

# 中华人民共和国公司法

(1993 年 12 月 29 日第八届全国人民代表大会常务委员会第五次会议通过根据 1999 年 12 月 25 日第九届全国人民代表大会常务委员会第十三次会议《关于修改〈中华人民共和国公司法〉的决定》第一次修正 根据 2004 年 8 月 28 日第十届全国人民代表大会常务委员会第十一次会议《关于修改〈中华人民共和国公司法〉的决定》第二次修正 2005 年 10 月 27 日第十届全国人民代表大会常务委员会第十八次会议修订 根据 2013 年 12 月 28 日第十二届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国海洋环境保护法〉等七部法律的决定》第三次修正 根据 2018 年 10 月 26 日第十三届全国人民代表大会常务委员会第六次会议《关于修改〈中华人民共和国公司法〉的决定》第四次修正)

## 第一章 总 则

**第一条** 为了规范公司的组织和行为，保护公司、股东和债权人的合法权益，维护社会经济秩序，促进社会主义市场经济的发展，制定本法。

**第二条** 本法所称公司是指依照本法在中国境内设立的有限责任公司和股份有限公司。

**第三条** 公司是企业法人，有独立的法人财产，享有法人财产权。公司以其全部财产对公司的债务承担责任。

有限责任公司的股东以其认缴的出资额为限对公司承担责任；股份有限公司的股东以其认购的股份为限对公司承担责任。

**第四条** 公司股东依法享有资产收益、参与重大决策和选择管理者等权利。

**第五条** 公司从事经营活动，必须遵守法律、行政法规，遵守社会公德、商业道德，诚实守信，接受政府和社会公众的监督，承担社会责任。

公司的合法权益受法律保护，不受侵犯。

**第六条** 设立公司，应当依法向公司登记机关申请设立登记。符合本法规定的设立条件的，由公司登记机关分别登记为有限责任公司或者股份有限公司；不符合本法规定的设立条件的，不得登记为有限责任公司或者股份有限公司。

法律、行政法规规定设立公司必须报经批准的，应当在公司登记前依法办理批准手续。

公众可以向公司登记机关申请查询公司登记事项，公司登记机关应当提供查询服务。

**第七条** 依法设立的公司，由公司登记机关发给公司营业执照。公司营业执照签发日期为公司成立日期。

公司营业执照应当载明公司的名称、住所、注册资本、经营范围、法定代表人姓名等事项。

公司营业执照记载的事项发生变更的，公司应当依法办理变更登记，由公司登记机关换发营业执照。

**第八条** 依照本法设立的有限责任公司，必须在公司名称中标明有限责任公司或者有限公司字样。

依照本法设立的股份有限公司，必须在公司名称中标明股份有限公司或者股份公司字样。

**第九条** 有限责任公司变更为股份有限公司，应当符合本法规定的股份有限公司的条件。股份有限公司变更为有限责任公司，应当符合本法规定的有限责任公司的条件。

有限责任公司变更为股份有限公司的，或者股份有限公司变更为有限责任公司的，公司变更前的债权、债务由变更后的公司承继。

**第十条** 公司以其主要办事机构所在地为住所。

**第十一条** 设立公司必须依法制定公司章程。公司章程对公司、股东、董事、监事、高级管理人员具有约束力。

**第十二条** 公司的经营范围由公司章程规定，并依法登记。公司可以修改公司章程，改变经营范围，但是应当办理变更登记。

公司的经营范围中属于法律、行政法规规定须经批准的项目，应当依法经过批准。

**第十三条** 公司法定代表人依照公司章程的规定，由董事长、执行董事或者经理担任，并依法登记。公司法定代表人变更，应当办理变更登记。

**第十四条** 公司可以设立分公司。设立分公司，应当向公司登记机关申请登记，领取营业执照。分公司不具有法人资格，其民事责任由公司承担。

公司可以设立子公司，子公司具有法人资格，依法独立承担民事责任。

**第十五条** 公司可以向其他企业投资；但是，除法律另有规定外，不得成为对所投资企业的债务承担连带责任的出资人。

**第十六条** 公司与其他企业投资或者为他人提供担保，依照公司章程的规定，由董事会或者股东会、股东大会决议；公司章程对投资或者担保的总额及单项投资或者担保的数额有限额规定的，不得超过规定的限额。

公司为公司股东或者实际控制人提供担保的，必须经股东会或者股东大会决议。

前款规定的股东或者受前款规定的实际控制人支配的股东，不得参加前款规定事项的表决。该项表决由出席会议的其他股东所持表决权的过半数通过。

**第十七条** 公司必须保护职工的合法权益，依法与职工签订劳动合同，参加社会保险，加强劳动保护，实现安全生产。

公司应当采用多种形式，加强公司职工的职业教育和岗位培训，提高职工素质。

**第十八条** 公司职工依照《中华人民共和国工会法》组织工会，开展工会活动，维护职工合法权益。公司应当为本公司工会提供必要的活动条件。公司工会代表职工就职工的劳动报酬、工作时间、福利、保险和劳动安全卫生等事项依法与公司签订集体合同。

公司依照宪法和有关法律的规定，通过职工代表大会或者其他形式，实行民主管理。

公司研究决定改制以及经营方面的重大问题、制定重要的规章制度时，应当听取公司工会的意见，并通过职工代表大会或者其他形式听取职工的意见和建议。

**第十九条** 在公司中，根据中国共产党章程的规定，设立中国共产党的组织，开展党的活动。公司应当为党组织的活动提供必要条件。

**第二十条** 公司股东应当遵守法律、行政法规和公司章程，依法行使股东权利，不得滥用股东权利损害公司或者其他股东的利益；不得滥用公司法人独立地位和股东有限责任损害公司债权人的利益。

公司股东滥用股东权利给公司或者其他股东造成损失的，应当依法承担赔偿责任。

公司股东滥用公司法人独立地位和股东有限责任，逃避债务，严重损害公司债权人利益的，应当对公司债务承担连带责任。

**第二十一条** 公司的控股股东、实际控制人、董事、监事、高级管理人员不得利用其关联关系损害公司利益。

违反前款规定，给公司造成损失的，应当承担赔偿责任。

**第二十二条** 公司股东会或者股东大会、董事会的决议内容违反法律、行政法规的无效。

股东会或者股东大会、董事会的会议召集程序、表决方式违反法律、行政法规或者公司章程，或者决议内容违反公司章程的，股东可以自决议作出之日起六十日内，请求人民法院撤销。

股东依照前款规定提起诉讼的，人民法院可以应公司的请求，要求股东提供相应担保。

公司根据股东会或者股东大会、董事会决议已办理变更登记的，人民法院宣告该决议无效或者撤销该决议后，公司应当向公司登记机关申请撤销变更登记。

## **第二章 有限责任公司的设立和组织机构**

### **第一节 设立**

**第二十三条** 设立有限责任公司，应当具备下列条件：

- (一) 股东符合法定人数；
- (二) 有符合公司章程规定的全体股东认缴的出资额；
- (三) 股东共同制定公司章程；
- (四) 有公司名称，建立符合有限责任公司要求的组织机构；
- (五) 有公司住所。

**第二十四条** 有限责任公司由五十个以下股东出资设立。

**第二十五条** 有限责任公司章程应当载明下列事项：

- (一) 公司名称和住所；
- (二) 公司经营范围；
- (三) 公司注册资本；
- (四) 股东的姓名或者名称；
- (五) 股东的出资方式、出资额和出资时间；
- (六) 公司的机构及其产生办法、职权、议事规则；
- (七) 公司法定代表人；
- (八) 股东会会议认为需要规定的其他事项。

股东应当在公司章程上签名、盖章。

**第二十六条** 有限责任公司的注册资本为在公司登记机关登记的全体股东认缴的出资额。

法律、行政法规以及国务院决定对有限责任公司注册资本实缴、注册资本最低限额另有规定的，从其规定。

**第二十七条** 股东可以用货币出资，也可以用实物、知识产权、土地使用权等可以用货币估价并可以依法转让的非货币财产作价出资；但是，法律、行政法规规定不得作为出资的财产除外。

对作为出资的非货币财产应当评估作价，核实财产，不得高估或者低估作价。法律、行政法规对评估作价有规定的，从其规定。

**第二十八条** 股东应当按期足额缴纳公司章程中规定的各自所认缴的出资额。股东以货币出资的，应当将货币出资足额存入有限责任公司在银行开设的账户；以非货币财产出资的，应当依法办理其财产权的转移手续。

股东不按照前款规定缴纳出资的，除应当向公司足额缴纳外，还应当向已按期足额缴纳出资的股东承担违约责任。

**第二十九条** 股东认足公司章程规定的出资后，由全体股东指定的代表或者共同委托的代理人向公司登记机关报送公司登记申请书、公司章程等文件，申请设立登记。

**第三十条** 有限责任公司成立后，发现作为设立公司出资的非货币财产的实际价额显著低于公司章程所定价额的，应当由交付该出资的股东补足其差额；公司设立时的其他股东承担连带责任。

**第三十一条** 有限责任公司成立后，应当向股东签发出资证明书。

出资证明书应当载明下列事项：

- （一）公司名称；
- （二）公司成立日期；
- （三）公司注册资本；
- （四）股东的姓名或者名称、缴纳的出资额和出资日期；
- （五）出资证明书的编号和核发日期。

出资证明书由公司盖章。

**第三十二条** 有限责任公司应当置备股东名册，记载下列事项：

- （一）股东的姓名或者名称及住所；

(二) 股东的出资额;

(三) 出资证明书编号。

记载于股东名册的股东，可以依股东名册主张行使股东权利。

公司应当将股东的姓名或者名称向公司登记机关登记；登记事项发生变更的，应当办理变更登记。未经登记或者变更登记的，不得对抗第三人。

**第三十三条** 股东有权查阅、复制公司章程、股东会会议记录、董事会会议决议、监事会会议决议和财务会计报告。

股东可以要求查阅公司会计账簿。股东要求查阅公司会计账簿的，应当向公司提出书面请求，说明目的。公司有合理根据认为股东查阅会计账簿有不正当目的，可能损害公司合法利益的，可以拒绝提供查阅，并应当自股东提出书面请求之日起十五日内书面答复股东并说明理由。公司拒绝提供查阅的，股东可以请求人民法院要求公司提供查阅。

**第三十四条** 股东按照实缴的出资比例分取红利；公司新增资本时，股东有权优先按照实缴的出资比例认缴出资。但是，全体股东约定不按照出资比例分取红利或者不按照出资比例优先认缴出资的除外。

**第三十五条** 公司成立后，股东不得抽逃出资。

## **第二节 组织 机构**

**第三十六条** 有限责任公司股东会由全体股东组成。股东会是公司的权力机构，依照本法行使职权。

**第三十七条** 股东会行使下列职权：

(一) 决定公司的经营方针和投资计划；



(二) 选举和更换非由职工代表担任的董事、监事，决定有关董事、监事的报酬事项；

(三) 审议批准董事会的报告；

(四) 审议批准监事会或者监事的报告；

(五) 审议批准公司的年度财务预算方案、决算方案；

(六) 审议批准公司的利润分配方案和弥补亏损方案；

(七) 对公司增加或者减少注册资本作出决议；

(八) 对发行公司债券作出决议；

(九) 对公司合并、分立、解散、清算或者变更公司形式作出决议；

(十) 修改公司章程；

(十一) 公司章程规定的其他职权。

对前款所列事项股东以书面形式一致表示同意的，可以不召开股东会会议，直接作出决定，并由全体股东在决定文件上签名、盖章。

**第三十八条** 首次股东会会议由出资最多的股东召集和主持，依照本法规定行使职权。

**第三十九条** 股东会会议分为定期会议和临时会议。

定期会议应当依照公司章程的规定按时召开。代表十分之一以上表决权的股东，三分之一以上的董事，监事会或者不设监事会的公司的监事提议召开临时会议的，应当召开临时会议。

**第四十条** 有限责任公司设立董事会的，股东会会议由董事会召集，董事长主持；董事长不能履行职务或者不履行职务的，由副董事长主持；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事主持。

