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# Company Law of the People's Republic of China

(The Company Law of the People's Republic of China has been amended and adopted by the 18th meeting of the Standing Committee of the Tenth National People's Congress on October 27, 2005. This Law, as amended, is hereby promulgated and will come into force on January 1, 2006.)

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## Chapter One: General Provisions

### Article 1

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

### Article 2

The term 'company' referred to in this Law means a limited liability company or a joint stock limited company incorporated within the territory of the People's Republic of China in accordance with this Law.

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### **Article 3**

A company is an enterprise legal person that shall enjoy the right to the entire independent property of the legal person. A company shall be liable for its debts to the extent of all its assets. In the case of a limited liability company, shareholders shall assume liability towards the company to the extent of their respective capital contributions. In the case of a joint stock limited company, shareholders shall assume liability towards the company to the extent of their respective shareholdings.

### **Article 4**

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

### **Article 5**

In conducting its business, a company must abide by laws and administrative rules and regulations, observe social morals and business ethics, conduct businesses in good faith, subject itself to the supervision of the government and the public and fulfill social responsibilities.

The company's lawful rights and interests are protected by law and shall not be infringed upon.

### **Article 6**

A company shall apply to the company registration authority for establishment registration. Companies meeting the conditions set by this Law shall be registered as limited liability companies or joint stock limited companies; while companies failing to meet the conditions set by this Law shall not be registered as limited liability companies or joint stock limited companies.

Where laws, administrative rules and regulations provide that incorporation of companies must be subject to examination and approval, the procedures of examination and approval shall be completed according to law prior to the registration of such companies.

The public may inquire about registration items from the company registration authority. The company registration authority shall provide such inquiry service.

### **Article 7**

The company registration authority shall grant registration and issue a business license to a company that is established in accordance with the law. The date of the issuance of the company business license shall be the date of the incorporation of the company.

The business license shall specify the name and domicile of the company, registered capital, paid-in capital, business scope, the name of the legal representative, etc. In the event of any change to the registration item of the business license, a company shall undergo alteration registration procedures with the company registration authority in accordance with the law, after which a new business license shall be issued to the company.

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## **Article 8**

A limited liability company established according with this Law must clearly indicate the words 'limited liability company' in its name.

A joint stock limited company established according to this Law must clearly indicate the words 'joint stock limited company' or 'joint stock company' in its name.

## **Article 9**

If a limited liability company is to be converted into a joint stock limited company, it shall satisfy the requirements for a joint stock limited company stipulated by this Law. If a joint stock limited company is to be converted into a limited liability company, it shall satisfy the requirements for a limited liability company stipulated by this Law. Where a limited liability company is converted into a joint stock limited company or vice versa, the claims and debts of the original company shall be succeeded to by the company into which it is converted.

## **Article 10**

A company's domicile shall be the place where its main administrative organization is located.

## **Article 11**

Articles of association must be formulated in accordance with the law when a company is incorporated. A company's articles of association shall have binding force on the company, its shareholders, directors, supervisors and senior officers.

## **Article 12**

A company's scope of business shall be defined in its articles of association and registered in accordance with the law. A company may change its scope of business by amending its articles of association but shall register such amendments with the company registration authority.

Items within the company's business scope that are subject to verifications under laws, administrative rules and regulations shall be approved in accordance with the law.

## **Article 13**

The legal representative of a company may be represented by the chairman, executive director or manager of a company in compliance with its articles of association and registered in accordance with the law. In the event of any change of the legal representative of a company, such change shall be registered in accordance with the law.

## **Article 14**

A company may establish branches. The company, in establishing its branch(es), shall conduct establishment registration procedures with the company registration authority and obtain the business license(s). The branches shall not possess the status of enterprise legal persons and whose civil liabilities shall be borne by the company.

A company may establish subsidiaries, which shall possess the status of enterprise legal persons,

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and shall independently bear civil liabilities in accordance with the law.

#### Article 15

A company may invest in other enterprises, however, unless otherwise stipulated by the law, the company making such investment shall not bear joint and several liability for the debts of the enterprise in which the company invests.

#### Article 16

Investments in other enterprises or provisions of security by a company shall be determined by its board of directors, shareholders meeting or general meeting of shareholders in compliance with its articles of association. Where the limit of the aggregate amount of investment or security extended by a company or, the amount of investment or security extended in each case is set out in the articles of association, the actual amount of investment or security shall not exceed such limit. Security provided by a company to its shareholders or actual controller shall be determined by the shareholders meeting or the general meeting of shareholders of the company.

The shareholders described in the preceding paragraph or the shareholders dominated by the actual controller described in the preceding paragraph shall not participate in the voting process on the matters described in the preceding paragraph. The vote on such matters shall be adopted by more than half of all the other shareholders attending the meeting.

#### Article 17

Companies must protect the lawful rights and interests of their staff and workers, sign labor contracts with them and cover them with social insurances in accordance with the law, and strengthen labor protection so as to achieve safety in production.

Companies shall apply various forms to strengthen professional education and on-the-job training of their staff and workers so as to improve their skills and capabilities.

#### Article 18

Company's staff and workers shall, in accordance with the Trade Union Law of the People's Republic of China, organize a trade union to carry out the trade union activities and protect the lawful rights and interests of the staff and workers. The company shall provide its trade union with conditions necessary for carrying out its activities. The trade union may represent the staff and workers to enter into a collective contract with the company in respect of the remuneration, work hours, welfare, insurance, labor security, etc. in accordance with the law.

Companies shall, through the congress of the workers and staff members or other forms, practice democratic management in accordance with the provisions of the Constitution and relevant laws.

A company shall seek advices from its trade union when discussing and deciding upon important issues on the restructuring or operation of the company, or formulating important rules and regulations and shall, through the congress of the workers and staff members or other forms, seek advice and suggestions from its staff and workers.

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## Article 19

The organizations of the Communist Party of China may be established in companies and carry out their activities in accordance with the Constitution of the Communist Party of China. Companies shall provide the organizations of the Communist Party of China with conditions necessary for carrying out their activities.

## Article 20

The shareholders of a company shall exercise their shareholders' rights in compliance with laws, administrative rules and regulations as well as the articles of association of the company, shall not abuse their shareholders' rights to injure the interests of the company or other shareholders, or take advantage of the company's independent status or the limited liability of shareholders to injure the interests of the company's creditors.

Where the abuse of shareholders' rights causes any loss to the company or other shareholders, such abusive shareholder shall be liable for compensation in accordance with the law.

Where shareholders of a company take advantage of the company's independent status or the limited liability of shareholders to disregard debts and seriously injures the interests of the company's creditors, such shareholders shall bear joint and several liability for the debts of the company.

## Article 21

The controlling shareholders, actual controllers, directors, supervisors or senior officers of a company shall not take advantage of their affiliations with others in an attempt to harm the company's interests and, where any losses are incurred in violation hereof, shall be liable for compensation.

## Article 22

Any resolution against laws and administrative rules and regulations that is adopted by the shareholders meeting, the general meeting of shareholders or the board of directors of a company shall be null and void.

Where the convening of shareholders meeting, general meeting of shareholders or board of directors of a company or the voting method violates laws, administrative rules and regulations or the articles of association of the company, or the resolution thereof contravenes the articles of association of the company, shareholders may, within sixty (60) days of the resolution, apply to the people's court for revocation.

Where shareholders file suit in accordance with the provisions of the preceding paragraph, a people's court may, at the company's request, order the shareholders to provide relevant security.

Where the company has effected alteration registration according to the resolution of shareholders meeting, general meeting of shareholders or board of directors, the company shall, after the

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people's court declares such resolution null and void or revokes the same, shall apply to the company registration authority for cancellation of its alteration registration.

## Chapter Two: Incorporation and Organizational Structure of a Limited Liability Company

### Section One Incorporation

#### Article 23

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

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

#### Article 24

A limited liability company shall be incorporated by not more than fifty (50) shareholders.

#### Article 25

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

- (1) the name and domicile of the company;
- (2) the scope of business of the company;
- (3) the registered capital of the company;
- (4) the names or titles of the shareholders;
- (5) the method, amount and time of capital contributions by the shareholders;
- (6) the organization of the company, its method of creation, functions and powers and the rules of procedure;
- (7) the legal representative of the company;
- (8) other items which the shareholders deem necessary to be specified. Shareholders shall sign and execute the article of association of the company.

#### Article 26

The registered capital of a limited liability company shall be the amount of the paid-up capital contributions of all its shareholders as registered with the company registration authority. The amount of the initial investment contributed by all shareholders shall not be lower than twenty percent (20%) of the registered capital or the minimum amount prescribed by the law, **the remaining of which shall be fully paid up within two years of the establishment of the company.** In the case of an investment company, the remaining amount of the registered capital may be paid up within five years of the establishment of the company. The minimum amount of the registered capital of a limited liability company shall be RMB 30, 000. Where laws and administrative regulations provide for more than the minimum amount, such provisions shall apply.

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## Article 27

Except for assets forbidden to be used as contribution by laws and administrative regulations, a shareholder may make its capital contributions to a company in currency or by contributing such non-currency property as material objects, intellectual property rights and land-use rights that can be evaluated in the form of currency and transferred in accordance with the law.

The non-currency property to be contributed as capital shall undergo an asset valuation and verification, and shall not be overvalued or undervalued. Where there are other provisions of laws and administrative regulations on the valuation and verification of non-currency property, such provisions shall apply.

The amount of the capital contributions in currency shall not be lower than thirty percent (30%) of the amount of the registered capital of the limited liability company.

## Article 28

Each shareholder shall make in full the amount of the capital contribution subscribed for under the articles of association of the company. Where a shareholder 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 limited liability company to be established. Where a shareholder makes its capital contribution in the form of non-currency property, the property rights therein shall be transferred in accordance with legally prescribed procedures.

Shareholders failing to make full capital contributions they have subscribed for in accordance with the preceding paragraph shall, they shall, in addition to making the contributions in full, be liable for breach of contract towards the shareholders who have made full capital contributions.

## Article 29

After all shareholders have made their capital contributions in full, such contributions must be verified by a statutory capital verification institution which shall issue capital verification certificates.

## Article 30

After the initial capital contributions of the shareholders have been verified by a statutory capital verification institution, application shall be made to the company registration authority for registration of the incorporation of the company by a representative designated by all the shareholders or by an agent jointly entrusted by them, who shall submit such documents as an application for registration, the articles of association and the capital verification certificate.

