such certificate invalid according to the procedure for public invitation to assert claims as prescribed in the *Civil Procedure Law of the People's Republic of China*. After the people's court has declared such share certificate invalid according to the procedure for public invitation to assert claims, the shareholder may apply to the company for issue of a replacement share certificate.

#### **Article 145**

Shares of listed companies shall be listed and traded in accordance with the relevant provisions of laws and administrative regulations and the rules of the stock exchanges.

#### **Article 146**

Listed companies shall disclose their financial position, state of business operations and

major legal proceedings in accordance with the relevant provisions of laws and administrative regulations and shall publish financial and accounting reports every half year in a fiscal year.

## **Chapter 6**

### **Qualifications and Obligations of Directors, Supervisors and Senior Officers of Companies**

#### **Article 147**

A person shall not take the position of a director, a supervisor or any senior officer of a company under any of the following circumstances:

- (1) if he has no or only limited civil capacity;
- (2) if it is less than five years since the expiration of the term of enforcement of a criminal punishment that was imposed on him for corruption, bribery, conversion or misappropriation of property, or disruption of the order of the socialist market economy, or it is less than five years since the expiration of the term of enforcement of a punishment that deprived him of his political rights for a crime he had committed;
- (3) if it is less than three years since the completion of the liquidation of a company or enterprise that became bankrupt and went into liquidation and for the bankruptcy of which he was held personally liable as a director of the board, factory director or manager of such company or enterprise;
- (4) if it is less than three years since the revocation of the business license of a company or enterprise that had its business license revoked and was ordered to close down for violation of law and for the closedown of which he was held personally liable as its legal representative;
- (5) if he has defaulted on any considerable debt he owes personally.

If a company elects or appoints any director or supervisor or engages any senior officer in violation of the provisions of the preceding paragraph, such election, appointment or engagement shall be invalid. If any of the circumstances as listed in Paragraph 1 of this Article occurs to a director, supervisor or senior officer during his term of office, the company shall dismiss him.

#### **Article 148**

The directors, supervisors and senior officers of a company shall abide by laws, administrative regulations and the articles of association of the company and owe duties of

loyalty and diligence to the company.

The directors, supervisors and senior officers shall not take advantage of their functions and powers to accept bribes or seek other illicit gains, nor shall they convert any property of the company.

#### **Article 149**

The directors and senior officers of a company shall not commit any of the following acts:

- (1) to misappropriate any funds of the company;
- (2) to deposit funds of the company in bank accounts opened in their own names or in the names of others;
- (3) to lend funds of the company to others or put up assets of the company as security for others in violation of the articles of association of the company or without approval of the shareholders' meeting, the shareholders' general meeting or the board of directors;
- (4) to enter into any contract or transaction with the company in violation of the articles of association of the company or without approval of the shareholders' meeting or the shareholders' general meeting;
- (5) to take advantage of their positions to obtain for their own benefit or the benefit of others any business opportunities that belong to the company or to engage in the same type of business as that of the company for their own account or for the account of others without approval of the shareholders' meeting or the shareholders' general meeting;
- (6) to accept commissions on transactions between others and the company and keep such commissions as their own;
- (7) to disclose any secret of the company without authorization; or
- (8) to commit any other act that is in violation of their duty of loyalty to the company. Gains made by a director or a senior officer in violation of any of the provisions of the preceding paragraph shall belong to the company.

#### **Article 150**

If a director, a supervisor or any senior officer violates any provisions of laws or administrative regulations or the articles of association of the company in the performance of his official duties, thus causing any losses to the company, he shall be liable for compensation for such losses.

**Article 151**

When the shareholders' meeting or the shareholders' general meeting requires that any director, supervisor or any senior officer attend a meeting as a non-voting attendee, such director, supervisor or senior officer shall attend such meeting as a non-voting attendee and answer inquiries from the shareholders.