有限责任公司不设董事会的，股东会会议由执行董事召集和主持。

董事会或者执行董事不能履行或者不履行召集股东会会议职责的，由监事会或者不设监事会的公司的监事召集和主持；监事会或者监事不召集和主持的，代表十分之一以上表决权的股东可以自行召集和主持。

**第四十一条** 召开股东会会议，应当于会议召开十五日前通知全体股东；但是，公司章程另有规定或者全体股东另有约定的除外。

股东会应当对所议事项的决定作成会议记录，出席会议的股东应当在会议记录上签名。

**第四十二条** 股东会会议由股东按照出资比例行使表决权；但是，公司章程另有规定的除外。

**第四十三条** 股东会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

股东会会议作出修改公司章程、增加或者减少注册资本的决议，以及公司合并、分立、解散或者变更公司形式的决议，必须经代表三分之二以上表决权的股东通过。

**第四十四条** 有限责任公司设董事会，其成员为三人至十三人；但是，本法第五十条另有规定的除外。

两个以上的国有企业或者两个以上的其他国有投资主体投资设立的有限责任公司，其董事会成员中应当有公司职工代表；其他有限责任公司董事会成员中可以有公司职工代表。董事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

董事会设董事长一人，可以设副董事长。董事长、副董事长的产生办法由公司章程规定。

**第四十五条** 董事任期由公司章程规定，但每届任期不得超过三年。董事任期届满，连选可以连任。

董事任期届满未及时改选，或者董事在任期内辞职导致董事会成员低于法定人数的，在改选出的董事就任前，原董事仍应当依照法律、行政法规和公司章程的规定，履行董事职务。

**第四十六条** 董事会对股东会负责，行使下列职权：

- （一）召集股东会会议，并向股东会报告工作；
- （二）执行股东会的决议；
- （三）决定公司的经营计划和投资方案；
- （四）制订公司的年度财务预算方案、决算方案；
- （五）制订公司的利润分配方案和弥补亏损方案；
- （六）制订公司增加或者减少注册资本以及发行公司债券的方案；
- （七）制订公司合并、分立、解散或者变更公司形式的方案；
- （八）决定公司内部管理机构的设置；
- （九）决定聘任或者解聘公司经理及其报酬事项，并根据经理的提名决定聘任或者解聘公司副经理、财务负责人及其报酬事项；
- （十）制定公司的基本管理制度；
- （十一）公司章程规定的其他职权。

**第四十七条** 董事会会议由董事长召集和主持；董事长不能履行职务或者不履行职务的，由副董事长召集和主持；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事召集和主持。

**第四十八条** 董事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

董事会应当对所议事项的决定作成会议记录，出席会议的董事应当在会议记录上签名。

董事会决议的表决，实行一人一票。

**第四十九条** 有限责任公司可以设经理，由董事会决定聘任或者解聘。经理对董事会负责，行使下列职权：

- （一）主持公司的生产经营管理工作，组织实施董事会决议；
- （二）组织实施公司年度经营计划和投资方案；
- （三）拟订公司内部管理机构设置方案；
- （四）拟订公司的基本管理制度；
- （五）制定公司的具体规章；
- （六）提请聘任或者解聘公司副经理、财务负责人；
- （七）决定聘任或者解聘除应由董事会决定聘任或者解聘以外的负责管理人员；
- （八）董事会授予的其他职权。

公司章程对经理职权另有规定的，从其规定。

经理列席董事会会议。

**第五十条** 股东人数较少或者规模较小的有限责任公司，可以设一名执行董事，不设董事会。执行董事可以兼任公司经理。

执行董事的职权由公司章程规定。

**第五十一条** 有限责任公司设监事会，其成员不得少于三人。股东人数较少或者规模较小的有限责任公司，可以设一至二名监事，不设监事会。

监事会应当包括股东代表和适当比例的公司职工代表，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。监事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

监事会设主席一人，由全体监事过半数选举产生。监事会主席召集和主持监事会会议；监事会主席不能履行职务或者不履行职务的，由半数以上监事共同推举一名监事召集和主持监事会会议。

董事、高级管理人员不得兼任监事。

**第五十二条** 监事的任期每届为三年。监事任期届满，连选可以连任。

监事任期届满未及时改选，或者监事在任期内辞职导致监事会成员低于法定人数的，在改选出的监事就任前，原监事仍应当依照法律、行政法规和公司章程的规定，履行监事职务。

**第五十三条** 监事会、不设监事会的公司的监事行使下列职权：

（一）检查公司财务；

（二）对董事、高级管理人员执行公司职务的行为进行监督，对违反法律、行政法规、公司章程或者股东会决议的董事、高级管理人员提出罢免的建议；

(三) 当董事、高级管理人员的行为损害公司的利益时，要求董事、高级管理人员予以纠正；

(四) 提议召开临时股东会会议，在董事会不履行本法规定的召集和主持股东会会议职责时召集和主持股东会会议；

(五) 向股东会会议提出提案；

(六) 依照本法第一百五十一条的规定，对董事、高级管理人员提起诉讼；

(七) 公司章程规定的其他职权。

**第五十四条** 监事可以列席董事会会议，并对董事会决议事项提出质询或者建议。

监事会、不设监事会的公司的监事发现公司经营情况异常，可以进行调查；必要时，可以聘请会计师事务所等协助其工作，费用由公司承担。

**第五十五条** 监事会每年度至少召开一次会议，监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经半数以上监事通过。

监事会应当对所议事项的决定作成会议记录，出席会议的监事应当在会议记录上签名。

**第五十六条** 监事会、不设监事会的公司的监事行使职权所必需的费用，由公司承担。

### **第三节 一人有限责任公司的特别规定**

**第五十七条** 一人有限责任公司的设立和组织机构，适用本节规定；本节没有规定的，适用本章第一节、第二节的规定。

本法所称一人有限责任公司，是指只有一个自然人股东或者一个法人股东的有限责任公司。

**第五十八条** 一个自然人只能投资设立一个一人有限责任公司。该一人有限责任公司不能投资设立新的一人有限责任公司。

**第五十九条** 一人有限责任公司应当在公司登记中注明自然人独资或者法人独资，并在公司营业执照中载明。

**第六十条** 一人有限责任公司章程由股东制定。

**第六十一条** 一人有限责任公司不设股东会。股东作出本法第三十七条第一款所列决定时，应当采用书面形式，并由股东签名后置备于公司。

**第六十二条** 一人有限责任公司应当在每一会计年度终了时编制财务会计报告，并经会计师事务所审计。

**第六十三条** 一人有限责任公司的股东不能证明公司财产独立于股东自己的财产的，应当对公司债务承担连带责任。

### **第四节 国有独资公司的特别规定**

**第六十四条** 国有独资公司的设立和组织机构，适用本节规定；本节没有规定的，适用本章第一节、第二节的规定。

本法所称国有独资公司，是指国家单独出资、由国务院或者地方人民政府授权本级人民政府国有资产监督管理机构履行出资人职责的有限责任公司。

**第六十五条** 国有独资公司章程由国有资产监督管理机构制定，或者由董事会制订报国有资产监督管理机构批准。

**第六十六条** 国有独资公司不设股东会，由国有资产监督管理机构行使股东会职权。国有资产监督管理机构可以授权公司董事会行使股东会的部分职权，决定公司的重大事项，但公司的合并、分立、解散、增加或者减少注册资本和发行公司债券，必须由国有资产监督管理机构决定；其中，重要的国有独资公司合并、分立、解散、申请破产的，应当由国有资产监督管理机构审核后，报本级人民政府批准。

前款所称重要的国有独资公司，按照国务院的规定确定。

**第六十七条** 国有独资公司设董事会，依照本法第四十六条、第六十六条的规定行使职权。董事每届任期不得超过三年。董事会成员中应当有公司职工代表。

董事会成员由国有资产监督管理机构委派；但是，董事会成员中的职工代表由公司职工代表大会选举产生。

董事会设董事长一人，可以设副董事长。董事长、副董事长由国有资产监督管理机构从董事会成员中指定。

**第六十八条** 国有独资公司设经理，由董事会聘任或者解聘。经理依照本法第四十九条规定行使职权。

经国有资产监督管理机构同意，董事会成员可以兼任经理。

**第六十九条** 国有独资公司的董事长、副董事长、董事、高级管理人员，未经国有资产监督管理机构同意，不得在其他有限责任公司、股份有限公司或者其他经济组织兼职。

**第七十条** 国有独资公司监事会成员不得少于五人，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。



监事会成员由国有资产监督管理机构委派；但是，监事会成员中的职工代表由公司职工代表大会选举产生。监事会主席由国有资产监督管理机构从监事会成员中指定。

监事会行使本法第五十三条第（一）项至第（三）项规定的职权和国务院规定的其他职权。

### **第三章 有限责任公司的股权转让**

**第七十一条** 有限责任公司的股东之间可以相互转让其全部或者部分股权。

股东向股东以外的人转让股权，应当经其他股东过半数同意。股东应就其股权转让事项书面通知其他股东征求同意，其他股东自接到书面通知之日起满三十日未答复的，视为同意转让。其他股东半数以上不同意转让的，不同意的股东应当购买该转让的股权；不购买的，视为同意转让。

经股东同意转让的股权，在同等条件下，其他股东有优先购买权。两个以上股东主张行使优先购买权的，协商确定各自的购买比例；协商不成的，按照转让时各自的出资比例行使优先购买权。

公司章程对股权转让另有规定的，从其规定。

**第七十二条** 人民法院依照法律规定的强制执行程序转让股东的股权时，应当通知公司及全体股东，其他股东在同等条件下有优先购买权。其他股东自人民法院通知之日起满二十日不行使优先购买权的，视为放弃优先购买权。

**第七十三条** 依照本法第七十一条、第七十二条转让股权后，公司应当注销原股东的出资证明书，向新股东签发出资证明书，并相应修改公司章程和股东名册中有关股东及其出资额的记载。对公司章程的该项修改不需再由股东会表决。

**第七十四条** 有下列情形之一的，对股东会该项决议投反对票的股东可以请求公司按照合理的价格收购其股权：

（一）公司连续五年不向股东分配利润，而公司该五年连续盈利，并且符合本法规定的分配利润条件的；

（二）公司合并、分立、转让主要财产的；

（三）公司章程规定的营业期限届满或者章程规定的其他解散事由出现，股东会会议通过决议修改章程使公司存续的。

自股东会会议决议通过之日起六十日内，股东与公司不能达成股权收购协议的，股东可以自股东会会议决议通过之日起九十日内向人民法院提起诉讼。

**第七十五条** 自然人股东死亡后，其合法继承人可以继承股东资格；但是，公司章程另有规定的除外。

## **第四章 股份有限公司的设立和组织机构**

### **第一节 设立**

**第七十六条** 设立股份有限公司，应当具备下列条件：

（一）发起人符合法定人数；

（二）有符合公司章程规定的全体发起人认购的股本总额或者募集的实收股本总额；

（三）股份发行、筹办事项符合法律规定；

（四）发起人制订公司章程，采用募集方式设立的经创立大会通过；

(五) 有公司名称，建立符合股份有限公司要求的组织机构；

(六) 有公司住所。

**第七十七条** 股份有限公司的设立，可以采取发起设立或者募集设立的方式。

发起设立，是指由发起人认购公司应发行的全部股份而设立公司。

募集设立，是指由发起人认购公司应发行股份的一部分，其余股份向社会公开募集或者向特定对象募集而设立公司。

**第七十八条** 设立股份有限公司，应当有二人以上二百人以下发起人，其中须有半数以上的发起人在中国境内有住所。

**第七十九条** 股份有限公司发起人承担公司筹办事务。

发起人应当签订发起人协议，明确各自在公司设立过程中的权利和义务。

**第八十条** 股份有限公司采取发起设立方式设立的，注册资本为在公司登记机关登记的全体发起人认购的股本总额。在发起人认购的股份缴足前，不得向他人募集股份。

股份有限公司采取募集方式设立的，注册资本为在公司登记机关登记的实收股本总额。

法律、行政法规以及国务院决定对股份有限公司注册资本实缴、注册资本最低限额另有规定的，从其规定。

**第八十一条** 股份有限公司章程应当载明下列事项：

(一) 公司名称和住所；

(二) 公司经营范围；

- (三) 公司设立方式;
- (四) 公司股份总数、每股金额和注册资本;
- (五) 发起人的姓名或者名称、认购的股份数、出资方式 and 出资时间;
- (六) 董事会的组成、职权和议事规则;
- (七) 公司法定代表人;
- (八) 监事会的组成、职权和议事规则;
- (九) 公司利润分配办法;
- (十) 公司的解散事由与清算办法;
- (十一) 公司的通知和公告办法;
- (十二) 股东大会会议认为需要规定的其他事项。