## Article 31

Where, after the incorporation of a limited liability company, it is discovered that the actual value of the non-currency property contributed as capital is notably less than the value stated in the articles of association, the shareholders that made such contributions shall make up the difference. Those who are shareholders at the time of the incorporation of the company shall bear joint and

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several liability therefor.

#### Article 32

After a limited liability company has been incorporated, it shall issue capital contribution certificates to its shareholders.

A capital contribution certificates shall specify the following items:

- (1) the name of the company;
- (2) the registration date of the company;
- (3) the registered capital of the company;
- (4) the name or title of the shareholder, the amount and date of its capital contribution;
- (5) the serial number of the capital contribution certificate and the date of its verification and issuance. A capital contribution certificate shall bear the seal of the company on it.

#### Article 33

A limited liability company shall prepare a roster of its shareholders with the following items therein:

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

The shareholders recorded in the roster of shareholders may claim and exercise the right of shareholders on the strength of the roster of shareholders.

The company shall register the names of shareholders and the amount of capital contributions of the shareholders with the company registration authority and, in the event of any change thereof, apply for alteration registration. Unless duly registered, the above-mentioned items and any changes thereof shall not be a defense against a third party.

#### Article 34

A shareholder shall have the right to view the articles of association, the minutes of shareholders meetings, resolutions of board of directors and board of supervisors and the financial and accounting reports of the company.

Shareholders may view the accounting books and reports of the company. For this purpose, they shall submit a written request and state reasons. Where the company reasonably believes that shareholders have unjust purposes in viewing the accounting books and reports which may harm the legal rights and interests of the company, the company may refuse such request and shall, within fifteen (15) days of such request, reply in written form and state reasons. Given such, shareholders may apply to the people's court for an order under which the company shall provide the shareholders with such references.

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### Article 35

Unless otherwise agreed upon by all shareholders, shareholders shall draw dividends in proportion to their actual capital contributions and, where a company increases capital, shall have priority in subscription for new shares in proportion to their actual contributions.

### Article 36

Once a company is registered, its shareholders shall not withdraw their capital contributions.

## Section Two 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 power of the company and shall exercise its functions and powers in accordance with this Law.

### Article 38

The shareholders meeting shall exercise the following functions and powers:

- (1) to decide on the business policy and investment plan of the company;
- (2) to elect and recall directors and supervisors whose posts are not taken by the representatives of the staff and workers, and to decide on matters concerning the remuneration of directors and supervisors;
- (3) to examine and approve reports of the board of directors;
- (4) to examine and approve reports of the supervisory board or supervisors;
- (5) to examine and approve the annual financial budget plan and final accounts plan of the company;
- (6) to examine and approve plans for profit distribution of the company and plans for making up losses;
- (7) to adopt resolutions on the increase or reduction of the registered capital of the company;
- (8) to adopt resolutions on the issuance of company bonds;
- (9) to adopt resolutions on matters such as the merger, division, transformation, dissolution and liquidation of the company;
- (10) to amend the articles of association of the company;
- (11) to exercise other functions and powers provided for in the articles of association.

Where a unanimous consent on the matters described above is achieved in writing by shareholders, the company may directly make decisions that shall be signed and executed by all shareholders instead of convening a shareholders meeting.

### Article 39

The first meeting of the shareholders of a company shall be convened and presided over by the shareholder who has made the biggest capital contribution to the company and shall exercise its functions and powers in accordance with this Law.

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#### **Article 40**

Shareholders meetings shall be divided into regular meetings and interim meetings. Regular shareholders meetings shall be convened on time as stipulated by the articles of association of the company. Interim shareholders meetings may be convened upon proposal made by shareholders representing more than one-tenth of voting rights or by more than one-third of directors, or at the request of board of supervisors or the supervisors of a company absent a board of supervisors.

#### **Article 41**

Where a limited liability company has a board of directors, its shareholders meeting shall be convened by the board of directors and presided over by the chairman of the board. Where the chairman of the board is unable to or does not perform his function, the meeting shall be presided over by a vice-chairman. Where the vice-chairman is unable to or does not perform his function, the meeting shall be presided over by a director jointly nominated by more than half of the directors.

Where a limited liability company does not form a board of directors, the shareholders meetings shall be convened and presided over by the executive director.

Where the board of directors or executive director cannot or does not perform its function, the shareholders meeting shall be convened and presided over by the board of supervisors or the supervisor in the absence of a board of supervisors. Where the board of supervisors or supervisor cannot or does not perform its function, the meeting shall be convened and presided over by shareholders representing more than one-tenth of the voting rights.

#### **Article 42**

All shareholders shall be notified fifteen (15) days prior to the convening of a shareholders meeting, unless otherwise stipulated by the articles of association or agreed upon by all shareholders.

The shareholders meeting shall prepare minutes regarding the decisions on matters considered at the meeting, which shall be signed by the shareholders present at the meeting.

#### **Article 43**

Shareholders shall exercise their voting rights at the shareholders meeting in proportion to their capital contributions, unless otherwise stipulated by the articles of association.

#### **Article 44**

Except as provided for in this Law, the rules of deliberation and voting procedures of the shareholders meeting shall be stipulated by the articles of association of the company.

Resolutions of the shareholders meeting on the increase or reduction of the registered capital, the division, merger, dissolution, or transformation of the company must be adopted by shareholders of the company representing two-thirds or more of the voting rights.

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#### **Article 45**

Except as otherwise provided for in Article 51 of this Law, a limited liability company shall have a board of directors, which shall be composed of three to thirteen members. The members of the board of directors of a limited liability company invested in and established by two or more State-owned enterprises, or by two or more other State-owned investment entities shall include representatives of the staff and workers of the company. The members of the board of directors of other limited liability companies may also include representatives of the staff and workers. Such representatives of the staff and workers shall be democratically elected by the workers and staff members of the company through the congresses or assemblies of the staff and workers or other forms. A board of directors shall have a chairman and may have a vice-chairman. The method for the creation of the chairman and vice-chairmen shall be stipulated in the articles of association of the company.

#### **Article 46**

The term of the directors shall be prescribed by the articles of association, provided that each term may not exceed three (3) years. A director may continue to serve his post if he is re-elected upon the expiration of his term. Where a new elect is not yet available upon expiration of a director's term, or the number of the directors on the board is less than the quorum due to the resignation of a director within his term, such director, before the new elect takes his office, shall continue the performance of his duties in accordance with laws, administrative regulations and the articles of association.

#### **Article 47**

The board of directors is accountable to the shareholders meeting and shall exercise the following powers:

- (1) being responsible for convening shareholders meetings and presenting reports thereto;
- (2) implementing resolutions adopted by the shareholders meeting;
- (3) determining the company's operational plans and investment programs;
- (4) preparing annual financial budget plans and final accounting plans of the company;
- (5) preparing profit distribution plans and plans to cover company losses;
- (6) preparing plans for increasing or reducing registered capital of the company or issuing company bonds;
- (7) drafting plans for merger, division, change of corporate form or dissolution of the company;
- (8) determining the structure of the company's internal management;
- (9) appointing or removing the general manager of the company, appointing or removing, upon the general manager's recommendation, deputy managers of the company and the officer in charge of finance, and determining the remuneration for those officers;
- (10) formulating the basic management scheme of the company;
- (11) exercising other powers stipulated by the articles of association.

#### **Article 48**

A meeting of the board of directors shall be convened and presided over by the chairman. Where the chairman is unable to or does not perform his duties, the meeting shall be convened and

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presided over by the vice-chairman. Where the vice-chairman is unable to or does not perform his duties, the meeting shall be convened and presided over by a director jointly nominated by more than half of the directors.

#### Article 49

Except as otherwise provided for in this Law, the rules of deliberation and voting procedures at the meeting of board of directors shall be stipulated by the articles of association of the company.

The board shall prepare minutes relating to the decisions on matters considered at the meeting, which shall be signed by the directors present at the meeting.

In the voting process, one director shall represent one vote.

#### Article 50

A limited liability company shall have a general manager, to be appointed or removed by the board of directors. The general manager is accountable to the board and shall exercise the following powers:

- (1) management of the company's production and operation, and organizing the implementation of board resolutions;
- (2) organizing the implementation of annual operating plans and investment programs of the company;
- (3) preparing the plan for the structure of the company's internal management;
- (4) preparing the basic management scheme of the company;
- (5) formulating detailed company rules;
- (6) recommending the appointment or removal of a deputy manager and the officer in charge of finance;
- (7) appointing and removing officers of the company other than those to be appointed or removed by the board of directors;
- (8) exercising other powers delegated by the board of directors.

Where the articles of association stipulate otherwise in respect of the manager's powers, such stipulations shall prevail. The general manager shall be present at board meetings.

#### Article 51

A small-scaled limited liability company or a limited liability company with only a few shareholders may have an executive director without establishing a board of directors. The executive director may serve concurrently as the general manager of the company.

The powers of the executive director shall be prescribed in the articles of association.

#### Article 52

A limited liability company shall have a board of supervisors composed of no less than three (3) members. A small-scaled limited liability company or a limited liability company with only a few

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shareholders may have one or two supervisors without establishing a board of supervisors. The board of supervisors shall be composed of shareholders' representatives and representatives of the staff and workers of the company. The number of the staff and workers' representatives shall not be lower than one third of all the supervisors, the specific percentage of which shall be determined in the articles of association. The representatives of the staff and workers on the board of supervisors shall be democratically elected by the staff and workers through the congresses or assemblies of the workers and staff members or other forms. The board of supervisors shall have one chairman elected by more than half of all the supervisors. The meetings of the board of supervisors shall be convened and presided over by the chairman of the board. In the event that the chairman is unable to or does not perform his duties, the meeting shall be convened and presided over by a supervisor jointly nominated by more than half of all the supervisors.

A director and a senior officer of the company shall not serve concurrently as a supervisor.

#### Article 53

Each term of a supervisor shall be three (3) years, and a supervisor may continue to serve his post upon expiration of his term if he is re-elected.

Where a new elect is not yet available upon expiration of a supervisor's term, or the number of the supervisors on the board is less than the quorum due to the resignation of a supervisor within his term, such supervisor, before the new elect takes his office, shall continue the performance of his duties in accordance with laws, administrative regulations and the articles of association.