The directors and senior officers of a company shall accurately provide the relevant information and data to the board of supervisors or the supervisors of a limited liability company that has not established a board of supervisors and shall not hinder the board of supervisors or the supervisors from exercising their functions and powers.

**Article 152**

If a director or senior officer commits any of the acts as described in Article 150 of this Law, the shareholders of a limited liability company or the shareholders of a company limited by shares that have individually or collectively held more than one percent of the shares of the company for more than 180 consecutive days may petition in writing the board of supervisors or the supervisors of a limited liability company that has not established a board of supervisors to initiate legal proceedings against such director or senior officer in the people's court; if a supervisor commits any of the acts as described in Article 150 of this Law, the aforementioned shareholders may petition in writing the board of directors or the executive director of a limited liability company that has not established a board of directors to initiate legal proceedings against such supervisor in the people's court.

If the board of supervisors or the supervisors of a limited liability company that has not established a board of supervisors, or the board of directors or the executive director refuses to initiate any legal proceedings upon receipt of the written petition as referred to in the preceding paragraph, or fails to initiate any legal proceedings within thirty (30) days of receipt of such petition, or the situation is so emergent that the company will suffer irreparable losses if legal proceedings are not initiated immediately, the shareholders as prescribed in the preceding paragraph shall have the right to directly initiate legal proceedings in the people's court in their own name for the benefit of the company.

If any person encroaches upon the lawful rights and interests of the company, thus causing any losses to the company, the shareholders as mentioned in Paragraph 1 of this Article may initiate legal proceedings in the people's court in accordance with the provisions of the preceding two paragraphs.

**Article 153**

If any director or senior officer is in violation of any provision of laws, administrative regulations or the articles of association of the company, thus causing any losses to the

shareholders, the shareholders may initiate legal proceedings against such director or senior officer in the people's court.

## **Chapter 7 Company Bonds**

### **Article 154**

The term "company bonds" as referred to in this Law shall mean negotiable securities issued by a company according to the statutory procedure, the principal of which the company undertakes to repay along with any interest thereon within a specified time limit. Issue of company bonds by a company shall satisfy the issuing conditions as prescribed in the *Securities Law of the People's Republic of China*.

### **Article 155**

After the application of a company for issuing company bonds has been examined and approved by an agency authorized by the State Council, such company shall announce its method for offer of company bonds, which shall specify the following main particulars:

- (1) the name of the company;
- (2) the use of the funds to be raised by issuing the bonds;
- (3) the total amount of the bonds and their face value;
- (4) the method of fixing the interest rate of the bonds;
- (5) the schedule for and method of repayment of the principal along with the interest thereon;
- (6) the provision of security for the bonds;
- (7) the price and opening and closing dates of the bond issue;
- (8) the value of the net assets of the company;
- (9) the total amount of the company bonds that have been issued but have not yet matured;  
and
- (10) the underwriter of the company bonds.

### **Article 156**

If a company issues company bonds in the form of physical bonds, such particulars as the name of the company, the face value of the bond, the interest rate and the schedule for repayment shall be clearly stated on the bond certificates, which shall be signed by the legal representative and sealed by the company.

#### **Article 157**

Company bonds may be divided into registered bonds and bearer bonds.

#### **Article 158**

When issuing company bonds, a company shall prepare and keep a counterfoil book of company bonds.

In the case of an issue of registered company bonds, the following particulars shall be recorded in the counterfoil book of company bonds:

- (1) the names and domiciles of the bondholders;
- (2) the dates on which the bondholders obtained the bonds and the serial numbers of the bond certificates;
- (3) the total amount, face value and interest rate of the bonds and the schedule for and method of repayment of the principal of the bonds along with the interest thereon; and
- (4) the date of issue of the bonds.

In the case of an issue of bearer company bonds, the following particulars shall be recorded in the counterfoil book of company bonds: the total amount and the interest rate of the bonds, the schedule for and method of repayment of the bonds, the date of issue of the bonds and the serial number of the bond certificates.