**第八十二条** 发起人的出资方式，适用本法第二十七条的规定。

**第八十三条** 以发起设立方式设立股份有限公司的，发起人应当书面认足公司章程规定其认购的股份，并按照公司章程规定缴纳出资。以非货币财产出资的，应当依法办理其财产权的转移手续。

发起人不依照前款规定缴纳出资的，应当按照发起人协议承担违约责任。

发起人认足公司章程规定的出资后，应当选举董事会和监事会，由董事会向公司登记机关报送公司章程以及法律、行政法规规定的其他文件，申请设立登记。

**第八十四条** 以募集设立方式设立股份有限公司的，发起人认购的股份不得少于公司股份总数的百分之三十五；但是，法律、行政法规另有规定的，从其规定。

**第八十五条** 发起人向社会公开募集股份，必须公告招股说明书，并制作认股书。认股书应当载明本法第八十六条所列事项，由认股人填写认购股数、金额、住所，并签名、盖章。认股人按照所认购股数缴纳股款。

**第八十六条** 招股说明书应当附有发起人制订的公司章程，并载明下列事项：

- （一）发起人认购的股份数；
- （二）每股的票面金额和发行价格；
- （三）无记名股票的发行总数；
- （四）募集资金的用途；
- （五）认股人的权利、义务；
- （六）本次募股的起止期限及逾期未募足时认股人可以撤回所认股份的说明。

**第八十七条** 发起人向社会公开募集股份，应当由依法设立的证券公司承销，签订承销协议。

**第八十八条** 发起人向社会公开募集股份，应当同银行签订代收股款协议。

代收股款的银行应当按照协议代收和保存股款，向缴纳股款的认股人出具收款单据，并负有向有关部门出具收款证明的义务。

**第八十九条** 发行股份的股款缴足后，必须经依法设立的验资机构验资并出具证明。发起人应当自股款缴足之日起三十日内主持召开公司创立大会。创立大会由发起人、认股人组成。

发行的股份超过招股说明书规定的截止期限尚未募足的，或者发行股份的股款缴足后，发起人在三十日内未召开创立大会的，认股人可以按照所缴股款并加算银行同期存款利息，要求发起人返还。

**第九十条** 发起人应当在创立大会召开十五日前将会议日期通知各认股人或者予以公告。创立大会应有代表股份总数过半数的发起人、认股人出席，方可举行。

创立大会行使下列职权：

- (一) 审议发起人关于公司筹办情况的报告；
- (二) 通过公司章程；
- (三) 选举董事会成员；
- (四) 选举监事会成员；
- (五) 对公司的设立费用进行审核；
- (六) 对发起人用于抵作股款的财产的作价进行审核；
- (七) 发生不可抗力或者经营条件发生重大变化直接影响公司设立的，可以作出不设立公司的决议。

创立大会对前款所列事项作出决议，必须经出席会议的认股人所持表决权过半数通过。

**第九十一条** 发起人、认股人缴纳股款或者交付抵作股款的出资后，除未按期募足股份、发起人未按期召开创立大会或者创立大会决议不设立公司的情形外，不得抽回其股本。

**第九十二条** 董事会应于创立大会结束后三十日内，向公司登记机关报送下列文件，申请设立登记：

- (一) 公司登记申请书；
- (二) 创立大会的会议记录；
- (三) 公司章程；
- (四) 验资证明；
- (五) 法定代表人、董事、监事的任职文件及其身份证明；
- (六) 发起人的法人资格证明或者自然人身份证明；
- (七) 公司住所证明。

以募集方式设立股份有限公司公开发行股票，还应当由公司登记机关报送国务院证券监督管理机构的核准文件。

**第九十三条** 股份有限公司成立后，发起人未按照公司章程的规定缴足出资的，应当补缴；其他发起人承担连带责任。

股份有限公司成立后，发现作为设立公司出资的非货币财产的实际价额显著低于公司章程所定价额的，应当由交付该出资的发起人补足其差额；其他发起人承担连带责任。

**第九十四条** 股份有限公司的发起人应当承担下列责任：

(一) 公司不能成立时，对设立行为所产生的债务和费用负连带责任；

(二) 公司不能成立时，对认股人已缴纳的股款，负返还股款并加算银行同期存款利息的连带责任；

(三) 在公司设立过程中，由于发起人的过失致使公司利益受到损害的，应当对公司承担赔偿责任。

**第九十五条** 有限责任公司变更为股份有限公司时，折合的实收股本总额不得高于公司净资产额。有限责任公司变更为股份有限公司，为增加资本公开发行股份时，应当依法办理。

**第九十六条** 股份有限公司应当将公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议记录、监事会会议记录、财务会计报告置备于本公司。

**第九十七条** 股东有权查阅公司章程、股东名册、公司债券存根、股东大会会议记录、董事会会议决议、监事会会议决议、财务会计报告，对公司的经营提出建议或者质询。

## **第二节 股东大会**

**第九十八条** 股份有限公司股东大会由全体股东组成。股东大会是公司的权力机构，依照本法行使职权。

**第九十九条** 本法第三十七条第一款关于有限责任公司股东会职权的规定，适用于股份有限公司股东大会。

**第一百条** 股东大会应当每年召开一次年会。有下列情形之一的，应当在两个月内召开临时股东大会：



(一) 董事人数不足本法规定人数或者公司章程所定人数的三分之二时;

(二) 公司未弥补的亏损达实收股本总额三分之一时;

(三) 单独或者合计持有公司百分之十以上股份的股东请求时;

(四) 董事会认为必要时;

(五) 监事会提议召开时;

(六) 公司章程规定的其他情形。

**第一百零一条** 股东大会会议由董事会召集，董事长主持；董事长不能履行职务或者不履行职务的，由副董事长主持；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事主持。

董事会不能履行或者不履行召集股东大会会议职责的，监事会应当及时召集和主持；监事会不召集和主持的，连续九十日以上单独或者合计持有公司百分之十以上股份的股东可以自行召集和主持。

**第一百零二条** 召开股东大会会议，应当将会议召开的时间、地点和审议的事项于会议召开二十日前通知各股东；临时股东大会应当于会议召开十五日前通知各股东；发行无记名股票的，应当于会议召开三十日前公告会议召开的时间、地点和审议事项。

单独或者合计持有公司百分之三以上股份的股东，可以在股东大会召开十日前提出临时提案并书面提交董事会；董事会应当在收到提案后二日内通知其他股东，并将该临时提案提交股东大会审议。临时提案的内容应当属于股东大会职权范围，并有明确议题和具体决议事项。

股东大会不得对前两款通知中未列明的事项作出决议。

无记名股票持有人出席股东大会会议的，应当于会议召开五日前至股东大会闭会时将股票交存于公司。

**第一百零三条** 股东出席股东大会会议，所持每一股份有一表决权。但是，公司持有的本公司股份没有表决权。

股东大会作出决议，必须经出席会议的股东所持表决权过半数通过。但是，股东大会作出修改公司章程、增加或者减少注册资本的决议，以及公司合并、分立、解散或者变更公司形式的决议，必须经出席会议的股东所持表决权的三分之二以上通过。

**第一百零四条** 本法和公司章程规定公司转让、受让重大资产或者对外提供担保等事项必须经股东大会作出决议的，董事会应当及时召集股东大会会议，由股东大会就上述事项进行表决。

**第一百零五条** 股东大会选举董事、监事，可以依照公司章程的规定或者股东大会的决议，实行累积投票制。

本法所称累积投票制，是指股东大会选举董事或者监事时，每一股份拥有与应选董事或者监事人数相同的表决权，股东拥有的表决权可以集中使用。

**第一百零六条** 股东可以委托代理人出席股东大会会议，代理人应当向公司提交股东授权委托书，并在授权范围内行使表决权。

**第一百零七条** 股东大会应当对所议事项的决定作成会议记录，主持人、出席会议的董事应当在会议记录上签名。会议记录应当与出席股东的签名册及代理出席的委托书一并保存。

### **第三节 董事会、经理**

**第一百零八条** 股份有限公司设董事会，其成员为五人至十九人。

董事会成员中可以有公司职工代表。董事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

本法第四十五条关于有限责任公司董事任期的规定，适用于股份有限公司董事。

本法第四十六条关于有限责任公司董事会职权的规定，适用于股份有限公司董事会。

**第一百零九条** 董事会设董事长一人，可以设副董事长。董事长和副董事长由董事会以全体董事的过半数选举产生。

董事长召集和主持董事会会议，检查董事会决议的实施情况。副董事长协助董事长工作，董事长不能履行职务或者不履行职务的，由副董事长履行职务；副董事长不能履行职务或者不履行职务的，由半数以上董事共同推举一名董事履行职务。

**第一百一十条** 董事会每年度至少召开两次会议，每次会议应当于会议召开十日前通知全体董事和监事。

代表十分之一以上表决权的股东、三分之一以上董事或者监事会，可以提议召开董事会临时会议。董事长应当自接到提议后十日内，召集和主持董事会会议。

董事会召开临时会议，可以另定召集董事会的通知方式和通知时限。

**第一百一十一条** 董事会会议应有过半数的董事出席方可举行。董事会作出决议，必须经全体董事的过半数通过。

董事会决议的表决，实行一人一票。

**第一百一十二条** 董事会会议，应由董事本人出席；董事因故不能出席，可以书面委托其他董事代为出席，委托书中应载明授权范围。

董事会应当对会议所议事项的决定作成会议记录，出席会议的董事应当在会议记录上签名。

董事应当对董事会的决议承担责任。董事会的决议违反法律、行政法规或者公司章程、股东大会决议，致使公司遭受严重损失的，参与决议的董事对公司负赔偿责任。但经证明在表决时曾表明异议并记载于会议记录的，该董事可以免除责任。

**第一百一十三条** 股份有限公司设经理，由董事会决定聘任或者解聘。

本法第四十九条关于有限责任公司经理职权的规定，适用于股份有限公司经理。

**第一百一十四条** 公司董事会可以决定由董事会成员兼任经理。

**第一百一十五条** 公司不得直接或者通过子公司向董事、监事、高级管理人员提供借款。

**第一百一十六条** 公司应当定期向股东披露董事、监事、高级管理人员从公司获得报酬的情况。

#### **第四节 监事会**

**第一百一十七条** 股份有限公司设监事会，其成员不得少于三人。

监事会应当包括股东代表和适当比例的公司职工代表，其中职工代表的比例不得低于三分之一，具体比例由公司章程规定。监事会中的职工代表由公司职工通过职工代表大会、职工大会或者其他形式民主选举产生。

监事会设主席一人，可以设副主席。监事会主席和副主席由全体监事过半数选举产生。监事会主席召集和主持监事会会议；监事会主席不能履行职务或者不履行职务的，由监事会副主席召集和主持监事会会

议；监事会副主席不能履行职务或者不履行职务的，由半数以上监事共同推举一名监事召集和主持监事会会议。

董事、高级管理人员不得兼任监事。

本法第五十二条关于有限责任公司监事任期的规定，适用于股份有限公司监事。

**第一百一十八条** 本法第五十三条、第五十四条关于有限责任公司监事会职权的规定，适用于股份有限公司监事会。

监事会行使职权所必需的费用，由公司承担。

**第一百一十九条** 监事会每六个月至少召开一次会议。监事可以提议召开临时监事会会议。

监事会的议事方式和表决程序，除本法有规定的外，由公司章程规定。

监事会决议应当经半数以上监事通过。

监事会应当对所议事项的决定作成会议记录，出席会议的监事应当在会议记录上签名。

## **第五节 上市公司组织机构的特别规定**

**第一百二十条** 本法所称上市公司，是指其股票在证券交易所上市交易的股份有限公司。

**第一百二十一条** 上市公司在一年内购买、出售重大资产或者担保金额超过公司资产总额百分之三十的，应当由股东大会作出决议，并经出席会议的股东所持表决权的三分之二以上通过。

**第一百二十二条** 上市公司设独立董事，具体办法由国务院规定。

**第一百二十三条** 上市公司设董事会秘书，负责公司股东大会和董事会会议的筹备、文件保管以及公司股东资料的管理，办理信息披露事务等事宜。

**第一百二十四条** 上市公司董事与董事会会议决议事项所涉及的企业有关联关系的，不得对该项决议行使表决权，也不得代理其他董事行使表决权。该董事会会议由过半数的无关联关系董事出席即可举行，董事会会议所作决议须经无关联关系董事过半数通过。出席董事会的无关联关系董事人数不足三人的，应将该事项提交上市公司股东大会审议。