#### Article 54

The board of supervisors or the supervisor, as the case may be, shall exercise the following authorities:

- (1) reviewing the financial affairs of the company;
- (2) monitoring the acts of the directors or the senior officers in the course of performance of their duties, and propose recall of the director or senior officer in violation of laws, administrative regulations or the articles of association;
- (3) requiring the directors or the senior officers to make rectification when any act thereof causes harm to company interests;
- (4) proposing for interim meetings of shareholders meetings, convene and preside over the meeting when the board of directors does not perform its function to convene and preside over a shareholders meeting as set forth in this Law;
- (5) submitting proposals at the shareholders meeting;
- (6) filing suit against the directors or senior officers of the company in accordance with the provisions of Article 152 in this Law;
- (7) exercising other authorities prescribed by the articles of association.

#### Article 55

The supervisors may attend board meetings, present inquiry or proposal with regards to the issues to be determined by the board of directors.

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The board of supervisors or the supervisors of a company that does not have the board may conduct investigations upon discovery of any unusual operations of the company and, where necessary, engage an accounting firm to assist in such investigations at the expense of the company.

#### Article 56

The board of supervisors shall have a meeting at least once a year. An interim meeting may be convened at the request of supervisors.

Except as provided for in this Law, the rules of deliberation and voting procedures at the meeting of board of directors shall be stipulated by the articles of association of the company.

The resolution of the board of supervisors shall be adopted by more than half of all the supervisors. The board shall prepare minutes relating to the decisions on matters considered at the meeting, which shall be signed by the supervisors present at the meeting.

#### Article 57

Reasonable expenses necessary for the board of supervisors or supervisors of a company that does not have the board to perform their duties shall be borne by the company.

### Section Three Special Provisions on One-Person Limited Liability Companies

#### Article 58

The provisions under this section shall govern the formation and the organizational structure of one-person limited liability companies. Where there are matters that are not covered by this section, the provisions of the first two sections under Chapter One shall apply.

A one-person limited liability company referred to herein means a limited liability company with a sole shareholder of either a natural person or a legal person.

#### Article 59

The minimum amount of the registered capital of a one-person limited liability company shall be RMB100, 000 which must be fully paid at the time of incorporation.

Natural persons are permitted to set up only one such company and that company is not allowed to invest in other one-person companies.

#### Article 60

In applying for registration of a one-person limited liability company, the proposed company shall indicate whether the investor is a natural person or a legal person, and specify it in its business license.

#### Article 61

The articles of association of a one-person limited liability company shall be formulated by its

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shareholder.

**Article 62**

A one-person limited liability company does not have shareholders meetings. The shareholder shall make the decision set forth in Article 38 (1) in written form, sign and maintain it at the company's premises.

**Article 63**

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

**Article 64**

Where the shareholder of a one-person limited liability company cannot prove that the company's assets is independent from his own property, such shareholder shall bear joint and several liability for the debts of the company.

**Section Four Special Provisions on Wholly State-owned Companies**

**Article 65**

The provisions under this section shall govern the formation and the organizational structure of wholly state-owned companies. Where there are matters that are not covered by this section, the provisions of the first two sections under Chapter One shall apply.

A wholly state-owned company referred to herein means a limited liability company established through the State's sole investment by the state-owned assets supervision and administration authority entrusted by the State Council or local people's government to perform the capital contribution functions.

**Article 66**

The articles of association of a wholly state-owned company may be formulated by the state-owned assets supervision and administration authority or may be prepared by its board of directors and submitted to the state-owned assets supervision and administration authority for approval.

**Article 67**

A wholly state-owned company does not have shareholders meetings, and the state-owned assets supervision and administration authority shall exercise the authorities of the shareholders meeting. The state-owned assets supervision and administration authority may authorize the board of directors to exercise part of the authorities of the shareholders meeting to decide on major issues of the company, provided that matters such as merger, division or dissolution of the company, capital increase or reduction by the company, and issue of company bonds must be decided by the state-owned assets supervision and administration authority. The merger, division, dissolution or application for bankruptcy of key wholly state-owned companies shall, after examination and verification by the state-owned assets supervision and administration authority, be submitted to the

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people's government at the same level for approval. The key wholly state-owned companies referred to herein shall be defined in accordance with the provisions of the State Council.

#### Article 68

A wholly state-owned company shall have a board of directors, which shall exercise its powers and perform its duties in accordance with the provisions of Article 47 and Article 67 hereof. The term of the directors shall not exceed three (3) years. There shall be representatives of the staff and workers on the board. The members of the board shall be designated by the state-owned assets supervision and administration authority. However, representatives of the staff and workers on the board shall be democratically elected through the congresses of the workers and staff members. The board of directors shall have a chairman and may have a vice-chairman. The chairman and vice-chairman shall be appointed by the state-owned assets supervision and administration authority from among the board members.

#### Article 69

A wholly state-owned company shall have a general manager, to be appointed or removed by the board of directors. The general manager shall exercise his powers and perform his duties in accordance with the provisions of Article 50 hereof. With the approval of the state-owned assets supervision and administration authority, a board member may serve concurrently as the general manager.

#### Article 70

Absent approval by the state-owned assets supervision and administration authority, the chairman, vice-chairman, a director, or a senior officer may not serve concurrently for any other limited liability company, joint stock limited company or any other business organization.

#### Article 71

The board of supervisors of a wholly state-owned company shall have no less than five (5) members, and the number of the staff and worker's representatives on the board shall be no less than one third of the board members, the specific percentage of which shall be determined in the articles of association.

The supervisors shall be designated by the state-owned assets supervision and administration authority, however, the staff and worker's representatives on the board shall be democratically elected through the congresses of workers and staff members. The chairman of the board of supervisors shall be appointed by the state-owned assets supervision and administration authority from among the board members. The board of supervisors shall exercise the powers prescribed in Article 54 (1), (2) and (3) hereof and other powers stipulated by the State Council.

### Chapter Three: Share Transfer of a Limited Liability Company

#### Article 72

Shareholders of a limited liability company may transfer in whole or part their respective shares

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amongst themselves.

Where a shareholder transfers his shares to a person other than a shareholder, the consent of more than half of all shareholders shall be required. The shareholder who intends to transfer his shares shall notify the other shareholders in writing and seek their approval. Failure by those shareholders to make any response within thirty (30) days of the receipt of the written notice shall be deemed to be their consent to such transfer. Where more than half of the other shareholders do not consent to the transfer, such shareholders shall purchase the shares to be transferred. Failure by those shareholders to make such purchase shall be deemed to be their consent to such transfer. Where the shareholders consent to the share transfer, other shareholders shall have the preemptive right to purchase the shares to be transferred on equal terms and conditions. Two or more of the shareholders exercising the preemptive right of purchase shall negotiate and determine the proportion of the shares to be purchased respectively. Failing such, the shares shall be purchased in proportion to their capital contributions at the time of such transfer.

Where the articles of association stipulate otherwise, such stipulations shall apply.

#### Article 73

The people's court, where the shares held by a shareholder is transferred through enforcement procedures prescribed by law, shall inform the company and all of its shareholders. Other shareholders shall have the preemptive right to purchase such shares on equal terms and conditions. Failure by those shareholders to exercise the right of first refusal within twenty (20) days of the date of court notice shall be deemed to be a waiver of the preemptive right of purchase.

#### Article 74

The company, after the share transfer is completed pursuant to Article 72 and Article 73 hereof, shall cancel the capital contribution certificate of the original shareholder, issue new certificate to the new shareholder and, amend the record of the shareholder and his capital contribution in the articles of association and the roster of shareholders. Such amendments to the articles of association need not be voted for by shareholders meetings.

#### Article 75

The shareholder voting against the decision of the shareholders meeting in respect of any one of the following circumstances may request the company to purchase his shares at reasonable prices:

- (1) the company will not distribute dividends for five consecutive years though the company has made profit over these years and has met the distribution requirements prescribed in this Law;
- (2) in the event of merger, division or assignment of the company's major assets;
- (3) in the event of expiry of the company or any other causes for dissolution prescribed in the articles of association, the shareholders meeting has adopted a resolution to amend the articles of association to renew the company.

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Where the shareholder cannot reach a share purchase agreement with the company within sixty (60) days of the date of the resolution, the shareholder may file suit to the people's court within ninety (90) days of the date of the resolution.

#### Article 76

Where a natural person shareholder deceases, his shareholder's status may be inherited by his legal heir unless otherwise stipulated in the articles of association.

### Chapter Four: Establishment and Organizational Structure of a Joint Stock Limited Company

#### Section One Establishment

##### Article 77

The establishment of a joint stock limited company is subject to the following conditions:

- (1) The number of sponsors meets legal requirement;
- (2) The amount of capital stocks subscribed for by the sponsors and publicly placed reaches the legally-prescribed minimum capital level;
- (3) The issue of its shares and the preparation for its establishment comply with the law;
- (4) The sponsors prepare the articles of association, and such articles of association of a company established by public share offer shall be adopted by the establishment meeting;
- (5) There is a company name, and the organs complying with the requirements for a joint stock limited company are established;
- (6) The company has a domicile.

##### Article 78

A joint stock limited company may be established either by sponsorship or public share offer.

Establishment by sponsorship means establishment of the company through subscription by the sponsors for all the shares to be issued by the company.

Establishment by public share offer means establishment of the company through subscription by sponsors for part of the shares to be issued by the company, and public or targeted placement of the remaining shares.

##### Article 79

In order to establish a joint stock limited company, there shall be not fewer than two but no more than two hundred sponsors, half of whom shall be domiciled in China.

##### Article 80

Sponsors of a joint stock limited company shall be responsible for the preparation of the establishment of the company and enter into a sponsor's agreement to clarify the rights and

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obligations during the incorporation of the company.

#### Article 81

The registered capital of a joint stock limited company established by public share offer shall be the total amount of share capital subscribed for by all the sponsors and registered with the company registration authority. The initial capital contribution of all the sponsors shall not be less than twenty percent (20%) of the registered capital, the remaining of which shall be paid in full within two (2) years of the establishment of the company. In the event of an investment company, the remaining part of the registered capital may be fully paid within five (5) years of the establishment of the company. Prior to a full contribution to the registered capital, sponsors shall not offer the shares to others.