#### **Article 159**

Institutions that register and clear registered company bonds shall formulate appropriate systems of registration, safekeeping and management, payment of interest on, and repayment, of the bonds.

#### **Article 160**

Company bonds may be transferred and the transfer price of company bonds shall be agreed upon between the transferor and transferee.

When any company bonds are listed and traded on a stock exchange, such company bonds shall be transferred in accordance with the trading rules of such stock exchange.

#### **Article 161**

Registered company bonds shall be transferred by means of endorsement by the bondholder or such other means as specified in laws and administrative regulations and, upon such transfer, the company shall record the name and domicile of the transferee in the counterfoil book of company bonds.

A transfer of bearer bonds shall become effective immediately upon delivery of the bonds by the bondholder to the transferee.

#### **Article 162**

Subject to a resolution of the shareholders' general meeting, listed companies may issue company bonds convertible into shares and the specific method of conversion shall be stipulated in its method for offer of company bonds. If a listed company is to issue any company bonds convertible into shares, it shall submit such issue to the securities supervisory and regulatory institution under the State Council for verification and approval. When any company bonds convertible into shares are issued, the words "convertible company bond" shall be clearly indicated on the bonds, and the amount of convertible company bonds shall be recorded in the counterfoil book of company bonds.

#### **Article 163**

A company that issues company bonds convertible into shares shall issue shares in exchange for such bonds to the bondholders in accordance with the conversion method. However, the bondholders shall have the right to decide whether or not to convert their bonds into shares.

### **Chapter 8 Financial Affairs and Accounting of Companies**

#### **Article 164**

Companies shall establish their own financial and accounting systems in accordance with laws, administrative regulations, and provisions of the department in charge of finance under the State Council.

#### **Article 165**

At the end of each fiscal year, companies shall prepare their financial and accounting reports, which shall be audited by an accounting firm according to law. Financial and accounting

reports of companies shall be prepared in accordance with laws, administrative regulations, and provisions of the department in charge of finance under the State Council.

### **Article 166**

Limited liability companies shall deliver their financial and accounting reports to each of their shareholders within the time limit as specified in their articles of association. Companies limited by shares shall make their financial and accounting reports available at the company for perusal by the shareholders twenty (20) days before the annual shareholders' general meeting is held. Companies limited by shares that publicly offer their shares shall publicly announce their financial and accounting reports.

### **Article 167**

When companies distribute their after-tax profits for a given year, they shall allocate 10% of their profits to their statutory common reserve funds. Companies shall no longer be required to make allocations to their statutory common reserve funds once the aggregate amount of such reserve funds exceeds 50% of their registered capital.

If a company's statutory common reserve fund is insufficient to make up its losses in the preceding years, such losses shall be made up from the profit for the current year before allocations are made to the statutory common reserve fund according to the provisions of the preceding paragraph.

After a company has made an allocation to its statutory common reserve fund from its after-tax profit, subject to a resolution of the shareholders' meeting or the shareholders' general meeting, the company may make an allocation to a discretionary common reserve fund. The after-tax profit of a company that remains after it has made up its losses and made an allocation to its common reserve fund shall be distributed in accordance with the provisions of Article 35 of this law in the case of a limited liability company and in proportion to the shareholdings of the shareholders in the case of a company limited by shares, except as otherwise provided in the articles of association of such company limited by shares.

If, in violation of the provisions of the preceding paragraph, the shareholders' general meeting or board of directors of a company has distributed its profit to its shareholders before the company has made up its losses and made an allocation to the statutory common reserve fund, the shareholders shall return to the company any profit that has been distributed in violation of the aforementioned provisions. No profit shall be distributed to a company for its own shares it holds.

### **Article 168**

A company shall enter under its capital reserve fund any premium it has earned from its issue

of shares above par and such other revenue as the department in charge of finance under the State Council department requires to be entered under the capital reserve fund.