## **第五章 股份有限公司的股份发行和转让**

### **第一节 股份发行**

**第一百二十五条** 股份有限公司的资本划分为股份，每一股的金额相等。

公司的股份采取股票的形式。股票是公司签发的证明股东所持股份的凭证。

**第一百二十六条** 股份的发行，实行公平、公正的原则，同种类的每一股份应当具有同等权利。

同次发行的同种类股票，每股的发行条件和价格应当相同；任何单位或者个人所认购的股份，每股应当支付相同价额。

**第一百二十七条** 股票发行价格可以按票面金额，也可以超过票面金额，但不得低于票面金额。

**第一百二十八条** 股票采用纸面形式或者国务院证券监督管理机构规定的其他形式。

股票应当载明下列主要事项：

- (一) 公司名称;
- (二) 公司成立日期;
- (三) 股票种类、票面金额及代表的股份数;
- (四) 股票的编号。

股票由法定代表人签名，公司盖章。

发起人的股票，应当标明发起人股票字样。

**第一百二十九条** 公司发行的股票，可以为记名股票，也可以为无记名股票。

公司向发起人、法人发行的股票，应当为记名股票，并应当记载该发起人、法人的名称或者姓名，不得另立户名或者以代表人姓名记名。

**第一百三十条** 公司发行记名股票的，应当置备股东名册，记载下列事项：

- (一) 股东的姓名或者名称及住所;
- (二) 各股东所持股份数;
- (三) 各股东所持股票的编号;
- (四) 各股东取得股份的日期。

发行无记名股票的，公司应当记载其股票数量、编号及发行日期。

**第一百三十一条** 国务院可以对公司发行本法规定以外的其他种类的股份，另行作出规定。

**第一百三十二条** 股份有限公司成立后，即向股东正式交付股票。公司成立前不得向股东交付股票。

**第一百三十三条** 公司发行新股，股东大会应当对下列事项作出决议：

- （一）新股种类及数额；
- （二）新股发行价格；
- （三）新股发行的起止日期；
- （四）向原有股东发行新股的种类及数额。

**第一百三十四条** 公司经国务院证券监督管理机构核准公开发行新股时，必须公告新股招股说明书和财务会计报告，并制作认股书。

本法第八十七条、第八十八条的规定适用于公司公开发行新股。

**第一百三十五条** 公司发行新股，可以根据公司经营情况和财务状况，确定其作价方案。

**第一百三十六条** 公司发行新股募足股款后，必须向公司登记机关办理变更登记，并公告。

## **第二节 股份转让**

**第一百三十七条** 股东持有的股份可以依法转让。

**第一百三十八条** 股东转让其股份，应当在依法设立的证券交易场所进行或者按照国务院规定的其他方式进行。

**第一百三十九条** 记名股票，由股东以背书方式或者法律、行政法规规定的其他方式转让；转让后由公司将受让人的姓名或者名称及住所记载于股东名册。



股东大会召开前二十日内或者公司决定分配股利的基准日前五日内，不得进行前款规定的股东名册的变更登记。但是，法律对上市公司股东名册变更登记另有规定的，从其规定。

**第一百四十条** 无记名股票的转让，由股东将该股票交付给受让人后即发生转让的效力。

**第一百四十一条** 发起人持有的本公司股份，自公司成立之日起一年内不得转让。公司公开发行股份前已发行的股份，自公司股票在证券交易所上市交易之日起一年内不得转让。

公司董事、监事、高级管理人员应当向公司申报所持有的本公司的股份及其变动情况，在任职期间每年转让的股份不得超过其所持有本公司股份总数的百分之二十五；所持本公司股份自公司股票上市交易之日起一年内不得转让。上述人员离职后半年内，不得转让其所持有的本公司股份。公司章程可以对公司董事、监事、高级管理人员转让其所持有的本公司股份作出其他限制性规定。

**第一百四十二条** 公司不得收购本公司股份。但是，有下列情形之一的除外：

- (一) 减少公司注册资本；
- (二) 与持有本公司股份的其他公司合并；
- (三) 将股份用于员工持股计划或者股权激励；
- (四) 股东因对股东大会作出的公司合并、分立决议持异议，要求公司收购其股份；
- (五) 将股份用于转换上市公司发行的可转换为股票的公司债券；
- (六) 上市公司为维护公司价值及股东权益所必需。

公司因前款第（一）项、第（二）项规定的情形收购本公司股份的，应当经股东大会决议；公司因前款第（三）项、第（五）项、第（六）项规定的情形收购本公司股份的，可以依照公司章程的规定或者股东大会的授权，经三分之二以上董事出席的董事会会议决议。

公司依照本条第一款规定收购本公司股份后，属于第（一）项情形的，应当自收购之日起十日内注销；属于第（二）项、第（四）项情形的，应当在六个月内转让或者注销；属于第（三）项、第（五）项、第（六）项情形的，公司合计持有的本公司股份数不得超过本公司已发行股份总额的百分之十，并应当在三年内转让或者注销。

上市公司收购本公司股份的，应当依照《中华人民共和国证券法》的规定履行信息披露义务。上市公司因本条第一款第（三）项、第（五）项、第（六）项规定的情形收购本公司股份的，应当通过公开的集中交易方式进行。

公司不得接受本公司的股票作为质押权的标的。

**第一百四十三条** 记名股票被盗、遗失或者灭失，股东可以依照《中华人民共和国民事诉讼法》规定的公示催告程序，请求人民法院宣告该股票失效。人民法院宣告该股票失效后，股东可以向公司申请补发股票。

**第一百四十四条** 上市公司的股票，依照有关法律、行政法规及证券交易所交易规则上市交易。

**第一百四十五条** 上市公司必须依照法律、行政法规的规定，公开其财务状况、经营情况及重大诉讼，在每会计年度内半年公布一次财务会计报告。

## **第六章 公司董事、监事、高级管理人员的资格和义务**

**第一百四十六条** 有下列情形之一的，不得担任公司的董事、监事、高级管理人员：

(一) 无民事行为能力或者限制民事行为能力；

(二) 因贪污、贿赂、侵占财产、挪用财产或者破坏社会主义市场经济秩序，被判处刑罚，执行期满未逾五年，或者因犯罪被剥夺政治权利，执行期满未逾五年；

(三) 担任破产清算的公司、企业的董事或者厂长、经理，对该公司、企业的破产负有个人责任的，自该公司、企业破产清算完结之日起未逾三年；

(四) 担任因违法被吊销营业执照、责令关闭的公司、企业的法定代表人，并负有个人责任的，自该公司、企业被吊销营业执照之日起未逾三年；

(五) 个人所负数额较大的债务到期未清偿。

公司违反前款规定选举、委派董事、监事或者聘任高级管理人员的，该选举、委派或者聘任无效。

董事、监事、高级管理人员在任职期间出现本条第一款所列情形的，公司应当解除其职务。

**第一百四十七条** 董事、监事、高级管理人员应当遵守法律、行政法规和公司章程，对公司负有忠实义务和勤勉义务。

董事、监事、高级管理人员不得利用职权收受贿赂或者其他非法收入，不得侵占公司的财产。

**第一百四十八条** 董事、高级管理人员不得有下列行为：

(一) 挪用公司资金；

(二) 将公司资金以其个人名义或者以其他个人名义开立账户存储;

(三) 违反公司章程的规定, 未经股东会、股东大会或者董事会同意, 将公司资金借贷给他人或者以公司财产为他人提供担保;

(四) 违反公司章程的规定或者未经股东会、股东大会同意, 与本公司订立合同或者进行交易;

(五) 未经股东会或者股东大会同意, 利用职务便利为自己或者他人谋取属于公司的商业机会, 自营或者为他人经营与所任职公司同类的业务;

(六) 接受他人与公司交易的佣金归为己有;

(七) 擅自披露公司秘密;

(八) 违反对公司忠实义务的其他行为。

董事、高级管理人员违反前款规定所得的收入应当归公司所有。

**第一百四十九条** 董事、监事、高级管理人员执行公司职务时违反法律、行政法规或者公司章程的规定, 给公司造成损失的, 应当承担赔偿责任。

**第一百五十条** 股东会或者股东大会要求董事、监事、高级管理人员列席会议的, 董事、监事、高级管理人员应当列席并接受股东的质询。

董事、高级管理人员应当如实向监事会或者不设监事会的有限责任公司的监事提供有关情况和资料, 不得妨碍监事会或者监事行使职权。

**第一百五十一条** 董事、高级管理人员有本法第一百四十九条规定的情形的, 有限责任公司的股东、股份有限公司连续一百八十日以上单独

或者合计持有公司百分之一以上股份的股东，可以书面请求监事会或者不设监事会的有限责任公司的监事向人民法院提起诉讼；监事有本法第一百四十九条规定的情形的，前述股东可以书面请求董事会或者不设董事会的有限责任公司的执行董事向人民法院提起诉讼。

监事会、不设监事会的有限责任公司的监事，或者董事会、执行董事收到前款规定的股东书面请求后拒绝提起诉讼，或者自收到请求之日起三十日内未提起诉讼，或者情况紧急、不立即提起诉讼将会使公司利益受到难以弥补的损害的，前款规定的股东有权为了公司的利益以自己的名义直接向人民法院提起诉讼。

他人侵犯公司合法权益，给公司造成损失的，本条第一款规定的股东可以依照前两款的规定向人民法院提起诉讼。

**第一百五十二条** 董事、高级管理人员违反法律、行政法规或者公司章程的规定，损害股东利益的，股东可以向人民法院提起诉讼。

## **第七章 公司债券**

**第一百五十三条** 本法所称公司债券，是指公司依照法定程序发行、约定在一定期限还本付息的有价证券。

公司发行公司债券应当符合《中华人民共和国证券法》规定的发行条件。

**第一百五十四条** 发行公司债券的申请经国务院授权的部门核准后，应当公告公司债券募集办法。

公司债券募集办法中应当载明下列主要事项：

- (一) 公司名称；
- (二) 债券募集资金的用途；

- (三) 债券总额和债券的票面金额;
- (四) 债券利率的确定方式;
- (五) 还本付息的期限和方式;
- (六) 债券担保情况;
- (七) 债券的发行价格、发行的起止日期;
- (八) 公司净资产额;
- (九) 已发行的尚未到期的公司债券总额;
- (十) 公司债券的承销机构。

**第一百五十五条** 公司以实物券方式发行公司债券的，必须在债券上载明公司名称、债券票面金额、利率、偿还期限等事项，并由法定代表人签名，公司盖章。

**第一百五十六条** 公司债券，可以为记名债券，也可以为无记名债券。

**第一百五十七条** 公司发行公司债券应当置备公司债券存根簿。

发行记名公司债券的，应当在公司债券存根簿上载明下列事项：

- (一) 债券持有人的姓名或者名称及住所;
- (二) 债券持有人取得债券的日期及债券的编号;
- (三) 债券总额，债券的票面金额、利率、还本付息的期限和方式;