The registered capital of a joint stock limited company established by sponsorship shall be the actual total amount of share capital that is paid up and registered with the company registration authority. The minimum amount of the registered capital of a joint stock limited company shall be RMB 5,000,000. Where there is a higher level of the minimum amount stipulated by laws and administrative regulations, such stipulations shall apply.

#### Article 82

The articles of association of a joint stock limited company shall set forth the following:

- (1) its name and domicile;
- (2) its business scope;
- (3) the method for its establishment;
- (4) the total number of shares of the company, the value of each share, and the registered capital of the company;
- (5) the names of the sponsors, the number of shares they have subscribed for, the form and time of capital contribution;
- (6) the composition of the board of directors, its authorities, term, and rules of conducting business;
- (7) its legal representative;
- (8) the composition of the board of supervisors, its authorities, term, and rules of conducting business;
- (9) the method for company profit distribution;
- (10) the causes for its dissolution and the method for its liquidation;
- (11) the method for giving notice and making public announcement;
- (12) other matters which the general meeting of shareholders deems necessary to provide for.

#### Article 83

The provisions of Article 27 herein shall apply to the form of sponsor's capital contribution.

#### Article 84

In the event of establishing a joint stock limited company by sponsorship, the sponsors shall fully subscribe in writing for the shares to be issued as prescribed in the articles of association. In the

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event of a lump sum payment, the investment shall be fully paid up in due time. In the event of payment in installments, the initial contribution shall be paid up in due time. In the event of contributions in form of non-currency property, the property rights therein shall be transferred in accordance with legally prescribed procedures.

Sponsors failing to make the capital contribution pursuant to the preceding paragraph shall bear the breach liability in accordance with the sponsor's agreement.

Upon the initial contribution of the share capital which the sponsors have subscribed for, they shall elect members to the board of directors and the board of supervisors, and the board of directors shall apply for establishment registration by submitting the articles of association, the capital verification certificate issued by a legally established capital inspection organization and other documents required by laws and administrative regulations to the company registration authority.

#### Article 85

In the case of establishing a joint stock limited company by public share offer, the shares subscribed for by the sponsors shall be not less than thirty five percent (35%) of the total shares of the company. Where laws and administrative regulations stipulate otherwise, such stipulations shall apply.

#### Article 86

In a public share offer, the sponsors shall make the prospectus available to the public and prepare the share subscription form. The share subscription form shall contain the items listed in Article 87, and a subscriber shall fill in the following: the number of shares subscribed for, the amount of share proceeds, and his or her domicile, and shall sign or impress his chop on the form. A subscriber shall pay the share proceeds according to the number of shares he has subscribed for.

#### Article 87

The prospectus shall be accompanied with the articles of association prepared by the sponsors, and shall set forth the following:

- (1) the number of shares subscribed for by the sponsors;
- (2) the par value and issuing price of each share;
- (3) the total number of bearer share certificates issued;
- (4) the purpose of the fund raised;
- (5) the rights and obligations of the subscribers;
- (6) the commencing time and expiration time of the share offer, and a statement that in the event the shares have not be placed in full upon the expiration time, the subscribers may revoke their share subscriptions.

#### Article 88

The sponsors' share offer to the public shall be underwritten by a securities underwriter established in accordance with the law, and an underwriting agreement shall be executed.

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## Article 89

When conducting public share offer, the sponsors shall execute an agreement with a bank for deposit of share proceeds.

The depository bank shall collect and hold the share proceeds in accordance with the agreement, and issue receipts to subscribers who have paid their share proceeds, and is obligated to provide to the relevant authority a certificate for receipt of share proceeds.

## Article 90

After the proceeds from issue of the shares are paid in full, the share capital shall be verified by a legally-prescribed capital verification institution and a certificate shall be issued thereby. Within thirty (30) days, the sponsors shall convene and preside over the establishment meeting, which is composed of the subscribers.

If the issued shares are not fully placed upon expiration of the time limit prescribed in the prospectus, or the sponsors fail to hold the establishment meeting within thirty (30) days of full payment of the proceeds from issue of the shares, the subscribers may demand that the sponsors return the share proceeds.

## Article 91

The sponsors shall notify each subscriber of the date of the establishment meeting or make a public announcement for such meeting fifteen (15) days in advance. The establishment meeting may not be held unless attended by subscribers representing at least half of the shares.

The establishment meeting shall exercise the following authorities:

- (1) considering the report on pre-establishment activities prepared by the sponsors;
- (2) adopting the articles of association;
- (3) electing members of the board of directors;
- (4) electing members of the board of supervisors;
- (5) verifying expenses incurred for the establishment of the company;
- (6) verifying the value of the assets contributed by the sponsors in lieu of share proceeds;
- (7) where an event of force majeure or any material change in operating condition affecting the company's establishment has occurred, a resolution not to establish the company may be adopted.

A resolution adopted at the establishment meeting on any of the matters mentioned in the preceding paragraph requires affirmative votes by subscribers present at the meeting representing more than half of the voting rights.

## Article 92

Upon payment of the share proceeds or delivery of the items as contribution of share capital in lieu of share proceeds, the sponsors and subscribers may not withdraw their share capital, except where the shares issued are not fully placed in time, the sponsors fail to hold the establishment

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meeting in time, or the establishment meeting adopts a resolution not to establish the company.

#### Article 93

Within thirty (30) days of the completion of the establishment meeting, the board of directors shall apply for establishment registration by submitting to the company registration authority the following:

- (1) the company registration application;
- (2) the minutes of the establishment meeting;
- (3) the articles of association;
- (4) the capital verification certificate;
- (5) the engagement letters and identity certificates of the legal representative, directors and supervisors;
- (6) the legal person's qualification certificate of sponsors or identity certificate of natural persons;
- (7) the company's certificate of domicile.

The verification documents issued by the securities regulatory department under the State Council shall be submitted to the company registration authority in the event of public share offer by a joint stock limited company established by public share offer.

#### Article 94

Sponsors failing to contribute in full after the establishment of a joint stock limited company shall make up the rest of the contribution. Other sponsors shall bear joint and several liability for such contribution.

Where the actual value of the non-currency property contribution, after the establishment of a joint stock limited company, is found to be obviously lower than the amount prescribed in the articles of association of the company, the sponsor making such contribution shall make up the balance and other sponsors shall bear joint and several liability therefor.

#### Article 95

The sponsors of a joint stock limited company shall bear liabilities as follows:

- (1) in the event of failure to establish the company, being jointly and severally liable for the debts and expenses incurred as a result of the pre-establishment activities;
- (2) in the event of failure to establish the company, being jointly and severally liable for the return of share proceeds paid by the subscribers, together with the interest thereon as if they have been deposited in a bank for a like period.
- (3) if the company's interest is harmed in the course of its establishment due to the negligence of the sponsors, being liable to the company for damages.

#### Article 96

Where a limited liability company is converted to a joint stock limited company, the total value of the converted shares shall not be higher than the company's net assets value. Public share offering

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by a joint stock limited company converted from a limited liability company for the purpose of increasing capital shall be carried out in accordance with the law.

#### Article 97

A joint stock limited company shall maintain its articles of association, the record of shareholders, the counterfoils of bonds, the minutes of the general meeting of shareholders, the board of directors and the board of supervisors as well as its financial and accounting reports at the company's premises.

#### Article 98

A shareholder is entitled to inspect the articles of association, the record of shareholders, the counterfoils of bonds, the minutes of the general meeting of shareholders, the board of directors and the board of supervisors as well as its financial and accounting reports and is entitled to make a proposal or inquiry concerning the company's operation.

### Section Two General Meeting of Shareholders

#### Article 99

The general meeting of shareholders of a joint stock limited company is composed of all shareholders. The general meeting of shareholders is the company's organ of authority, and shall exercise its authorities in accordance herewith.

#### Article 100

The provisions set forth in Article 38(2) with regards to the functions of the shareholders meeting of a limited liability company shall apply to the general meeting of shareholders of a joint stock limited company.

#### Article 101

The general meeting of shareholders shall hold an annual meeting each year. An interim general meeting of the shareholders shall be held within two (2) months upon the occurrence of any of the following circumstances:

- (1) The number of directors falls below the number prescribed herein or below two-thirds of the number prescribed in the articles of association;
- (2) The company's losses which are not covered have reached one-third of the total amount of the share capital;
- (3) Shareholders holding at least ten percent (10%) of the company's stocks make a request;
- (4) The board of directors deems necessary;
- (5) The board of supervisors proposes for such a meeting;
- (6) Other circumstances provided for in the articles of association.

#### Article 102

A general meeting of shareholders shall be convened by the board of directors and shall be presided over by the chairman of the board. Where the chairman is unable to or does not perform

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his duties, the meeting shall be presided over by the vice-chairman. Where the vice chairman is unable to or does not perform his duties, the meeting shall be presided over by a director jointly appointed by a majority of all the directors.

Where the board of directors is unable to or does not perform the duties to convene a general meeting of shareholders, the meeting shall be called and presided over by the board of supervisors in a timely manner. Where the board of supervisors is unable to or does not perform the duties to call and preside over a general meeting of shareholders, the shareholders individually or jointly holding ten percent (10%) of the shares of the company for consecutive ninety (90) days or more may, at its own discretion, convene and preside over a general meeting of shareholders.

#### Article 103

In order to hold a general meeting of shareholders, notice concerning the time, venue and matters to be considered at the meeting shall be given to each shareholder twenty days in advance. In the event of an interim meeting of shareholders, the notice may be given fifteen days in advance. Where the company has issued bearer share certificates, a public notice concerning the time, venue and matters to be considered at the meeting shall be made thirty days prior to the meeting.

Shareholders individually or jointly holding three percent (3%) of the shares of the company may, ten days prior to the general meeting of shareholders, submit a temporary written proposal to the board of directors. The board of directors shall, within two days after receipt of the proposal, inform other shareholders and submit the proposal to the general meeting of shareholders for deliberation. The items contained in the proposal shall fall within the scope of powers exercised by the general meeting of shareholders and clear topic and specific matters to be considered shall be included. The general meeting of shareholders shall not decide on any matters that are not specified in aforesaid notices. Where the holders of bearer shares attend the general meeting of shareholders, they shall deposit the shares with the company five (5) days earlier before the date of the meeting up till the closing date of the meeting.