### **Article 169**

The common reserve fund of a company shall be used to make up its losses, expand its production and business operations, or increase its capital by means of conversion; provided however, its capital reserve fund shall not be used to make up its losses.

When any part of the statutory common reserve fund of a company is converted to capital, the balance of such fund shall amount to not less than twenty-five percent of the registered capital the company had before such conversion.

### **Article 170**

Engagement of any accounting firm that undertakes the auditing of a company or termination of such engagement shall be decided on by the shareholders' meeting, shareholders' general meeting or board of directors in accordance with the provisions of the articles of association of the company.

When the shareholders' meeting, shareholders' general meeting or board of directors of a company puts to a vote the termination of engagement of an accounting firm, such accounting firm shall be permitted to state its case.

### **Article 171**

A company shall provide the accounting firm it has engaged with true and complete accounting vouchers, accounting books, financial and accounting reports and other accounting data, and shall not refuse to provide such data, or conceal such data, or give false data.

### **Article 172**

Companies may not establish any other accounting books than those required by law.

The assets of a company shall not be deposited to any account opened in the name of any individual.

## **Chapter 9 Merger and Split of Companies and Increase and Reduction of the Registered Capital of Companies**

### **Article 173**

The merger of companies may take the form of merger by absorption and merger by new establishment.

The absorption by one company of one or more other companies shall be merger by absorption, in which case the absorbed company or companies shall be dissolved. Establishment of a new company by merging two or more companies shall be merger by new establishment, in which case the parties to the merger shall be dissolved.

#### **Article 174**

When companies merge, the parties to the merger shall enter into a merger agreement and prepare balance sheets and asset inventories. The companies shall notify their creditors of such merger within ten (10) days after the merger resolution is made and shall announce such merger in the newspapers within thirty (30) days. Within thirty (30) days of receipt of the written notification of the merger or within forty-five (45) days after the date of announcement of the merger in the case of those who have not received such written notification, the creditors may require the company to settle all its liabilities or provide appropriate security for such liabilities.

#### **Article 175**

When companies are merged, the surviving company or the newly established company shall succeed to the claims and liabilities of each party to the merger.

#### **Article 176**

When a company is split, its assets shall be divided accordingly. When a company is to be split, it shall prepare a balance sheet and an asset inventory and shall notify its creditors of such split within ten (10) days after the split resolution is made and shall announce such split in the newspapers within thirty (30) days.

#### **Article 177**

The companies that are established after a company is split shall be jointly and severally liable for the debts the company incurred before such split except as otherwise provided in any written agreement the company entered into with its creditors with respect to the repayment of such debts before such split.

#### **Article 178**

When a company needs to reduce its registered capital, it shall prepare a balance sheet and an asset inventory.

The company shall notify its creditors of such reduction within ten (10) days after the resolution to reduce the registered capital is made and shall announce such reduction in the newspapers within thirty (30) days. Within thirty (30) days of receipt of the written notification of the reduction or within forty-five (45) days after the date of announcement of the reduction in the case of those who have not received such written notification, the creditors shall have the right to require the company to settle all its liabilities or provide appropriate security for such liabilities. The amount of the registered capital of a company after such reduction shall not be less than the statutory minimum.

#### **Article 179**

When a limited liability company increases its registered capital, its shareholders shall subscribe for capital contributions to such increase in accordance with the provisions of this Law on payment of capital contributions in connection with the establishment of a limited liability company.

When a company limited by shares issues new shares to increase its registered capital, its shareholders shall subscribe for such new shares in accordance with the provisions of this Law on payment of subscription monies in connection with the establishment of a company limited by shares.

#### **Article 180**

When the merger or split of a company involves any changes in the particulars of its registration, the company shall carry out the procedure of registration modification with the company registration authority according to law; when a company is dissolved, the procedure of registration cancellation shall be carried out according to law; and, when a new company is established, the procedure of registration of establishment of the company shall be carried out according to law.

When a company increases or reduces its registered capital, the company shall carry out the procedure of registration modification with the company registration authority according to law.