#### (四) 债券的发行日期。

发行无记名公司债券的，应当在公司债券存根簿上载明债券总额、利率、偿还期限和方式、发行日期及债券的编号。

**第一百五十八条** 记名公司债券的登记结算机构应当建立债券登记、存管、付息、兑付等相关制度。

**第一百五十九条** 公司债券可以转让，转让价格由转让人与受让人约定。

公司债券在证券交易所上市交易的，按照证券交易所的交易规则转让。

**第一百六十条** 记名公司债券，由债券持有人以背书方式或者法律、行政法规规定的其他方式转让；转让后由公司将受让人的姓名或者名称及住所记载于公司债券存根簿。

无记名公司债券的转让，由债券持有人将该债券交付给受让人后即发生转让的效力。

**第一百六十一条** 上市公司经股东大会决议可以发行可转换为股票的公司债券，并在公司债券募集办法中规定具体的转换办法。上市公司发行可转换为股票的公司债券，应当报国务院证券监督管理机构核准。

发行可转换为股票的公司债券，应当在债券上标明可转换公司债券字样，并在公司债券存根簿上载明可转换公司债券的数额。

**第一百六十二条** 发行可转换为股票的公司债券的，公司应当按照其转换办法向债券持有人换发股票，但债券持有人对转换股票或者不转换股票有选择权。

## 第八章 公司财务、会计

**第一百六十三条** 公司应当依照法律、行政法规和国务院财政部门的规定建立本公司的财务、会计制度。

**第一百六十四条** 公司应当在每一会计年度终了时编制财务会计报告，并依法经会计师事务所审计。

财务会计报告应当依照法律、行政法规和国务院财政部门的规定制作。

**第一百六十五条** 有限责任公司应当依照公司章程规定的期限将财务会计报告送交各股东。

股份有限公司的财务会计报告应当在召开股东大会年会的二十日前置备于本公司，供股东查阅；公开发行股票股份有限公司必须公告其财务会计报告。

**第一百六十六条** 公司分配当年税后利润时，应当提取利润的百分之十列入公司法定公积金。公司法定公积金累计额为公司注册资本的百分之五十以上的，可以不再提取。

公司的法定公积金不足以弥补以前年度亏损的，在依照前款规定提取法定公积金之前，应当先用当年利润弥补亏损。

公司从税后利润中提取法定公积金后，经股东会或者股东大会决议，还可以从税后利润中提取任意公积金。

公司弥补亏损和提取公积金后所余税后利润，有限责任公司依照本法第三十四条的规定分配；股份有限公司按照股东持有的股份比例分配，但股份有限公司章程规定不按持股比例分配的除外。

股东会、股东大会或者董事会违反前款规定，在公司弥补亏损和提取法定公积金之前向股东分配利润的，股东必须将违反规定分配的利润退还公司。

公司持有的本公司股份不得分配利润。



**第一百六十七条** 股份有限公司以超过股票票面金额的发行价格发行股份所得的溢价款以及国务院财政部门规定列入资本公积金的其他收入，应当列为公司资本公积金。

**第一百六十八条** 公司的公积金用于弥补公司的亏损、扩大公司生产经营或者转为增加公司资本。但是，资本公积金不得用于弥补公司的亏损。

法定公积金转为资本时，所留存的该项公积金不得少于转增前公司注册资本的百分之二十五。

**第一百六十九条** 公司聘用、解聘承办公司审计业务的会计师事务所，依照公司章程的规定，由股东会、股东大会或者董事会决定。

公司股东会、股东大会或者董事会就解聘会计师事务所进行表决时，应当允许会计师事务所陈述意见。

**第一百七十条** 公司应当向聘用的会计师事务所提供真实、完整的会计凭证、会计账簿、财务会计报告及其他会计资料，不得拒绝、隐匿、谎报。

**第一百七十一条** 公司除法定的会计账簿外，不得另立会计账簿。

对公司资产，不得以任何个人名义开立账户存储。

## **第九章 公司合并、分立、增资、减资**

**第一百七十二条** 公司合并可以采取吸收合并或者新设合并。

一个公司吸收其他公司为吸收合并，被吸收的公司解散。两个以上公司合并设立一个新的公司为新设合并，合并各方解散。

**第一百七十三条** 公司合并，应当由合并各方签订合并协议，并编制资产负债表及财产清单。公司应当自作出合并决议之日起十日内通知债权人，并于三十日内在报纸上公告。债权人自接到通知书之日起三十日

内，未接到通知书的自公告之日起四十五日内，可以要求公司清偿债务或者提供相应的担保。

**第一百七十四条** 公司合并时，合并各方的债权、债务，应当由合并后存续的公司或者新设的公司承继。

**第一百七十五条** 公司分立，其财产作相应的分割。

公司分立，应当编制资产负债表及财产清单。公司应当自作出分立决议之日起十日内通知债权人，并于三十日内在报纸上公告。

**第一百七十六条** 公司分立前的债务由分立后的公司承担连带责任。但是，公司在分立前与债权人就债务清偿达成的书面协议另有约定的除外。

**第一百七十七条** 公司需要减少注册资本时，必须编制资产负债表及财产清单。

公司应当自作出减少注册资本决议之日起十日内通知债权人，并于三十日内在报纸上公告。债权人自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，有权要求公司清偿债务或者提供相应的担保。

**第一百七十八条** 有限责任公司增加注册资本时，股东认缴新增资本的出资，依照本法设立有限责任公司缴纳出资的有关规定执行。

股份有限公司为增加注册资本发行新股时，股东认购新股，依照本法设立股份有限公司缴纳股款的有关规定执行。

**第一百七十九条** 公司合并或者分立，登记事项发生变更的，应当依法向公司登记机关办理变更登记；公司解散的，应当依法办理公司注销登记；设立新公司的，应当依法办理公司设立登记。

公司增加或者减少注册资本，应当依法向公司登记机关办理变更登记。

## **第十章 公司解散和清算**

### **第一百八十条 公司因下列原因解散：**

（一）公司章程规定的营业期限届满或者公司章程规定的其他解散事由出现；

（二）股东会或者股东大会决议解散；

（三）因公司合并或者分立需要解散；

（四）依法被吊销营业执照、责令关闭或者被撤销；

（五）人民法院依照本法第一百八十二条的规定予以解散。

**第一百八十一条** 公司有本法第一百八十条第（一）项情形的，可以通过修改公司章程而存续。

依照前款规定修改公司章程，有限责任公司须经持有三分之二以上表决权的股东通过，股份有限公司须经出席股东大会会议的股东所持表决权的三分之二以上通过。

**第一百八十二条** 公司经营管理发生严重困难，继续存续会使股东利益受到重大损失，通过其他途径不能解决的，持有公司全部股东表决权百分之十以上的股东，可以请求人民法院解散公司。

**第一百八十三条** 公司因本法第一百八十条第（一）项、第（二）项、第（四）项、第（五）项规定而解散的，应当在解散事由出现之日起十五日内成立清算组，开始清算。有限责任公司的清算组由股东组成，股份有限公司的清算组由董事或者股东大会确定的人员组成。逾期不成立清算组进行清算的，债权人可以申请人民法院指定有关人员组成清算组进行清算。人民法院应当受理该申请，并及时组织清算组进行清算。

**第一百八十四条** 清算组在清算期间行使下列职权：

- (一) 清理公司财产，分别编制资产负债表和财产清单；
- (二) 通知、公告债权人；
- (三) 处理与清算有关的公司未了结的业务；
- (四) 清缴所欠税款以及清算过程中产生的税款；
- (五) 清理债权、债务；
- (六) 处理公司清偿债务后的剩余财产；
- (七) 代表公司参与民事诉讼活动。

**第一百八十五条** 清算组应当自成立之日起十日内通知债权人，并于六十日内在报纸上公告。债权人应当自接到通知书之日起三十日内，未接到通知书的自公告之日起四十五日内，向清算组申报其债权。

债权人申报债权，应当说明债权的有关事项，并提供证明材料。清算组应当对债权进行登记。

在申报债权期间，清算组不得对债权人进行清偿。

**第一百八十六条** 清算组在清理公司财产、编制资产负债表和财产清单后，应当制定清算方案，并报股东会、股东大会或者人民法院确认。

公司财产在分别支付清算费用、职工的工资、社会保险费用和法定补偿金，缴纳所欠税款，清偿公司债务后的剩余财产，有限责任公司按照股东的出资比例分配，股份有限公司按照股东持有的股份比例分配。

清算期间，公司存续，但不得开展与清算无关的经营活动。公司财产在未依照前款规定清偿前，不得分配给股东。

**第一百八十七条** 清算组在清理公司财产、编制资产负债表和财产清单后，发现公司财产不足清偿债务的，应当依法向人民法院申请宣告破产。

公司经人民法院裁定宣告破产后，清算组应当将清算事务移交给人民法院。

**第一百八十八条** 公司清算结束后，清算组应当制作清算报告，报股东会、股东大会或者人民法院确认，并报送公司登记机关，申请注销公司登记，公告公司终止。

**第一百八十九条** 清算组成员应当忠于职守，依法履行清算义务。

清算组成员不得利用职权收受贿赂或者其他非法收入，不得侵占公司财产。

清算组成员因故意或者重大过失给公司或者债权人造成损失的，应当承担赔偿责任。

**第一百九十条** 公司被依法宣告破产的，依照有关企业破产的法律实施破产清算。

## **第十一章 外国公司的分支机构**

**第一百九十一条** 本法所称外国公司是指依照外国法律在中国境外设立的公司。

**第一百九十二条** 外国公司在中国境内设立分支机构，必须向中国主管机关提出申请，并提交其公司章程、所属国的公司登记证书等有关文件，经批准后，向公司登记机关依法办理登记，领取营业执照。

外国公司分支机构的审批办法由国务院另行规定。

**第一百九十三条** 外国公司在中国境内设立分支机构，必须在中国境内指定负责该分支机构的代表人或者代理人，并向该分支机构拨付与其所从事的经营活动相适应的资金。

对外国公司分支机构的经营资金需要规定最低限额的，由国务院另行规定。

**第一百九十四条** 外国公司的分支机构应当在其名称中标明该外国公司的国籍及责任形式。

外国公司的分支机构应当在本机构中置备该外国公司章程。

**第一百九十五条** 外国公司在中国境内设立的分支机构不具有中国法人资格。

外国公司对其分支机构在中国境内进行经营活动承担民事责任。

**第一百九十六条** 经批准设立的外国公司分支机构，在中国境内从事业务活动，必须遵守中国的法律，不得损害中国的社会公共利益，其合法权益受中国法律保护。

**第一百九十七条** 外国公司撤销其在中国境内的分支机构时，必须依法清偿债务，依照本法有关公司清算程序的规定进行清算。未清偿债务之前，不得将其分支机构的财产移至中国境外。

## **第十二章 法律责任**

**第一百九十八条** 违反本法规定，虚报注册资本、提交虚假材料或者采取其他欺诈手段隐瞒重要事实取得公司登记的，由公司登记机关责令改正，对虚报注册资本的公司，处以虚报注册资本金额百分之五以上百分之十五以下的罚款；对提交虚假材料或者采取其他欺诈手段隐瞒重要事实的公司，处以五万元以上五十万元以下的罚款；情节严重的，撤销公司登记或者吊销营业执照。

**第一百九十九条** 公司的发起人、股东虚假出资，未交付或者未按期交付作为出资的货币或者非货币财产的，由公司登记机关责令改正，处以虚假出资金额百分之五以上百分之十五以下的罚款。

**第二百条** 公司的发起人、股东在公司成立后，抽逃其出资的，由公司登记机关责令改正，处以所抽逃出资金额百分之五以上百分之十五以下的罚款。

**第二百零一条** 公司违反本法规定，在法定的会计账簿以外另立会计账簿的，由县级以上人民政府财政部门责令改正，处以五万元以上五十万元以下的罚款。

**第二百零二条** 公司在依法向有关主管部门提供的财务会计报告等材料上作虚假记载或者隐瞒重要事实的，由有关主管部门对直接负责的主管人员和其他直接责任人员处以三万元以上三十万元以下的罚款。

**第二百零三条** 公司不依照本法规定提取法定公积金的，由县级以上人民政府财政部门责令如数补足应当提取的金额，可以对公司处以二十万元以下的罚款。

**第二百零四条** 公司在合并、分立、减少注册资本或者进行清算时，不依照本法规定通知或者公告债权人的，由公司登记机关责令改正，对公司处以一万元以上十万元以下的罚款。

公司在进行清算时，隐匿财产，对资产负债表或者财产清单作虚假记载或者在未清偿债务前分配公司财产的，由公司登记机关责令改正，对公司处以隐匿财产或者未清偿债务前分配公司财产金额百分之五以上百分之十以下的罚款；对直接负责的主管人员和其他直接责任人员处以一万元以上十万元以下的罚款。