#### Article 104

When a shareholder attends the general meeting of shareholders, each share he holds is entitled to one vote. However, the share held by the company itself shall not have the voting right. A resolution adopted by the general meeting of shareholders requires affirmative votes by a majority of the votes held by shareholders attending the meeting. The resolution with regards to amendment to the articles of association, increase or decrease of registered capital, merger, division or dissolution of the company or change of the form of the company requires affirmative votes by at least two-thirds of the votes held by shareholders attending the meeting.

#### Article 105

Where it is stipulated in this Law or the articles of association that the assignment or receipt of the company's major assets or provision of security shall be determined at the general meeting of shareholders, the board of directors shall, in a timely manner, convene the general meeting of shareholders that will vote on aforesaid matters.

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#### **Article 106**

The general meeting of shareholders shall adopt accumulative voting system when voting on the election of directors or supervisors in accordance with the articles of association or the resolution adopted by the shareholders' general meeting. The accumulative voting system referred to herein means that in the election of the directors or supervisors at the general meeting, the number of votes attached to each share held by a shareholder shall be equal to the number of candidates. A shareholder can multiply his voting shares by the number of candidates and vote them all for one person for director or supervisor.

#### **Article 107**

A shareholder may attend a general meeting of shareholders by proxy, the proxy holder shall present the proxy statement issued by the shareholder to the company, and shall exercise his voting rights to the extent authorized by the proxy.

#### **Article 108**

The general meeting of shareholders shall prepare minutes regarding the decisions on matters considered at the meeting, which shall be signed by the chairman of the meeting and directors attending the meeting. The minutes shall be maintained together with the record containing signatures of the shareholders attending the meeting and the proxy statements.

### **Section Three Board of Directors and General Manager**

#### **Article 109**

A joint stock limited company shall have a board of directors, which shall be composed of not fewer than five but not more than nineteen members.

The members of the board of directors shall include representatives of the staff and workers of the company. Such representatives of the staff and workers shall be democratically elected by the staff and workers of the company through the congresses or assemblies of the workers and staff members or other forms.

The provisions of Article 46 on the term of directors of a limited liability company shall apply to that of the directors of a joint stock limited company.

The provisions of Article 47 on the functions and powers of the board of directors of a limited liability company shall apply to that of the board of directors of a joint stock limited company.

#### **Article 110**

The board of directors shall have a chairman, and may have one or two vice-chairmen. The chairman and vice-chairman shall be elected by the board of directors through affirmative votes by more than half of all the directors.

The chairman shall convene and preside over meetings of the board of directors and supervise the implementation of resolutions adopted by the board of directors. The vice-chairman shall assist the

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chairman in his work. Where the chairman is unable to or does not exercise his authorities, the vice-chairman appointed by the chairman shall exercise such authorities in his capacity. Where the vice chairman is unable to or does not exercise his authorities, a director jointly nominated by more than half of all the directors shall exercise such authorities.

#### Article 111

The board of directors shall hold meetings at least twice a year, and notice shall be given to all directors and supervisors ten days in advance. Shareholders representing one tenth of voting rights, or one third or more of all the directors or supervisors may propose to have an interim meeting of the board. The Chairman, within ten days after receipt of such proposal, may convene and preside over a meeting of the board. Where an interim meeting of the board of directors is to be held, the method and time limit for notification for convening the interim meeting may be prescribed separately.

#### Article 112

A meeting of the board of directors may not be held unless attended by more than half of the directors. A resolution adopted by the board of directors requires affirmative votes by more than half of all the directors.

In the voting procedures, one director shall represent one vote.

#### Article 113

A meeting of the board of directors shall be attended by each director in person. Where a director is unable to attend the meeting for cause, he may issue a written proxy entrusting another director to attend on his behalf, and the proxy shall set forth the scope of authorization.

The board of directors shall prepare minutes regarding the decisions on matters considered at the meeting, which shall be signed by the directors attending the meeting and the person preparing the minutes.

The directors shall be responsible for resolutions adopted by the board of directors. Where a resolution of the board violates any national statutes, administrative regulations or the articles of association, and causes the company to incur serious loss, those directors participating in the adoption of the resolution are liable to the company for damages. Provided, however, if a director is proven to have dissented at the vote adopting such resolution and such dissension was noted in the minutes, then the director may be exempt from liability.

#### Article 114

A joint stock limited company shall have a general manager, to be appointed or removed by the board.

The provisions of Article 50 on the functions and powers of the manager of a limited liability company shall apply to the manager of a joint stock limited company.

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#### **Article 115**

The board of directors of the company may decide that a board member is to serve concurrently as the general manager.

#### **Article 116**

A joint stock limited company must not directly, or through its affiliate companies, borrow money from its directors, supervisors or senior officers.

#### **Article 117**

A joint stock limited company shall disclose on regular basis the remuneration of its directors, supervisors and senior officers.

### **Section Four Board of Supervisors**

#### **Article 118**

A joint stock limited company shall have a board of supervisors, which shall be composed of not fewer than three (3) members.

The board of supervisors shall be composed of the shareholders' representatives and representatives of the workers of the company. The number of the workers' representatives shall not be lower than one third of all the supervisors, the specific percentage of which shall be determined in the articles of association. The workers' representatives on the board of supervisors shall be democratically elected by the workers of the company through the congresses or assemblies of the workers and staff members or other forms. The board of supervisors shall have one chairman that shall be elected by more than half of all the supervisors. The meetings of the board of supervisors shall be convened and presided over by the chairman of the board. In the event that the chairman is unable to or does not perform his duties, the meeting shall be convened and presided over by a supervisor jointly nominated by more than half of all the supervisors.

A director and a senior officer may not serve concurrently as a supervisor.

The provisions of Article 52 on the term of the supervisor of a limited liability company shall apply to the supervisor of a joint stock limited company.

#### **Article 119**

The provisions of Article 54 and Article 55 on the functions and powers of the board of supervisors of a limited liability company shall apply to the board of the supervisors of a joint stock limited company.

Reasonable expenses necessary for supervisors to performance their duties shall be borne by the company.

#### **Article 120**

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The board of supervisors shall convene a meeting at least every six months. An interim meeting of the board may be called at the request of supervisors.

The rules of deliberation and voting procedures for the board of supervisors shall be stipulated by the articles of association of the company.

The board of supervisors shall prepare a minute of the meeting signed by all supervisors attending the meeting.

#### Section Four Special Provisions on the Structure of a Listed Company

##### Article 121

A listed company referred to herein means a joint stock limited company whose shares are listed and traded on a securities exchange.

##### Article 122

Any purchase or sale of major assets within one year or provision of a security in an amount in excess of thirty percent (30%) of the total assets by a listed company shall be deliberated and determined at a general meeting of shareholders and the resolution adopted by such a meeting requires affirmative votes by shareholders representing two-thirds of the voting rights.

##### Article 123

A listed company shall have independent directors the specific method of which shall be determined by the State Council.

##### Article 124

A listed company shall have a secretary of the board of directors whose responsibilities include the preparation of the general meeting of shareholders and meetings of the board of directors, maintenance of documents, share management as well as relevant matters concerning information disclosure.

##### Article 125

The director of a listed company affiliated with the enterprise involved in the matters discussed by the board of directors shall not exercise his own, or represent other directors to exercise voting right for such matters. The meeting of the board of directors may be held once more than half of the unaffiliated directors will be present. The resolution made by the meeting of the board shall be adopted by more than half of all such directors. Where there are not more than three (3) unaffiliated directors, the relevant matters shall be forwarded to the general meeting of shareholders for deliberation.

#### Chapter Five Issue and Transfer of Shares of Joint Stock Limited Companies

##### Section One Issue of Shares

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#### **Article 126**

The capital of a joint stock limited company shall be divided into shares, and all the shares shall be of equal value.

Shares of the company are represented by share certificates. A share certificate is a certificate issued by the company certifying the share held by a shareholder.

#### **Article 127**

When shares are issued, the principles of openness, fairness, and equity shall be followed, and each share in the same class must have the same rights and receive the same interests.

For shares issued at the same time, each share shall be issued on the same conditions and at the same price. All entities or individuals subscribing for shares shall pay the same price for each share.

#### **Article 128**

The issuing price per share may be at par value, or above par value, but may not be below par value.

#### **Article 129**

A share certificate shall be in paper form or in other forms prescribed by the securities regulatory authority under the State Council.

A share certificate shall set forth the following major items:

- (1) the name of the company;
- (2) the company's date of registration and establishment;
- (3) the class and par value of the shares and the number of shares represented;
- (4) the serial number of the share certificate.

The share certificate shall be signed by the chairman of the board, and the company's chop shall be impressed thereon.

Share certificates held by the sponsors shall be marked with the words Sponsors' Share.

#### **Article 130**

Share certificates issued by the company may be in the form of either registered share certificates or bearer share certificates.

Share certificates issued by the company to its sponsors or legal persons shall be registered share certificates bearing the names of such sponsors or legal persons, and may not be registered under any other names or in the names of their legal representatives.

#### **Article 131**

A company issuing registered share certificates shall maintain a record of shareholders, which

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shall set forth the following:

- (1) the name and domicile of each shareholder;
- (2) the number of shares held by each shareholder;
- (3) the serial numbers of share certificates held by each shareholder;
- (4) the date on which each shareholder acquired his shares.

A company issuing bearer share certificates shall record the number of such share certificates, their serial numbers and their issuing dates.

#### Article 132

The State Council may make separate stipulations relating to a company's issuance of shares of classes other than those prescribed herein.

#### Article 133

Upon registration and establishment, a joint stock limited company shall promptly deliver the share certificates to its shareholders officially. Prior to registration and establishment, the company may not deliver any share certificate to its shareholders.

#### Article 134

Where a company is to issue new shares, the general meeting of shareholders or the board of directors shall adopt a resolution concerning the following in accordance with the articles of association:

- (1) the classes and number of the new shares;
- (2) the issuing price of the new shares;
- (3) the commencing and ending dates of issuance of the new shares;
- (4) the classes and number of new shares issued to the existing shareholders.

#### Article 135

When a company is approved by the securities supervision and administration department under the State Council to issue new shares to the public, it shall make public the prospectus for the issue of new shares, its financial and accounting statements, and shall prepare the subscription form.

The provisions of Article 88 and Article 89 shall apply to the issue of new shares.

#### Article 136

In issuing new shares, a company may determine the pricing scheme in light of the business operation and financial conditions of the company.