### **Chapter 10 Dissolution and Liquidation of Companies**

#### **Article 181**

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

- (1) when the term of operations of the company as specified in the articles of association of the company expires or any other reason for dissolution of the company as

specified in the articles of association of the company arises;

- (2) if a resolution to dissolve the company is passed by the shareholders' meeting or shareholders' general meeting;
- (3) if the merger or split of the company necessitates its dissolution; or
- (4) if the people's court dissolves the company in accordance with the provisions of Article 183 of this Law.

### **Article 182**

If an event as referred to in Item (1) of Article 181 of this Law occurs to a company, the company may continue to exist by making amendments to the articles of association of the company. If any amendments are to be made to the articles of association of a company in accordance with the provisions of the preceding sentence, such amendments shall be approved by the affirmative votes of the shareholders that hold more than two thirds of the voting rights in the case of a limited liability company and by the affirmative votes of the shareholders present at a shareholder's general meeting that hold more than two thirds of the voting rights in the case of a company limited by shares.

### **Article 183**

If a company has met such difficulty in its business operations that the continued existence of the company will cause serious losses to the interests of the shareholders and such situation can not be rectified by any other means, the shareholders that hold more than ten percent of the voting rights of all the shareholders may petition the people's court to dissolve the company.

### **Article 184**

When a company is to be dissolved upon occurrence of any of the events as referred to in Item (1) 、 Item (2) 、 Item (4) or Item (5) of Article 181 of this Law, it shall establish a liquidation committee to initiate the liquidation proceedings within fifteen (15) days of such occurrence. In the case of a limited liability company, such liquidation committee shall be composed of its shareholders and, in the case of a company limited by shares, such liquidation committee shall be composed of the directors of the board or the personnel to be decided by the shareholders' general meeting. If no liquidation committee is established to set about the liquidation within the specified time limit, the creditors of the company may petition the people's court to designate relevant persons to form a liquidation committee to carry out the liquidation. The people's court shall accept such petition and promptly form a liquidation committee to carry out the liquidation.

### **Article 185**

A liquidation committee shall exercise the following functions and powers during the liquidation:

- (1) to thoroughly sort out the assets of the company and prepare a balance sheet and an asset inventory;
- (2) to notify the creditors of the company of its liquidation by notice or announcement;
- (3) to deal with and dispose of the relevant unfinished business affairs of the company;
- (4) to pay all overdue taxes and taxes that may be incurred in the course of the liquidation;
- (5) to clear claims and debts of the company;
- (6) to dispose of any assets of the company that will remain after all its debts have been paid off; and
- (7) to participate in civil proceedings on behalf of the company.

#### **Article 186**

A liquidation committee shall notify the creditors of such liquidation within ten (10) days after the date of its establishment and announce such liquidation in the newspapers within sixty (60) days. Within thirty (30) days of receipt of the written notification of the liquidation or within forty-five (45) days after the date of announcement of the liquidation in the case of those who have not received such written notification, the creditors shall declare their claims to the liquidation committee.

When declaring their claims, the creditors shall explain the relevant particulars of their claims and provide supporting documents. The liquidation committee shall have such claims registered. During the course of declaration of the claims, the liquidation committee shall not pay off the creditors.

#### **Article 187**

After a liquidation committee has thoroughly sorted out the assets of the company and prepared a balance sheet and an asset inventory, it shall formulate a liquidation plan and submit the same to the shareholders' meeting, the shareholders' general meeting or the people's court for confirmation.

The assets of the company that remain after the company has paid the liquidation expenses, the wages, social insurance premiums and statutory compensation of the employees, overdue

taxes, and all debts of the company, shall be distributed in proportion to the capital contributions of the shareholders in the case of a limited liability company and in proportion to the shareholdings of the shareholders in the case of a company limited by shares. During the liquidation a company may continue to exist, provided that it shall not engage in any business activities unconnected to the liquidation. The assets of a company shall not be distributed to its shareholders before all the liabilities of the company are settled in accordance with the provisions as set forth in the first sentence of this paragraph.