**第二百零五条** 公司在清算期间开展与清算无关的经营活动的，由公司登记机关予以警告，没收违法所得。

**第二百零六条** 清算组不依照本法规定向公司登记机关报送清算报告，或者报送清算报告隐瞒重要事实或者有重大遗漏的，由公司登记机关责令改正。

清算组成员利用职权徇私舞弊、谋取非法收入或者侵占公司财产的，由公司登记机关责令退还公司财产，没收违法所得，并可以处以违法所得一倍以上五倍以下的罚款。

**第二百零七条** 承担资产评估、验资或者验证的机构提供虚假材料的，由公司登记机关没收违法所得，处以违法所得一倍以上五倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因过失提供有重大遗漏的报告的，由公司登记机关责令改正，情节较重的，处以所得收入一倍以上五倍以下的罚款，并可以由有关主管部门依法责令该机构停业、吊销直接责任人员的资格证书，吊销营业执照。

承担资产评估、验资或者验证的机构因其出具的评估结果、验资或者验证证明不实，给公司债权人造成损失的，除能够证明自己没有过错的外，在其评估或者证明不实的金额范围内承担赔偿责任。

**第二百零八条** 公司登记机关对不符合本法规定条件的登记申请予以登记，或者对符合本法规定条件的登记申请不予登记的，对直接负责的主管人员和其他直接责任人员，依法给予行政处分。

**第二百零九条** 公司登记机关的上级部门强令公司登记机关对不符合本法规定条件的登记申请予以登记，或者对符合本法规定条件的登记申请不予登记的，或者对违法登记进行包庇的，对直接负责的主管人员和其他直接责任人员依法给予行政处分。

**第二百一十条** 未依法登记为有限责任公司或者股份有限公司，而冒用有限责任公司或者股份有限公司名义的，或者未依法登记为有限责任



公司或者股份有限公司的分公司，而冒用有限责任公司或者股份有限公司的分公司名义的，由公司登记机关责令改正或者予以取缔，可以并处十万元以下的罚款。

**第二百一十一条** 公司成立后无正当理由超过六个月未开业的，或者开业后自行停业连续六个月以上的，可以由公司登记机关吊销营业执照。

公司登记事项发生变更时，未依照本法规定办理有关变更登记的，由公司登记机关责令限期登记；逾期不登记的，处以一万元以上十万元以下的罚款。

**第二百一十二条** 外国公司违反本法规定，擅自在中国境内设立分支机构的，由公司登记机关责令改正或者关闭，可以并处五万元以上二十万元以下的罚款。

**第二百一十三条** 利用公司名义从事危害国家安全、社会公共利益的严重违法行为的，吊销营业执照。

**第二百一十四条** 公司违反本法规定，应当承担民事赔偿责任和缴纳罚款、罚金的，其财产不足以支付时，先承担民事赔偿责任。

**第二百一十五条** 违反本法规定，构成犯罪的，依法追究刑事责任。

## **第十三章 附 则**

**第二百一十六条** 本法下列用语的含义：

（一）高级管理人员，是指公司的经理、副经理、财务负责人，上市公司董事会秘书和公司章程规定的其他人员。

（二）控股股东，是指其出资额占有限责任公司资本总额百分之五十以上或者其持有的股份占股份有限公司股本总额百分之五十以上的股东；出资额或者持有股份的比例虽然不足百分之五十，但依其出资额或

者持有的股份所享有的表决权已足以对股东会、股东大会的决议产生重大影响的股东。

（三）实际控制人，是指虽不是公司的股东，但通过投资关系、协议或者其他安排，能够实际支配公司行为的人。

（四）关联关系，是指公司控股股东、实际控制人、董事、监事、高级管理人员与其直接或者间接控制的企业之间的关系，以及可能导致公司利益转移的其他关系。但是，国家控股的企业之间不仅因为同受国家控股而具有关联关系。

**第二百一十七条** 外商投资的有限责任公司和股份有限公司适用本法；有关外商投资的法律另有规定的，适用其规定。

**第二百一十八条** 本法自 2006 年 1 月 1 日起施行。

# Company Law of the People's Republic of China

(Adopted at the 5th Meeting of the Standing Committee of the Eighth National People's Congress on December 29, 1993; amended for the first time under the Decision on Amending the Company Law of the People's Republic of China adopted at the 13th Meeting of the Standing Committee of the Ninth National People's Congress on December 25, 1999; amended for the second time under the Decision on Amending the Company Law of the People's Republic of China adopted at the 11th Meeting of the Standing Committee of the Tenth National People's Congress on August 28, 2004; revised at the 18th Meeting of the Standing Committee of the Tenth National People's Congress on October 27, 2005; amended for the third time under the Decision on Amending the Marine Environmental Protection Law of the People's Republic of China and Other Six Laws at the 6th Meeting of the Standing Committee of the Twelfth National People's Congress on December 28, 2013; and amended for the fourth time under the Decision on Amending the Company Law of the People's Republic of China at the 6th Meeting of the Standing Committee of the Thirteenth National People's Congress on October 26, 2018)

## CHAPTER I GENERAL PRINCIPLES

**Article 1** This Law is formulated for the purposes of standardising the organisation and activities of companies, protecting the legal rights and interests of companies, shareholders and creditors, safeguarding social and economic order and promoting the development of socialist market economy.

**Article 2** Companies referred to in this Law shall mean limited liability companies and companies limited by shares established in China in accordance with the provisions of this Law.

**Article 3** A company is an enterprise legal person which owns independent legal person property and enjoys legal person property rights.

The liability of a company shall be limited to its entire assets. The liability of a shareholder of a limited liability company shall be limited to the amount of its capital contribution. The liability of a shareholder of a company limited by shares shall be limited to the number of its subscribed shares.

**Article 4** Shareholders of a company shall be entitled to gains on assets, participation in major decision-making and selection of managers etc in accordance with the law.

**Article 5** Companies engaging in business activities shall comply with the provisions of laws and administrative regulations, uphold social morality, business ethics, honesty and trustworthiness, accept supervision of the government and social public and bear social responsibility.

The legal rights and interests of companies shall be protected by the law and shall not be infringed.

**Article 6** Applications shall be submitted to the company registration authorities in accordance with the law for registration and incorporation of companies. Applications which satisfy the requirements for incorporation stipulated in this Law shall be registered by the company registration authorities as limited liability companies or companies limited by shares respectively. Applications which do not satisfy the requirements for incorporation stipulated in this Law shall not be registered as limited liability companies or companies limited by shares.

Where it is provided by the laws and administrative regulations that company incorporation requires prior approval, such approval formalities shall be completed in accordance with the law prior to the application for company registration.

The public may apply to inquire company registration matters with the company registration authorities; the company registration authorities shall provide such inquiry services.

**Article 7** Companies incorporated in accordance with the law shall be issued a business licence by the company registration authorities. The date of issuance of a business licence shall be the date of incorporation of the company.

A business licence shall state the name and address, registered capital and scope of operations of the company, the name of its legal representative etc.

Where there is a change in the details stated on a business licence, the company shall complete change of registration formalities in accordance with the law and the company registration authorities shall issue a new business licence.

**Article 8** Limited liability companies incorporated in accordance with this Law shall include the wordings "limited liability company" or "company limited" in their company name.

Companies limited by shares incorporated in accordance with this Law shall include the wordings "company limited by shares" or "joint stock company" in their company name.

**Article 9** A limited liability company proposing to be converted to a company limited by shares shall comply with the requirements for companies limited by shares stipulated in this Law. A company limited by shares proposing to be converted to a limited liability company shall comply with the requirements for limited liability companies stipulated in this Law.

In the case of a conversion from a limited liability company into a company limited shares or vice versa, the liability of the company before the conversion shall be assumed by the converted company.

**Article 10** The address of the company shall be its principal business office.

**Article 11** A company shall draft its articles of association in accordance with the law. The articles of association of the company shall be binding on the company, shareholders, directors, supervisors and senior management personnel.

**Article 12** The scope of operations of a company shall be provided in the articles of association of the company and be registered in accordance with the law. The scope of operations of a company may be amended by a revision to the articles of association of the company, and change of registration formalities shall be completed.

Where it is provided in the laws and administrative regulations that the scope of operations of a company is subject to approval, such approval formalities shall be completed in accordance with the law.

**Article 13** The chairman, an executive director or a manager shall act as the legal representative of the company in accordance with the provisions of the articles of association of the company and registration formalities shall be completed in accordance

with the law. Where there is a change of legal representative of the company, change of registration formalities shall be completed.

**Article 14** Companies may register branch companies. Applications for incorporation of branch companies shall be submitted to the company registration authorities and a business licence shall be issued for successful applications. A branch company does not possess legal person qualification and its civil liability shall be borne by the company.

Companies may incorporate subsidiaries. A subsidiary possesses legal person qualification and shall bear civil liability independently in accordance with the law.

**Article 15** A company may invest in other enterprises. However, unless otherwise provided by the law, a company shall not act as a contributory which bears joint liability of an investee enterprise.

**Article 16** Where a company invests in other enterprises or provide guarantee for others, a resolution passed by the board of directors or board of shareholders or a general meeting in accordance with the articles of association of the company shall be required. Where the articles of association of the company provide a limit for the total amount of such investment or guarantee or the amount of each investment or guarantee, such limits shall not be exceeded.

In the case of a company providing guarantee for a shareholder or the actual controlling party of the company, a resolution passed by the board of shareholders or a general meeting is required.

Shareholders stipulated in the preceding paragraph or shareholders controlled by the actual controlling party stipulated in the preceding paragraph shall not participate in the resolution in respect of the matter stipulated in the preceding paragraph. Such a resolution shall be passed by a simple majority of votes cast by other shareholders attending the meeting.

**Article 17** Companies shall protect the legal rights and interests of their employees, enter into labour contracts with their employees in accordance with the law, participate in social insurance, strengthen labour protection and implement work safety.

Companies shall adopt various measures to strengthen vocational education and job training and upgrade staff's quality.

**Article 18** The employees of companies shall organise labour unions in accordance with the provisions of the Trade Union Law of the People's Republic of China, develop trade union activities and safeguard the legal rights and interests of employees. Companies shall provide the requisite conditions for the activities of their trade unions. A trade union shall represent the employees to negotiate with the company on wages, working hours, welfare, insurance, work safety and sanitation etc and enter into a collective contract with the company in accordance with the law.

Companies shall implement democratic management through employees' representative congress or other means in accordance with the provisions of the Constitution and relevant laws.

A company studying and proposing a structural reform, deliberating on major business issues and drafting important rules and policies shall seek the comments of the trade union and hear the opinions and proposals of the employees through the employees' representative congress or other means.

**Article 19** Where a Chinese Communist Party organisation is to be established in the company in accordance with the articles of association of the Chinese Communist Party to develop Party activities, the company shall provide the requisite conditions for such Party organisation activities.

**Article 20** Shareholders of a company shall exercise shareholders' rights in accordance with the provisions of laws and administrative regulations and the articles of association of the company and shall not abuse their shareholders' rights to cause damage to the company or the interests of other shareholders or abuse the independent legal person status of the company and limited liability of the shareholders to cause damage to the interests of the creditors of the company.

Shareholders of a company who abuse their shareholders' rights and cause the company or other shareholders to suffer damages shall bear compensation liability in accordance with the law.

Shareholders of a company who abuse the independent legal person status of the company and limited liability of shareholders to evade debts and cause damage to the interests of the creditors of the company shall bear joint liability for the company's debt.

**Article 21** The controlling shareholders, actual controlling party, directors, supervisors and senior management personnel of a company shall not use their relationship to cause damage to the company's interests.

Persons who violate the aforesaid provisions and cause the company to suffer losses shall bear compensation liability.

**Article 22** A resolution passed by the board of shareholders or a shareholders' meeting or the board of directors which violates the provisions of laws and administrative regulations shall be void.

Where the convening procedures and voting method of a meeting of the board of shareholders or board of directors or a shareholders' meeting violates the provisions of laws and administrative regulations or the articles of association of the company or the contents of the resolution violate the articles of association of the company, the shareholders may apply to a people's court within 60 days from the date of resolution for rescission of the resolution.