#### Article 137

Upon full receipt of the share proceeds from the company's newly issued shares, the company shall carry out amendment registration with the company registration authority and shall make a

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public announcement.

## Section Two Assignment Of Shares

### Article 138

Shares held by a shareholder may be assigned in accordance with the law.

### Article 139

Assignment of shares by a shareholder must be carried out at a lawfully established securities exchange or in other manners stipulated by the State Council.

### Article 140

Assignment of registered share certificates is effected by the shareholder's endorsement thereof or by other methods prescribed by the relevant national statutes or administrative regulations. In the case of assignment of registered share certificates, the company shall record the assignee's name and domicile on the record of shareholders.

Alteration registration for the record of shareholders referred to in the preceding paragraph shall not be carried out for a period of twenty days prior to the holding of a general meeting of shareholders, or five days prior to the record date for the purpose of dividend distribution determined by the company. However, where such change of shareholders is otherwise stipulated by the law, such stipulations shall apply.

### Article 141

Assignment of bearer share certificates takes effect upon delivery thereof by the shareholder to the assignee.

### Article 142

Shares of a company held by its sponsors may not be assigned for a period of one year commencing from the date of the company's establishment. Shares that have been issued before the public offer shall not be transferred for a period of one year commencing from the date of trading of the company's shares on a stock exchange.

The directors, supervisors and senior officers of the company shall report to the company the number of the company's shares held thereby and any change of such shareholding. The shares transferred within their term of office each year shall not exceed twenty-five percent (25%) of the total shares of the company held by them. Shares of the company held by aforesaid people shall not be transferred for a period of one year commencing from the date of trading of the company's shares on a stock exchange. These people, within half of the year from their departure from the company, shall not transfer the shares of the company held by them. The articles of association may otherwise provide for restrictions on the transfer of the shares of the company held by its directors, supervisors and senior officers.

### Article 143

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A company may not purchase its own shares, except in the following cases:

- (1) reducing the company's registered capital;
- (2) merging with another company holding shares of the company;
- (3) granting incentive shares to the staff and workers of the company;
- (4) requesting the company to purchase its own shares where shareholders of the company oppose the decision on merge or division of the company made at a general meeting of shareholders.

A resolution shall be adopted by a general meeting of shareholders in the event of a purchase as described in the above items from (1) through (3). The original shares, after the company has purchased its own shares in the case as described in item (1), shall be cancelled within ten days of such purchase. In the cases as described in item (2) and (4), the shares shall be transferred or canceled within six months of such purchase.

The shares of the company purchased by itself in the case as described in item (3) shall not exceed five percent (5%) of the total shares issued by the company. The fund for such purchase shall be paid out of the after-tax profits of the company and the shares purchased shall be transferred to the staff and workers within one year of such purchase.

The company may not accept its own shares as the collateral under a security arrangement.

#### Article 144

If a registered share certificate is stolen, lost or destroyed, the shareholder may petition a people's court for the invalidation thereof through the public notice procedure prescribed in the Civil Procedural Law of the People's Republic of China.

After the people's court has invalidated such share certificate through the public notice procedure, the shareholder may apply to the company for re-issuance of a certificate for the share.

#### Article 145

The shares of a company approved for listing shall be listed in accordance with laws, administrative regulations and trading rules set forth by a stock exchange.

#### Article 146

A listed company shall make public its financial conditions and operating conditions in accordance with the relevant laws and administrative regulations, and shall make public its financial and accounting reports semiannually in each fiscal year.

### Chapter Six: Qualifications and Obligations of Directors, Supervisors and Senior Officers

#### Article 147

A person in any of the following categories may not serve as a director, supervisor, or the general manager of a company:

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- (1) without civil capacity or with limited civil capacity;
  - (2) having been sentenced to prison for the following crimes, and completion of the sentence being less than five years ago: embezzlement, bribery, conversion of property, misappropriation of property, sabotage of social economic order; or having been deprived of political rights as a result of a criminal conviction, and completion of such sanction being less than five years ago;
  - (3) having served as a director, the factory chief, or the general manager of a company or enterprise which underwent bankruptcy liquidation as a result of mismanagement, and being personally responsible for such bankruptcy, and completion of the bankruptcy liquidation being less than three years ago;
  - (4) having served as the legal representative of a company or enterprise whose business license was revoked due to its violation of law, and being personally responsible for such revocation, and such revocation occurring less than three years ago;
  - (5) in default of personal debt of a significant amount.

If the company elects or appoints a director or supervisor or employs the senior officer in violation of the above paragraph, such election, appointment or employment is invalid. The company shall remove the director, supervisor or senior officer once the circumstances described in item (1) occur.

#### Article 148

A director, supervisor, or the general manager shall abide by laws, administrative regulations and articles of association of the company and shall have the fiduciary and diligent duties to the company.

A director, supervisor, or the senior officer may not abuse their authorities by accepting bribes or generating other illegal income, and may not convert company property.

#### Article 149

The director and senior officer:

- (1) may not misappropriate company funds;
- (2) may not deposit company assets into an account in his own name or in any other individual's name;
- (3) may not loan company funds to other people or give company assets as security for the debt of any other individual without the approval of the shareholders meeting, general meeting of shareholders or the board of directors in violation of the articles of association;
- (4) may not execute any contract or engage in any transaction with the company in violation of the articles of association or without the approval of the shareholders meeting or the general meeting of shareholders;
- (5) may not use the favorable conditions and conveniences to seek the business opportunities that shall belong to the company to engage in the same business as the company in which he serves as a director or the senior officer either for his own account or for any other person's account without the approval of the shareholders meeting or the general meeting of shareholders;

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- (6) may not accept and possess the commissions paid by others for transactions conducted with the company;
  - (7) may not disclose company confidential information without authorization;
  - (8) may not engage in other activities in violation of his fiduciary duties.

#### Article 150

If a director, supervisor or the senior officer causes detriment to the company while performing his duties in violation of laws, administrative regulations or the articles of association, he shall be liable for the loss so caused.

#### Article 151

Where the shareholders meeting or the general meeting of shareholders requires a director, supervisor or the senior officer to be present at meetings, they shall be present at meetings and answer the inquiries of shareholders.

A director or senior officer shall provide the board of supervisors or the supervisors of a limited liability company without a board of supervisors with genuine documents and information and shall not obstruct the board of supervisors or supervisors from performing duties.

#### Article 152

Where a director or senior officer is involved in the circumstance as described in Article 150, the shareholders of a limited liability company or a joint stock limited company that individually or jointly hold one percent (1%) of the total shares for consecutive 180 days may request in writing the board of supervisors or the supervisors of a limited liability company without a board of supervisors to file suit before a people's court. Where a supervisor is involved in the circumstance as described in Article 150, aforesaid shareholders may request in writing the board of directors or the executive director of a limited liability company without a board of directors to file suit before a people's court.

Where the board of supervisors or the supervisors of a limited liability company without a board of supervisors, or the board of directors or the executive director refuses to file suit after receipt of the written request mentioned above, or does not file suit within thirty days of the receipt of the same, or comes across an emergency where, if no immediate actions are taken, the company's interests shall be incurably impaired, then the shareholders may, for the interest of the company and on their own behalf, directly file suit before a people's court.

Where the company's legal rights and interests are violated by others and in the event of any losses incurred, the shareholders defined in the first preceding paragraph may file suit before a people's court in accordance with the first two preceding paragraphs.

#### Article 153

Where a director or senior officer violates laws, administrative registrations or the articles of association, or infringes upon the rights and interests of the shareholders, the shareholders may file suit before a people's court.

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## Chapter Seven: Company Bonds

### Article 154

Company bonds referred to herein means a form of security which is issued by a company in accordance with legally prescribed procedure, and which provides that the principal thereof and interest thereon shall be paid at specified times. The issue of company bonds shall meet the requirements set forth by the Securities Law of the People's Republic of China.

### Article 155

Upon approval of an application for company bonds issue granted by the relevant department authorized by the State Council, the plan for company bonds offer shall be made public. The plan for company bonds offer shall set forth the following major items:

- (1) the name of the company;
- (2) the purpose of the fund raised;
- (3) the total value of the bonds and the par value of each bond;
- (4) the determination method of the rate of interest on the bonds;
- (5) the time limit and method for payment of the principal of and interest on the bonds;
- (6) the security information concerning the bonds;
- (7) the price, the commencing and ending date of the bonds issue;
- (8) the net assets value of the company;
- (9) the total value of issued and outstanding company bonds;
- (10) the underwriter of the company bonds.

### Article 156

Where material company bonds are issued, a company must state on each bond certificate the name of the company, the par value of the bond, interest rate, and repayment period, and the bond certificate shall be signed by the legal representative, and the company's chop shall be impressed thereon.

### Article 157

Company bonds may be classified as either registered bonds or bearer bonds.

### Article 158

If a company has issued bonds, it shall maintain a record of bondholders.

If registered bonds are issued, the following shall be recorded on the company's record of bondholders:

- (1) the name and domicile of each bondholder;
- (2) the dates on which the bondholders acquired the bonds and the serial numbers of the bond certificates;
- (3) the total value of the bonds, the par value of each bond, the interest thereon, the term thereof

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and method for payment of principal and interest;

(4) the date of issue of the bonds.

If bearer company bonds are issued, the company's record of bondholders shall record the total value of such bonds, the interest rate thereon, the term thereof and the method for repayment, and the date of issue and the serial numbers of the bond certificates.

#### Article 159

In the event of registered bonds, securities registration and settlement organizations shall establish relevant rules and regulations for the bonds registration, deposit, interest payment and bond redemption.

#### Article 160

Company bonds may be assigned, the price of which shall be agreed upon between the assignor and the assignee.

Where the company bonds are listed and traded at a securities exchange, the assignment of the bonds shall be conducted in accordance with the trading rules of the securities exchange.

#### Article 161

Assignment of registered company bonds is effected by the bondholder's endorsement of the bonds or by other methods prescribed by relevant laws and administrative regulations. After the assignment of the bonds, the company shall record the assignee's name and domicile on the record of bondholders.

Assignment of bearer bonds takes effect upon delivery thereof by the bondholder to the assignee at a lawfully established securities exchange.