### **Article 188**

If the liquidation committee, having thoroughly sorted out the assets of the company and prepared a balance sheet and an asset inventory, discovers that the assets of the company are insufficient to pay off all its debts, it shall make an application to the people's court for a declaration of bankruptcy of the company according to law.

After the people's court has ruled that the company be declared bankrupt, the liquidation committee shall turn over the liquidation matters to the people's court.

### **Article 189**

Upon completion of the liquidation, the liquidation committee shall compile a liquidation report and submit the same to the shareholders' meeting, the shareholders' general meeting or the people's court for confirmation and, in addition, submit such report to the company registration authority, make an application to such authority for cancellation of the registration of the company and announce the termination of the company.

### **Article 190**

Members of a liquidation committee shall be devoted to their duties and perform their liquidation obligations according to law.

Members of a liquidation committee shall not take advantage of their functions or powers to accept bribes or seek other illicit gains or to convert any assets of the company.

If a member of a liquidation committee causes any losses to the company or its creditors willfully or through gross negligence, such member shall be liable for compensation for such losses.

### **Article 191**

If any company is declared bankrupt according to law, the bankruptcy liquidation of the company shall be carried out in accordance with laws on the bankruptcy of enterprises.

## **Chapter 11**

### **Branches of Foreign Companies**

#### **Article 192**

For the purposes of this Law, the term "foreign companies" shall mean companies incorporated outside the PRC in accordance with a foreign country's law.

#### **Article 193**

If any foreign company is to establish a branch within the PRC, it shall make an application for such establishment to the competent authority of the PRC and submit such relevant documents as its articles of association and certificate of incorporation issued by its home country and, upon approval of its application, carry out the procedure of registration with the company registration authority and obtain a business license according to law.

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

#### **Article 194**

If any foreign company is to establish a branch within the PRC, it shall designate a representative or agent within the PRC to be responsible for such branch and shall allocate to such branch such amount of funds that is commensurate with the business activities in which the branch is to engage. If it is necessary to prescribe a minimum amount of operating funds of branches of foreign companies, such amount shall be separately prescribed by the State Council.

#### **Article 195**

The name of a branch of a foreign company shall indicate the nationality and form of liability of such foreign company.

The branch of a foreign company shall keep at its office a copy of the articles of association of such foreign company.

#### **Article 196**

Branches established by foreign companies within the PRC shall not have the status of Chinese legal persons.

Foreign companies shall assume civil liability for the business activities conducted by their branches within the PRC.

**Article 197**

The business activities conducted within the PRC by branches of foreign companies that have been established after approval shall comply with PRC laws and shall not cause any damage to the public interest of the PRC. The lawful rights and interests of such branches shall be protected by PRC laws.

**Article 198**

When a foreign company closes down its branch in the PRC, it shall pay off all its debts according to law and carry out its liquidation in accordance with the provisions of this Law relating to the procedure for company liquidation. No assets of a branch of a foreign company shall be transferred out of the PRC before all the debts of such branch are paid off.

**Chapter 12  
Legal Liability****Article 199**

If, in violation of this Law, any person obtains the registration of a company by reporting a false amount of its registered capital, submitting false materials or resorting to any other fraudulent means to conceal any important facts, such person shall be ordered by the company registration authority to make a rectification thereof. In the case of a company that reported a false amount of its registered capital, the company shall be fined not less than 5% but not more than 15% of the falsely reported amount of its registered capital and, in the case of a company that submitted false materials or resorted to any other fraudulent means to conceal any important facts, the company shall be fined not less than RMB 50,000 but not more than RMB 500,000. If any of the violations as referred to above is serious enough, the company shall have its registration and business license revoked.