Where the shareholders file for a lawsuit in accordance with the provisions of the preceding paragraph, the people's court may, upon a request of the company, ask the shareholders to provide the corresponding guarantee.

Where a company has completed change of registration formalities in accordance with a resolution passed by the board of shareholders or a shareholders' meeting or the board of directors and upon nullification or rescission of the resolution by a people's court, the company shall apply to the company registration authorities for rescission of the change of registration.

## **CHAPTER II ESTABLISHMENT AND ORGANISATION OF LIMITED LIABILITY COMPANIES**

### **Section 1 Establishment**

**Article 23** Incorporation of a limited liability companies shall satisfy the following requirements:

- (1) the quorum of shareholders shall be met;
- (2) the capital contribution subscribed by all its shareholders shall comply with the provisions of the company's articles of association;
- (3) the articles of association of the company shall be jointly drafted by the shareholders of the company;
- (4) a company name shall exist and the organisation shall satisfy the requirements of a limited liability company; and
- (5) a company address shall exist.

**Article 24** Limited liability companies shall be incorporated by not more than 50 shareholders contributing to the capital.

**Article 25** The articles of association of limited liability companies shall state the following matters:

- (1) name and address of the company;
- (2) scope of operations of the company;
- (3) amount of the registered capital of the company;
- (4) name of the shareholders;
- (5) method of capital contribution of the shareholders and amount and timing of capital contribution;
- (6) the organisation of the company and the method of organisation, duties and powers and rules of procedure;
- (7) legal representative of the company; and
- (8) other matters required by the shareholders' meeting to be stipulated.

The shareholders shall sign and affix their seal on the articles of association of the company.

**Article 26** The registered capital of a limited liability company shall be the amount of capital contribution subscribed by all its shareholders who are registered with the company registration authorities.

Where the laws, administrative regulations and the State Council decisions stipulate otherwise on paid-up registered capital and the minimum amount of registered capital of limited liability companies, such provisions shall prevail.

**Article 27** Shareholders may make capital contribution in cash or in kind, intellectual property, land use rights or any other non-cash property which can be valued and transferred in accordance with the law, except for properties prohibited by laws and administrative regulations to be used for capital contribution.

Non-cash properties used for capital contribution shall be valued and verified; and shall not be overvalued or undervalued. Where there are provisions in the laws and administrative regulations on valuation, such provisions shall prevail.

**Article 28** The shareholders shall make their respective capital contribution in accordance with the amount of their subscribed capital and the schedule stipulated in the articles of association of the company. Shareholders making capital contribution in cash shall deposit the full amount of their capital contribution in cash into a bank account of the limited liability company. Shareholders making capital contribution using non-cash properties shall complete the transfer formalities for the property rights in accordance with the law.

Shareholders who fail to make capital contribution in accordance with the said provisions shall, in addition to making the capital contribution in full, bear default liability towards other shareholders who have made their capital contributions in full accordance with the schedule.

**Article 29** Upon full subscription of capital contribution by the shareholders as stipulated by the company's articles of association, the representative designated by all the shareholders or the agent entrusted by all the shareholders shall submit an application form for company registration, the company's articles of association etc to the company registration authorities to apply for incorporation and registration.

**Article 30** Where it is discovered after the incorporation of a limited liability company that the actual value of non-cash properties used for capital contribution for company incorporation is significantly lower than the value stipulated in the articles of association of the company, the shareholders who made the capital contribution shall make up for the difference; and other shareholders at the time of company incorporation shall bear joint liability.

**Article 31** Upon incorporation of a limited liability company, a capital contribution certificate shall be issued to the shareholders.

A capital contribution certificate shall state the following matters:

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

The company seal shall be affixed to capital contribution certificates.

**Article 32** Limited liability companies shall set up a register of shareholders which state the following matters:

- (1) name and address of the shareholders;
- (2) amount of capital contribution of the shareholders; and
- (3) serial numbers of the capital contribution certificates.



Shareholders named in the register of shareholders may exercise their shareholders' rights in accordance with the register of shareholders.

Companies shall register the names of their shareholders with the company registration authorities. Where there is a change in the registration details, change of registration formalities shall be completed. Where the registration or change of registration formalities are not completed, no defence against third party claims shall be made.

**Article 33** Shareholders shall have the right to check and make copies of the articles of association, minutes of shareholders' meetings, resolutions of the board of directors and board of supervisors and financial reports of the company.

Shareholders may request to check the accounts of the company. A shareholder who requests to check the accounts of the company shall make a written request and state the purpose. If the company has reasonable grounds to believe that the shareholder who makes the request has an ulterior motive and may cause damage to the legal interests of the company, it may reject the request and shall give a written reply to the shareholder stating the reason within 15 days from the date of the written request of the shareholder. Where the company rejects the request, the shareholder may apply to a people's court for access to the company's accounts.

**Article 34** Shareholders shall be entitled to bonus sharing in accordance with the ratio of capital contribution; in the event of an increase in capital, the shareholders shall have pre-emptive right to subscribe to new capital in accordance with the ratio of capital contribution, unless all the shareholders agreed that bonus sharing or subscription to new capital shall not be in accordance with the ratio of capital contribution.

**Article 35** Upon the incorporation of a company, the shareholders shall not withdraw their capital contribution.

## **Section 2 Organisation**

**Article 36** The board of shareholders of a limited liability company shall comprise all shareholders of the company. The board of shareholders is the authority of the company and shall exercise their duties and powers in accordance with the provisions of this Law.

**Article 37** The board of shareholders shall exercise the following duties and powers:

- (1) decide on the business direction and investment plans of the company;
- (2) elect and remove directors and supervisors who are not representatives of the employees and decide on the remuneration of directors and supervisors;
- (3) review and approve reports of the board of directors;
- (4) review and approve reports of the supervisors or the board of supervisors;
- (5) review and approve the annual financial budget and financial accounting plan of the company;
- (6) review and approve the profit distribution plan and loss recovery plan of the company;
- (7) resolve on increase or reduction of registered capital of the company;
- (8) resolve on issue of corporate bonds;

- (9) resolve on merger, division, dissolution, liquidation or change of company structure;
- (10) amend the articles of association of the company; and
- (11) other duties and powers stipulated in the articles of association of the company.

The shareholders may pass a resolution in writing unanimously for a direct decision on the aforesaid matters without convening a shareholders' meeting and all the shareholders shall sign and affix their seal on the decision document.

**Article 38** The first shareholders' meeting shall be convened and chaired by the shareholder who made the largest amount of capital contribution and shall exercise its duties and powers in accordance with the provisions of this Law.

**Article 39** Shareholders' meetings include regular meetings and ad hoc meetings.

Regular meetings shall be convened regularly in accordance with the provisions of the articles of association of the company. Shareholders holding one-tenth or more of the voting rights or one-third or above of the board of directors or board of supervisors or the supervisors (in the case of a company which does not have a board of supervisors) may propose to convene an ad hoc meeting.

**Article 40** In the case of limited liability companies which have established a board of directors, the shareholders' meetings shall be convened by the board of directors and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall chair the shareholders' meeting; where the deputy chairman is unable or fails to perform to do so, a director appointed by more than half of the board of directors shall chair the meeting.

In the case of limited liability companies which have not established a board of directors, the shareholders' meetings shall be convened and chaired by the executive director.

Where the board of directors or the executive director is unable or fails to convene a shareholders' meeting, the board of supervisors or the supervisor (in the case of companies which have not established a board of supervisors) shall convene and chair the meeting; where the board of supervisors or the supervisor does not convene and chair a meeting, shareholders holding one-tenth or more of the voting rights may convene and chair the meeting.

**Article 41** All shareholders shall be notified 15 days before a shareholders' meeting is convened, unless otherwise provided in the articles of association of the company or otherwise agreed by all shareholders.

The board of shareholders shall record minutes of meeting and the shareholders present at the meeting shall sign on the minutes of meeting.

**Article 42** The voting rights exercisable by shareholders at a shareholders' meeting shall be based on the ratio of capital contribution, unless otherwise provided in the articles of association of the company.

**Article 43** The rule of procedure and voting procedures of a board of shareholders shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

Resolutions passed by a shareholders' meeting on amendment to the articles of association of the company, increase or reduction of registered capital, and company merger, division, dissolution or change of company structure shall be passed by shareholders holding two-thirds or more of the voting rights.

**Article 44** The board of directors of limited liability companies shall comprise three to 13 members, unless otherwise provided in Article 50.

The board of directors of a limited liability company invested and incorporated by two or more State-owned enterprises or two or more other State-owned investment entities shall comprise employees' representatives; the board of directors of other limited liability companies may comprise employees' representatives. Employees' representatives who sit on the board of directors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of directors shall appoint one chairman and may appoint a deputy chairman. The appointment of chairman and a deputy chairman shall be stipulated by the articles of association of the company.

**Article 45** The term of appointment of a director shall be stipulated by the articles of association of the company, but each term shall not exceed three years.

Upon expiry of the term of appointment, a director may be re-elected. Where no new appointment is made upon expiry of the term of appointment of a director or a director has resigned during his/her term of appointment and causes the number of directors that constitutes the board of directors to fall below the quorum, the original director shall, prior to the new director taking office, continue to perform his/her duties as a director in accordance with the provisions of laws and administrative regulations and the articles of association of the company.

**Article 46** The board of directors shall be accountable to the board of shareholders and shall exercise the following duties and powers:

- (1) convene shareholders' meetings and report to the board of shareholders;
- (2) execute the resolutions passed by the board of shareholders;
- (3) decide on the business plans and investment schemes of the company;
- (4) formulate the annual financial budget and financial accounting plan of the company;
- (5) formulate the profit distribution plan and loss recovery plan of the company;
- (6) formulate the plan for increase or reduction of registered capital and issue of corporate bonds;
- (7) formulate the plan for merger, division, dissolution or change of company structure;
- (8) decide on the set-up of internal management organisation of the company;
- (9) decide on appointment or dismissal of company managers and their remuneration, and decide on appointment or dismissal of deputy managers and finance controller of the company based on the nomination by the managers.

(10) formulate the basic management system of the company; and

(11) other duties and powers stipulated by the articles of association of the company.

**Article 47** Meetings of the board of directors shall be convened and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall convene and chair the meeting; where the deputy chairman is unable or fails to perform his/her duties, a director appointed by half or more of the board of directors shall convene and chair the meeting.

**Article 48** The rules of procedure and voting procedures of the board of directors shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

The board of directors shall record minutes of meeting and the directors present at the meeting shall sign on the minutes of meeting.

The board of directors shall exercise one vote per person for passing of resolutions.

**Article 49** Managers of limited liability companies may be appointed or dismissed by the board of directors. The managers shall be accountable to the board of directors and shall exercise the following duties and powers:

(1) manage the production and business operations of the company and organise and implement resolutions passed by the board of directors;

(2) organise and implement the annual business plan and investment scheme of the company;

(3) draft the plan for setting up of internal management organisation of the company;

(4) draft the basic management system of the company;

(5) formulate company rules and policies;

(6) recommend appointment or dismissal of deputy manager and financial controller of the company;

(7) decide on appointment or dismissal of management staff other than those positions which are to be decided by the board of directors; and

(8) other duties and powers granted by the board of directors.

Where there are provisions in the articles of association of the company on the duties and powers of managers, such provisions shall prevail.

Managers shall attend meetings of the board of directors.

**Article 50** Limited liability companies with relatively fewer shareholders or of a relatively smaller scale may appoint an executive director instead of establishing a board of directors. An executive director may hold the post of company manager concurrently.

The duties and powers of the executive director shall be stipulated by the articles of association of the company.

**Article 51** The board of supervisors of a limited liability company shall comprise not less than three members. Limited liability companies with relatively fewer shareholders or of a relatively smaller scale may appoint one to two supervisors instead of establishing a board of supervisors.