#### Article 162

Upon adoption of a resolution by the general meeting of shareholders, a listed company may issue bonds which are convertible to its shares, and it shall prescribe the specific method for such conversion in the plan for company bonds offer. In order to issue convertible company bonds, an application shall be submitted to the securities regulatory authority under the State Council for approval. In the case of issue of convertible company bonds, the face of the bond certificate shall be marked with the word "Convertible," and the number of convertible company bonds shall be specified in the company's record of bondholders.

#### Article 163

Where convertible company bonds are issued, the company shall exchange its shares for the bonds held by the bondholders using the prescribed method of conversion, provided that the bondholders have the option on whether or not to convert their bonds.

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#### **Article 164**

A company shall establish its financial and accounting system in accordance with the relevant national statutes, administrative regulations and the stipulations of the finance authority under the State Council.

#### **Article 165**

A company shall prepare its financial and accounting reports at the end of each fiscal year, which shall be audited by an accounting firm in accordance with the law. The financial and accounting reports shall be complied pursuant to relevant laws, administrative regulations and relevant regulations set forth by the finance authority under the State Council.

#### **Article 166**

A limited liability company shall deliver its financial and accounting reports to each shareholder within the time limit prescribed by the articles of association.

The financial and accounting reports of a joint stock limited company shall be available at the company's premises for shareholders' inspection as from the twentieth day prior to the annual general meeting of shareholders.

A joint stock limited company established through public share offer shall make public its financial and accounting reports.

#### **Article 167**

In distributing its current year after-tax profit, a company shall allocate ten percent (10%) of the profit to its statutory reserve fund. Allocation to the company's statutory reserve fund may be waived once the cumulative amount of funds therein exceeds fifty percent (50%) of the company's registered capital.

Where the statutory reserve fund is not sufficient to cover the company's loss from the previous year, the current year profit shall be used to cover such loss before allocation is made to the statutory reserve fund pursuant to the preceding paragraph.

After allocation to the statutory reserve fund has been made from the after-tax profit of the company, and upon adoption of a resolution by the shareholders meeting or the general meeting of shareholders, allocation may be made to the discretionary reserve fund.

After the company has covered its losses, and made allocation to the reserve funds, the remainder of the profit shall be distributed to the shareholders in accordance with the provisions of Article 35 in the case of a limited liability company, and in proportion to their share holdings in the case of a joint stock limited company unless otherwise stipulated in its articles of association.

If the shareholders meeting, the general meeting of shareholders or the board of directors, in violation of the preceding paragraph, distributes profit to the shareholders before covering company losses and making allocation to company statutory reserve fund, the profit so distributed

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must be returned to the company. The shares of the company held by the company itself shall not be granted profit distribution.

#### Article 168

The premium received by a joint stock limited company through issuance of shares at prices above par value, as well as other incomes to be allocated to the capital reserve fund as stipulated by the finance authority under the State Council, shall be allocated to the capital reserve fund.

#### Article 169

The reserve funds of the company shall be used to cover company losses, expand its production and operation, or be converted to the company's increased capital. The capital reserve fund must not be used to cover company losses.

Upon conversion of statutory reserve fund into capital, the amount remaining in the statutory reserve fund may not fall below twenty-five percent (25%) of the registered capital.

#### Article 170

Engagement or dismissal of an accounting firm to be responsible for the audit of the financial and accounting reports of a company shall be determined by the shareholders meeting, the general meeting of shareholders or the board of directors in accordance with the articles of association.

When the shareholders meeting, the general meeting of shareholders or the board of directors votes on the matter of dismissal of an accounting firm, the said firm shall be given the chance to state its opinions.

#### Article 171

The company shall provide the accounting firm with true and complete accounting certificates, books, financial and accounting reports and other accounting materials and must not refuse to provide or conceal such documents, or report deceitfully.

#### Article 172

The company shall not establish any separate accounting book besides the accounting books prescribed by law. The company's assets shall not be deposited into any account established under an individual's name.

### Chapter Nine:Merger and Division of Company, Increase and Decrease of Registered Capital

#### Article 173

Companies may be merged by absorption and merger by consolidation.

One company absorbing another company is merger by absorption, and the company being absorbed shall be dissolved. Merger of two or more companies through establishment of a new company is a consolidation, and the companies being consolidated shall be dissolved.

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#### Article 174

In a merger of companies, the companies shall execute a merger agreement, and prepare their respective balance sheets and schedules of assets. The companies shall notify their creditors within ten days of adoption of merger resolutions, and shall publish a notice in a newspaper within thirty days. Creditors are entitled to claim full payment of the debts of the companies or require the provision of appropriate assurances within thirty days of receipt of the notice, or within forty-five days of publication of the first notice if such creditors did not receive the notice.

#### Article 175

Once the companies are merged, the creditor's rights and debtor's liabilities of the merged companies shall be assumed by the surviving company or the newly formed company after merger.

#### Article 176

Where a company is to undergo division, its assets shall be divided accordingly.

In dividing the company, a balance sheet and a schedule of assets shall be prepared. The company shall notify its creditors within ten days of adoption of a division resolution, and shall publish a notice in a newspaper within thirty days.

#### Article 177

The company resulting from the division shall bear joint liabilities for the debts of the company prior to its division except otherwise stipulated in a written agreement concluded before the division by and between the company and its creditor.

#### Article 178

Where a company needs to reduce its registered capital, a balance sheet and a schedule of assets must be prepared.

The company shall notify its creditors within ten days of adoption of a resolution to reduce its registered capital, and shall publish a notice in a newspaper within thirty days. Creditors are entitled to claim full payment of the company's debts or require the provision of appropriate assurances within thirty days of receipt of the notice, or within forty-five days of publication of the first notice if such creditors did not receive the notice.

After capital reduction, the company's registered capital may not fall below the statutory minimum capital level.

#### Article 179

When a limited liability company is to increase its registered capital, after subscription for the newly increased capital, the shareholders shall make capital contribution in accordance with the provisions hereof concerning capital contribution for the establishment of a limited liability company.

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When a joint stock limited company is to issue new shares for the purpose of increasing its registered capital, the shareholders' subscription for the new shares shall be carried out in accordance with the provisions hereof concerning payment of share proceeds for the establishment of a joint stock limited company.

#### Article 180

In the case of merger or division of a company, where any registered item requires change, amendment registration shall be carried out with the company registration authority in accordance with the law; where the company is dissolved, company de-registration shall be carried out in accordance with the law; where a new company is established, establishment registration shall be carried out in accordance with the law.

Where a company is to increase or reduce its registered capital, a amendment registration shall be carried out with the company registration authority in accordance with the law.

### Chapter Ten: Dissolution and Liquidation of Company

#### Article 181 A company may be dissolved for any one of the following reasons:

- (1) the term of operation prescribed by the company's articles of association has expired, or any other cause for dissolution prescribed by the company's articles of association has occurred;
- (2) the shareholders meeting or the general meeting of shareholders has adopted a resolution for dissolution;
- (3) dissolution is required due to merger or division of the company;
- (4) the business license of the company is revoked by law, or the company is ordered to terminate or cancelled;
- (5) the company is dissolved by the people's court in accordance with the provisions of Article 183.

#### Article 182

Where a company is involved in the circumstance described in the above Article 181 (1), the company may amend its articles of association to continue its existence. The amendment to the articles of association shall be adopted by two thirds or more of all voting shareholders in the case of a limited liability company. In the event of a joint stock limited company, the amendment requires affirmative votes by at least two-thirds of the votes held by shareholders attending the general meeting of shareholders.

#### Article 183

Where there are serious difficulties in the operation of a company and the company's continuance will definitely cause significant losses to shareholders' interests, however, such scenario cannot be solved through other channels, then, shareholders representing 10% of all the votes may request the people's court to dissolve the company.

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#### Article 184

Where a company is to be dissolved pursuant to Article 181 (1), (2), (3), (4) and (5), a liquidation committee shall be formed within fifteen days; the liquidation committee of a limited liability company shall be composed of its shareholders, and members of the liquidation committee of a joint stock limited company shall be determined by the board of directors or the general meeting of shareholders; where the company fails to form a liquidation committee to carry out liquidation within the prescribed time limit, its creditors may petition the people's court to appoint the relevant persons to form a liquidation committee to carry out liquidation. The people's court shall accept such petition, and promptly appoint members of the liquidation committee to carry out liquidation.

#### Article 185

The liquidation committee shall exercise the following authorities in the course of liquidation:

- (1) identifying the company's assets, and preparing a balance sheet and a schedule of assets respectively;
- (2) notifying creditors through notice or public announcement;
- (3) handling the company's ongoing businesses which are related to liquidation;
- (4) making full payment of taxes owed and the taxes incurred during liquidation;
- (5) identifying the company's creditor's rights and debtor's liabilities;
- (6) disposing of the remaining assets after full payment of company debts;
- (7) participating in civil actions on behalf of the company.

#### Article 186

The liquidation committee shall notify creditors within ten days of its establishment, and shall make a public announcement in a newspaper within sixty days. Creditors shall file their creditor's rights with the liquidation committee within thirty days of receipt of the notice, and within forty-five days of publication of the first notice if such creditors did not receive the notice.

In filing for creditor's rights, the creditors shall state the relevant matters relating to the creditor's rights, and provide supporting materials. The liquidation committee shall record such creditor's rights. During the filing for creditor's rights, the liquidation committee shall not pay any debts to creditors.

#### Article 187

After identifying the company's assets and preparing the balance sheet and schedule of assets, the liquidation committee shall prepare a liquidating plan, which shall be submitted to the shareholders meeting, the general meeting of shareholders or the people's court for ratification.

After payment of liquidating expenses, payment of wages and expenses for labor insurance of the workers, payment of taxes owed, and payment of company debts are made, the remaining assets shall be distributed to the shareholders in proportion to their shares of capital contribution in the case of a limited liability company, and in proportion to their share holdings in the case of a joint stock limited company. In the course of liquidation, the company continues its existence but shall

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not conduct any business activities irrelevant to the liquidation. Before payments have been made in accordance with the preceding regulations, the assets of the company shall not be distributed to the shareholders.

#### Article 188

Where the liquidation committee, after identification of company assets and preparation of the balance sheet and schedule of assets, discovers that the company does not have sufficient assets to fully repay company debts, the liquidation committee shall file a bankruptcy application with the people's court in accordance with the law.

Once the company is adjudged bankrupt by a ruling of the people's court, the liquidation committee shall transfer the liquidating affairs to the people's court.