**Article 200**

If any promoter or shareholder of a company makes any false capital contribution or fails to hand over or to hand over within a specified time limit the currency or non-currency assets used as capital contribution, such promoter or shareholder shall be ordered by the company registration authority to make a rectification thereof and shall be fined not less than 5% but not more than 15% of the amount of its false capital contribution.

**Article 201**

If any promoter or shareholder of a company surreptitiously withdraws its capital contribution after the company has been established, such promoter or shareholder shall be ordered by the company registration authority to make a rectification thereof and shall be

fined not less than 5% but not more than 15% of the capital contribution that has been surreptitiously withdrawn.

#### **Article 202**

If, in violation of this Law, a company establishes any other accounting books than those required by law, such company shall be ordered to make a rectification thereof by the treasury department of the people's government at or above the county level and shall be fined not less than RMB 50,000 but not more than RMB 500,000.

#### **Article 203**

If a company makes any false records or conceals any important facts in such materials as financial and accounting reports submitted to the relevant department in charge, the relevant department in charge shall impose a fine of not less than RMB 30,000 but not more than RMB 300,000 upon the person in charge and other persons who are directly liable therefor.

#### **Article 204**

If a company fails to make allocations to the statutory common reserve fund in accordance with the provisions of this Law, such company shall be ordered by the treasury department of the people's government at or above the county level to make up any shortage of such allocations until they reach the amount that should have been allocated and, in addition, such company may be fined up to RMB 200,000.

#### **Article 205**

If a company fails to notify its creditors by notice or by public announcement in accordance with the provisions of this Law when it is to merge, split, reduce its registered capital or carry out the procedure of liquidation, it shall be ordered by the company registration authority to make a rectification thereof and shall be fined not less than RMB 10,000 but not more than RMB 100,000.

If, in the process of liquidation of a company, such company hides any of its assets or makes any false record in its balance sheet or asset inventory or distributes any of its assets before all its debts are paid off, it shall be ordered by the company registration authority to make a rectification thereof and shall be fined not less than 5% but not more than 10% of the value of the assets it has hidden or distributed before all its debts are paid off, and a fine of not less than RMB 10,000 but not more than RMB100,000 shall be imposed upon the person in charge and other persons who are directly liable therefor.

#### **Article 206**

If, during the liquidation of a company, it conducts any business activities that have nothing

to do with the liquidation, it shall be admonished by the company registration authority and its illicit gains shall be confiscated.

#### **Article 207**

If the liquidation committee fails to submit a liquidation report to the company registration authority in accordance with the provisions of this Law or if any important fact is concealed or any important omission is committed in the liquidation report it submits, it shall be ordered by the company registration authority to make a rectification thereof.

If any member of the liquidation committee takes advantage of his functions or powers to engage in any malpractices for his selfish ends, seek any illicit gains or convert any assets of the company, he shall be ordered by the company registration authority to return the assets of the company, his illicit gains shall be confiscated and, in addition, he may be fined not less than the amount of his illicit gains but not more than five times such amount.

#### **Article 208**

If any institution that undertakes asset assessment, capital verification or certificate verification provides any false materials, the company registration authority shall confiscate its illicit gains and impose a fine of not less than the amount of its illicit gains but not more than five times such amount on it and, in addition, the relevant department in charge may order it to suspend its business operations and revoke the qualifications certificates of those who are directly liable therefor and the business license of such institution according to law.

If any institution that undertakes asset assessment, capital verification or certificate verification submits through negligence a report in which there is any important omission, it shall be ordered by the company registration authority to make a rectification thereof; if the circumstances of such violation are serious, it shall be fined not less than the amount of its gains but not more than five times such amount and, in addition, the relevant department in charge may order it to suspend its business operations and revoke the qualifications certificates of those who are directly liable therefor and the business license of such institution according to law.

If the assessment, capital verification or certificate verification as carried out by any institution that undertakes asset assessment, capital verification or certificate verification is found to be at variance with the facts, thus causing any losses to the creditors of the company, such institution shall be liable for compensation for such losses to the extent to which such assessment or verification is found to be at variance with the facts, except to the extent that it can prove that such losses were incurred through no fault on its part.

#### **Article 209**

If any company registration authority registers any application for registration that does not

meet the conditions as prescribed in this Law or refuses to register any application for registration that meets the conditions as prescribed in this Law, administrative penalties shall be imposed on the person in charge and other persons who are directly liable therefor.

### **Article 210**

If any authority at a level higher than a company registration authority forces the company registration authority to register an application for registration that does not meet the conditions as prescribed in this Law, refuses to register any application for registration that meets the conditions as prescribed in this Law or covers up an illegal registration, administrative penalties shall be imposed on the person in charge and other persons who are directly liable therefor.

### **Article 211**

If an entity that has not been registered according to law as a limited liability company or company limited by shares passes itself off as a limited liability company or company limited by shares or an entity that has not been registered according to law as a branch of a limited liability company or company limited by shares passes itself off as a branch of a limited liability company or company limited by shares, the company registration authority shall order it to make a rectification thereof or to close down and, in addition, may impose a fine of up to RMB 100,000 on it.

### **Article 212**

If, without any justification, a company fails to commence its business operations six months after it is established or suspends its business operations without approval for six consecutive months after it has commenced its business operations, its business license may be revoked by the company registration authority.

If any change occurs in the particulars of the registration of a company but the procedure of registration modification fails to be carried out in accordance of the provisions of this Law, the company registration authority shall order such company to carry out such procedure within a specified time limit; if the company fails to carry out such procedure within the specified time limit, a fine of not less than RMB 10,000 but not more than RMB 100,000 shall be imposed on it.

### **Article 213**

If, in violation of this law, any foreign company establishes a branch within the PRC without authorization, the company registration authority shall order such company to make a rectification thereof or to close down and, in addition, may impose a fine of not less than RMB 50,000 but not more than RMB 200, 000 on such company.

**Article 214**

If, in the name of a company, any person engages in any activities that are in serious violation of laws, thus causing damage to the security of the state or the public interest, the business license of the company shall be revoked.

**Article 215**

If a company has to assume civil liability for compensation and pay fines and pecuniary penalties as a result of its violation of any provisions of this Law but its assets are insufficient to make both the compensation and the payment, it shall first assume civil liability for compensation.

**Article 216**

If any violation of this Law is serious enough to constitute a criminal offence, criminal liability shall be pursued according to law.

### **Chapter 13 Supplementary Provisions**

**Article 217**

The following terms used in this Law shall be defined as below:

- (1) The term “senior officer” shall mean the manager, deputy manager, and chief financial officer of a company, the secretary of the board of directors of a listed company, and any other person as specified in the articles of association of a company.
- (2) The term “controlling shareholder” shall mean a shareholder whose capital contribution accounts for more than 50% of the total capital of a limited liability company, or a shareholder whose shareholdings accounts for more than 50% of the total equity of a company limited by shares, or a shareholder whose capital contribution or shareholdings account for less than 50% but who holds the voting rights on the strength of its capital contribution or shareholdings that are enough to have an important influence on resolutions of the shareholders’ meeting or the shareholders’ general meeting.
- (3) The term “de facto controlling person” shall mean any person who is not a shareholder of a company but has de facto control of the acts of the company by means of investment relationship, agreements or any other arrangements.

- (4) The “affiliation relationship” shall mean the relationship between the controlling shareholder, de facto controlling person, director, supervisor, or senior officer of a company and the enterprise under their direct or indirect control and any other relationship that may lead to the transfer of any interest of the company. However, the enterprises in which the state holds a controlling interest do not have an affiliation relationship between them simply because the state holds a controlling interest in them.

**Article 218**

Limited liability companies and companies limited by shares in which foreign investments have been made shall be governed by this Law. If laws on foreign investments contain any other provisions, such provisions shall prevail.

**Article 219**

This Law shall be effective as of January 1, 2006.