#### Article 189

Upon completion of a company's liquidation, the liquidation committee shall prepare a liquidating report, which shall be submitted to the shareholders meeting, the general meeting of shareholders or the people's court for ratification, and upon ratification, the liquidation committee shall submit such report to the company registration authority to apply for company de-registration, and make a public announcement of the company's termination.

#### Article 190

Members of the liquidation committee shall faithfully perform their duties and carry out their liquidating obligations in accordance with the law.

Members of the liquidation committee may not abuse their authorities by accepting bribes or receiving other illegal income, and may not misappropriate company assets.

A committee member who causes loss to the company or its creditors due to his intentional misconduct or gross negligence shall be liable for damages.

#### Article 191

Where a company is declared bankrupt in accordance with the law, the company's bankruptcy liquidation shall be carried out in accordance with the relevant applicable laws.

### Chapter Eleven : Branch of Foreign Company

#### Article 192

A foreign company referred to herein means a company registered and established outside China under foreign laws.

#### Article 193

In order to establish a branch within China, a foreign company must submit an application to the Chinese authority in charge, together with the relevant documents such as its articles of association, the company registration certificate issued in its home country, etc. Upon approval, it

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shall carry out registration with the company registration authority and be issued a business license.

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

#### Article 194

In order to establish a branch within China, a foreign company must appoint a representative or agent in charge of such branch within China, and fund its branch as appropriate in light of the nature of its intended business. Where operation of certain branches of foreign companies is subject to a minimum level of funding, such level shall be prescribed by the State Council separately.

#### Article 195

The branch of a foreign company shall identify the nationality and form of liability in its name.

The branch of a foreign company shall maintain the articles of association of such foreign company on its premises.

#### Article 196

A foreign company is a foreign legal person, and its branch established within China does not have the status of a Chinese legal person.

A foreign company shall bear civil liabilities in respect of the business conducted by its branch within China.

#### Article 197

While conducting business within China, the branch of a foreign company established after approval must abide by Chinese law, and may not harm the public interest of China, and its lawful rights and interests are protected by Chinese law.

#### Article 198

When a foreign company cancels its branch within China, such company must fully repay the debts thereof in accordance with the law and carry out liquidation in accordance with the provisions hereof concerning company liquidation procedure. The company may not transfer the assets of such branch abroad prior to full repayment of its debts.

### Chapter Twelve: Legal Liabilities

#### Article 199

In the case of company registration, where an applicant obtains company registration in violation hereof by making false statement of registered capital, submitting false certificates or by concealing material facts through other fraudulent means, the company shall be ordered to make rectification, and in the event false statements of registered capital were made, the company shall

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be fined not less than five percent (5%) but not more than fifteen percent (15%) of the amount of registered capital falsely stated; the company submitting false certificates or concealing material facts shall be fined not less than RMB 50,000 but not more than RMB 500,000; where the circumstances are serious, the company registration shall be revoked or the business license of the company shall be cancelled.

#### Article 200

Where the sponsors or shareholders falsify capital contribution by failing to pay money, to deliver or delay in the delivery of currency or non-currency property, they shall be ordered by the company registration authority to make rectification, and such persons shall be fined not less than five percent (5%) but not more than fifteen percent (15%) of the amount of capital contribution falsified.

#### Article 201

Where the sponsors or shareholders of a company withdraw their capital contribution after the establishment of the company, they shall be ordered by the company registration authority to make rectification, and such persons shall be fined not less than five percent (5%) but not more than fifteen percent (15%) of the amount of capital contribution withdrawn.

#### Article 202

Where a company, in violation hereof, establishes another set of accounting books besides those prescribed by law, it shall be ordered by the company registration authority to make rectification, and the company shall be fined not less than RMB 50,000 but not more than RMB 500,000.

#### Article 203

Where a company provides to its shareholders and the public financial and accounting reports which are false or which conceal material facts, a fine of not less than RMB 30,000 but not more than RMB 300,000 shall be imposed by relevant authority on the supervisor directly in charge and the other person(s) directly responsible.

#### Article 204

Where a company fails to make allocation to the statutory reserve fund in accordance herewith, such company shall be ordered by the finance authority of the people's government at the level of county or higher to make full allocation to the required funds, and a fine of not more than RMB 200,000 may be levied on the company.

#### Article 205

Where a company fails to notify creditors through notice or public announcement in accordance herewith while carrying out merger, division, reduction of registered capital, or liquidation, it shall be ordered by the company registration authority to make rectification, and the company shall be fined not less than RMB 10,000 but not more than RMB 100,000.

Where in the course of liquidation, the company conceals its assets, makes false statements in its balance sheet or schedule of assets, or distributes company assets prior to full repayment of

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company debts, it shall be ordered to make rectification, and the company shall be fined not less than five percent (5%) but not more than ten percent (10%) of the value of the concealed assets, or the value of the assets distributed prior to full repayment of company debts. A fine of not less than RMB 10,000 but not more than RMB 100,000 shall be imposed on the supervisor directly in charge and the other person(s) directly responsible. Where such action constitutes a crime, criminal liability shall be imposed in accordance with the law.

#### Article 206

Where the company engages in any business activities unrelated to the liquidation, it shall be warned by the company registration authority and its income derived therefrom shall be confiscated.

#### Article 207

Where the liquidation committee fails to submit the liquidating report to the company registration authority in accordance herewith, or conceals any material fact or makes any material omission in the liquidating report submitted, it shall be ordered by the company registration authority to make rectification.

Where a member of the liquidation committee abuses his authority to engage in fraudulent activity for private gain, to obtain illegal income or convert company assets, such member shall be ordered to return the company assets, and the illegal income shall be confiscated, and such member may be fined not less than two times but not more than five times the illegal income.

#### Article 208

Where an institution conducting assets appraisal, capital verification, or testing and verification provides a false certificate, the illegal income so derived shall be confiscated, and a fine of not less than two times but not more than five times the illegal income shall be imposed, and the relevant authority in charge may order such institution to cease operation, and revoke the qualification certificates of the persons directly responsible. Where such action constitutes a crime, criminal liability shall be imposed in accordance with the law.

Where an institution conducting assets appraisal, capital verification or testing and verification provides a report with material omission due to its negligence, it shall be ordered to make rectification, and where the circumstance is relatively serious, a fine of not less than two times but not more than five times the income so derived shall be imposed, and the relevant authority in charge may order such institution to cease operation, and revoke the qualification certificates of the persons directly responsible.

Where the appraisal report, capital verification report or verification issued by an institution conducting assets appraisal, capital verification or testing and verification does not comply with the fact which has caused losses to the company's creditors, the institution conducting assets appraisal, capital verification or testing and verification shall, unless they can prove they have no fault, make compensations within the range of amount in discord with the fact.

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#### Article 209

Where the company registration authority grants registration to an application which fails to meet the requirements prescribed herein or, refuses to grant registration to an application which meets the requirements prescribed herein, administrative penalty shall be imposed on the supervisor directly in charge and the other person(s) directly responsible in accordance with the law.

#### Article 210

Where the department in charge of the company registration authority compels it to grant registration to an application which fails to meet the requirements prescribed herein, or engages in cover up for an illegal registration, administrative penalty shall be imposed on the supervisor directly in charge and the other person(s) directly responsible in accordance with the law.

#### Article 211

Where an entity passes itself off as a limited liability company or joint stock limited company while not registered as such in accordance with the law, or an entity passes itself off as a branch company of a limited liability company or joint stock limited company while not registered as such in accordance with the law, it shall be ordered by the company registration authority to make rectification or such entity shall be closed down, and a fine of not more than RMB 100,000 may be imposed.

#### Article 212

Where a company fails to commence operation for more than 6 months without proper cause, or suspends operation on its own without proper cause for more than 6 consecutive months after commencement of operation, the company registration authority shall revoke its company business license.

Where the company fails to carry out amendment registration in accordance herewith when a registered item of the company has changed, it shall be ordered to register within a prescribed time limit, and where the company has not carried out registration after expiration of the time limit, a fine of not less than RMB 10,000 but not more than RMB 100,000 shall be imposed.

#### Article 213

Where, in violation hereof, a foreign company establishes a branch within China without approval, it shall be ordered to make rectification, or such branch shall be ordered to terminate, and a fine of not less than RMB 50,000 but not more than RMB 200,000 may be imposed.

#### Article 214

Where a company conducts illegal activities jeopardizing the national security and social public interests, the business license of such company shall be revoked.

#### Article 215

Where a company violates of this Law, and is therefore liable for civil damages as well as for an administrative fine or criminal fine, and its assets are not sufficient to cover both, its assets shall first be used to cover the civil liability for damages.

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## **Article 216**

Where any violation of this Law constitutes a crime, criminal liability shall be imposed in accordance with the law.

## **Chapter Thirteen : Supplementary Provisions**

### **Article 217**

For the purpose of this Law, the definitions of the following terms are:

- (1) Senior Officer referred to herein means the manager, deputy manager, person in charge of financial affairs, secretary of the board of directors of a listed company or any other personnel so appointed in the article of association of the company.
- (2) Controlling Shareholder referred to herein means the shareholder which amount of capital contribution accounts for more than fifty percent (50%) of the total amount of capital of a limited liability company or, the shareholder with more than fifty percent (50%) of the total amount of share capital of a joint stock limited company or, the shareholder of either a limited liability company or a joint stock limited company which, by virtue of its voting right represented by its capital contribution or shareholding, has a significant impact on the decision of shareholders meeting or the general meeting of shareholders regardless of a percentage lower than fifty percent as aforementioned.
- (3) Actual Controller referred to herein means a person who is not a shareholder of the company but has virtual control over corporate actions through investment in, agreement or other arrangements with the company.
- (4) Affiliation referred to herein means the connection between a controlling shareholder, actual controller, director, supervisor or senior officer of a company and the enterprises controlled by them, directly or indirectly, or any other kinds of relationships that are likely to cause diversion of the company's interests. Notwithstanding the foregoing, companies which majority of shares are controlled by the state are not necessarily affiliated with one another simply because the majority of their shares are commonly controlled by the state.

### **Article 218**

This Law shall be applicable to foreign-invested limited liability companies and joint stock limited companies. Where the laws on enterprises with foreign investment provide otherwise, such provisions shall apply.

### **Article 219**

This Law shall become effective on January 1, 2006.