The board of supervisors shall include shareholders' representatives and an appropriate number of employees' representatives; the ratio of employees' representative therein shall not be less than one-third and such ratio shall be stipulated by the articles of association of the company. Employees' representatives sitting on the board of supervisors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of supervisors shall appoint a chairman; the chairman shall be elected by more than half of the board of supervisors. The chairman of the board of supervisors shall convene and chair meetings of the board of supervisors; where the chairman of the board of supervisors is unable or fails to perform his/her duties, a supervisor appointed by more than half of the board of supervisors shall convene and chair the meeting(s) of the board of supervisors.

Directors and senior management personnel shall not hold the post of supervisor concurrently.

**Article 52** The term of appointment of a supervisor shall be three years. Upon expiry of the term of appointment, a supervisor may be re-elected.

Where no new appointment is made upon expiry of the term of appointment of a supervisor or a supervisor resigns during his/her term of appointment and causes the number of supervisors that constitutes the board of supervisors to fall below the quorum, the original supervisor shall, prior to the new supervisor taking office, continue to perform his/her duties as a supervisor in accordance with the provisions of laws and administrative regulations and the articles of association of the company.

**Article 53** A board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) shall exercise the following duties and powers:

- (1) inspect the company finances;
- (2) supervise the performance of duties by directors and senior management personnel and propose to remove a director or senior executive who violates the provision of the laws and administrative regulations and the articles of association of the company or the resolutions of the board of shareholders;
- (3) require a director or senior executive who acts against the interests of the company to make correction;
- (4) propose to convene ad hoc shareholders' meeting, convene and chair a shareholders' meeting when the board of directors fails to convene and chair a shareholders' meeting in accordance with the provisions of this Law;
- (5) make proposals at shareholders' meetings;
- (6) file a lawsuit against a director or senior executive in accordance with the provisions of Article 151; and
- (7) other duties and powers stipulated in the articles of association of the company.

**Article 54** Supervisors may attend meetings of the board of directors and query resolutions of the board of directors or give suggestions.

A board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) may conduct investigation upon discovering irregularities in the business operations and may appoint an accounting firm etc to assist in the investigation if necessary; such expenses shall be borne by the company.

**Article 55** The board of supervisors shall convene at least one meeting every year; a supervisor may propose to convene an ad hoc meeting of the board of supervisors.

The rule of procedures and voting procedures of a board of supervisors shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

Resolutions of a board of supervisors shall be passed by a simple majority of votes.

The board of supervisors shall record minutes of meeting and the supervisors present at the meeting shall sign on the minutes of meeting.

**Article 56** Expenses incurred by a board of supervisors or a supervisor (in the case of companies which have not established a board of supervisors) in exercising their duties and powers shall be borne by the company.

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

**Article 57** The provisions of this Section shall apply to the establishment and organisation of one-person limited liability companies. Where there is no provision in this Section, the provisions of Sections 1 and 2 of this Chapter shall apply.

One-person limited liability companies referred to in this Law shall mean limited liability companies with only one natural person shareholder or one legal person shareholder.

**Article 58** A natural person shall invest in a one-person limited liability company only. Such a one-person limited liability company shall not invest in the setting up of a new one-person limited liability company.

**Article 59** A one-person limited liability company shall declare in its company registration details whether the company is wholly-funded by a natural person or a legal person and state so in its business licence.

**Article 60** The articles of association of one-person limited liability companies shall be formulated by the shareholder.

**Article 61** One-person limited liability companies are not required to establish a board of shareholders. The shareholder shall put decisions stipulated in the first paragraph of Article 37 in writing and keep such documents in the company after signing.

**Article 62** One-person limited liability companies shall formulate a financial accounting report at each accounting year-end for audit by an accounting firm.

**Article 63** A shareholder of a one-person limited liability company who is unable to prove that the company's assets are independent of the shareholder's personal assets shall bear joint liability for the company's debt.

#### **Section 4 Special provisions on State-owned wholly-funded companies**

**Article 64** The provisions of this Section shall apply to the establishment and organisation of State-owned wholly-funded companies. Where there is no provision in this Section, the provisions of Sections 1 and 2 of this Chapter shall apply.

State-owned wholly-funded companies referred to in this Law shall mean limited liability companies wholly funded by the State and for which the State Council or a local people's government has authorised the State-owned assets supervision and administration authorities of the local people's government to perform the duties of a capital contributory.

**Article 65** The articles of association of State-owned wholly-funded companies shall be formulated by the State-owned assets supervision and administration authorities or formulated by the board of directors and submitted to the State-owned assets supervision and administration authorities for approval.

**Article 66** In the case of State-owned wholly-funded companies which do not establish a board of shareholders, the State-owned assets supervision and administration authorities shall exercise the duties and powers of the board of shareholders. The State-owned assets supervision and administration authorities may authorise the board of directors to exercise some duties and powers of the board of shareholders and to decide on important matters of the company; however, any merger, division, dissolution, increase or reduction in registered capital and issue of corporate bonds of the company shall be decided by the State-owned assets supervision and administration authorities; a merger, division, dissolution, bankruptcy application of significant State-owned wholly-funded companies shall be examined by the State-owned assets supervision and administration authorities and reported to the people's government of counterpart level.

The aforesaid significant State-owned wholly-funded companies shall be determined in accordance with the provisions of the State Council.

**Article 67** The board of directors of State-owned wholly-funded companies shall exercise duties and powers stipulated in Article 46 and Article 66. The term of appointment of directors shall not exceed three years. The board of directors shall comprise employees' representatives.

The board of directors shall be appointed by the State-owned assets supervision and administration authorities; however employees' representatives sitting on the board of directors shall be elected by an employees' representative congress.

The board of directors shall appoint a chairman and may appoint deputy chairmen. The chairman and deputy chairmen shall be appointed by the State-owned assets supervision and administration authorities from members of the board of directors.

**Article 68** The managers of State-owned wholly-funded companies shall be appointed or dismissed by the board of directors. The managers shall exercise duties and powers in accordance with the provisions of Article 49.

A director may take the post of manager concurrently with the consent of the State-owned assets supervision and administration authorities.

**Article 69** The chairman, deputy chairmen, directors and senior management personnel of State-owned wholly-funded companies shall not hold a post concurrently in other limited liability companies, companies limited by shares or economic organisations without the consent of the State-owned assets supervision and administration authorities.

**Article 70** The board of supervisors of State-owned wholly-funded companies shall comprise not less than five members; the ratio of employees' representatives shall not be less than one-third. The ratio shall be stipulated by the articles of association of the company.

The board of supervisors shall be appointed by the State-owned assets supervision and administration authorities; however, employees' representatives sitting on the board of supervisors shall be elected by an employees' representative congress. The chairman of the board of supervisors shall be appointed by the State-owned assets supervision and administration authorities from members of the board of supervisors.

The board of supervisors shall exercise the duties and powers stipulated in item (1) to item (3) of Article 53 and other duties and powers stipulated by the State Council.

## **CHAPTER III SHARE TRANSFERS OF LIMITED LIABILITY COMPANIES**

**Article 71** The shareholders of a limited liability company may transfer all or part of their equity interests among themselves.

A shareholder proposing to transfer its equity interests to a non-shareholder shall obtain the consent of more than half of the other shareholders. The shareholder shall inform the other shareholders of the proposed equity transfer in writing and seek their consent. Failure to reply within 30 days from receipt of the written notice shall be deemed as consent to the proposed transfer. Where more than half of the other shareholders do not consent to the proposed transfer, the non-consenting shareholders shall acquire such equity interests, failing which they shall be deemed to have consented to the proposed transfer.

Where the shareholders consent to the proposed transfer, the other shareholders shall have pre-emptive right to acquire such equity interests on similar terms. Where two or more shareholders intend to exercise their pre-emptive rights, they shall negotiate and determine the acquisition ratio. Where the negotiation fails, the shareholders shall exercise their pre-emptive rights based on the ratio of capital contribution at the time of the proposed transfer.

Where there are provisions in the articles of association of the company for transfer of equity interests, such provisions shall prevail.

**Article 72** A people's court handling transfer of equity interests of a shareholder in accordance with the enforcement procedures stipulated by the laws shall inform the company and all its shareholders; the other shareholders shall have pre-emptive rights to acquire such equity interests on similar terms. Failure to exercise pre-emptive rights within 20 days from receipt of the notice of the people's court shall be deemed as a forfeiture of pre-emptive rights by the other shareholders.

**Article 73** Following a transfer of equity interests in accordance with the provisions of Article 71 and Article 72, the company shall cancel the capital contribution certificate of the original shareholder, issue a new capital contribution certificate to the new shareholder(s) and make corresponding amendments to the articles of association of the company and the records of shareholders and their amount of capital contribution in the register of shareholders. Such amendment to the articles of association of the company shall not require a resolution of the board of shareholders.



**Article 74** Under any of the following circumstances, shareholders who cast an opposing vote to a resolution passed by the board of shareholders may request that the company acquire their equity interests at a reasonable price:

(1) the company has not made a profit distribution to the shareholders for five consecutive years although the company has been profitable for those five consecutive years and satisfy profit distribution requirements stipulated in this Law;

(2) merger, division and transfer of main assets of the company; or

(3) upon expiry of the term of business operations stipulated in the articles of association of the company or the occurrence of a trigger event for dissolution stipulated in the articles of association, the shareholders' meeting amends the articles of association by resolution to keep the company in existence.

Where the shareholders fail to conclude an agreement for acquisition of equity interests within 60 days from the date of the resolution by the shareholders' meeting, the shareholders may file a lawsuit with a people's court within 90 days from the date of the resolution of the shareholders' meeting.

**Article 75** Upon the death of a natural person shareholder, the lawful successor of a natural person shareholder may succeed the shareholder's qualifications, unless otherwise provided by the articles of association of the company.

## **CHAPTER IV ESTABLISHMENT AND ORGANISATION OF COMPANIES LIMITED BY SHARES**

### **Section 1 Establishment**

**Article 76** Establishment of companies limited by shares shall satisfy the following requirements:

(1) the number of promoters satisfies the quorum;

(2) the total share capital subscribed by all the promoters or the paid-up total share capital raised by all the promoters shall comply with the provisions of the company's articles of association;

(3) share issues and preparatory matters satisfy the provisions of the law;

(4) the articles of association of the company shall be formulated by the promoters and shall be adopted by the founding meeting if the company is established by a share float method;

(5) a company name shall exist and the organisation shall satisfy the requirements of a company limited by shares; and

(6) a company address shall exist.

**Article 77** Establishment of a company limited by shares may adopt the promotion method or share float method.

Establishment by promotion shall mean that the promoters set up a company by subscribing to the entire share capital of the company.

Establishment by share float shall mean that the promoters establish a company by subscribing to a part of the shares to be issued by the company and offering the remaining shares to the public or to specific targets.

**Article 78** The number of promoters required for the establishment of a company limited by shares shall be more than two but less than 200 and more than half of the promoters shall have a domicile in China.

**Article 79** The promoters of a company limited by shares shall handle the preparatory matters of the company.

The promoters shall enter into a promoters' agreement to specify their respective rights and obligations in the process of establishment of the company.

**Article 80** The registered capital of a company limited by shares established by promotion shall be the total share capital subscribed by all the promoters as registered with the company registration authorities. Prior to the capital subscribed by the promoters being paid up, the company shall not offer shares to others.

The registered capital of a company limited by shares established by share float shall be the actual paid-up capital at the time of registration with the company registration authorities.

Where the laws and administrative regulations stipulate otherwise on paid up registered capital and the amount of minimum registered capital for companies limited by shares, such provisions shall prevail.

**Article 81** The articles of association of companies limited by shares shall state the following matters:

- (1) name and address of the company;
- (2) scope of operations of the company;
- (3) the method of establishment of the company;
- (4) total number of shares of the company, par value of each share and amount of the registered capital;
- (5) names of the promoters, number of shares subscribed to, and method and timing of capital contribution;
- (6) composition of the board of directors, duties and powers and rules of procedure;
- (7) legal representative of the company;
- (8) composition of the board of supervisors, duties and powers and rules of procedure;
- (9) profit distribution method of the company;
- (10) trigger events for dissolution of the company and liquidation method;
- (11) company notices and announcement method; and

(12) other matters required by the board of shareholders to be stipulated.

**Article 82** The provisions of Article 27 shall apply to the methods of capital contribution by promoters.

**Article 83** The promoters of a company limited by shares established by promotion shall subscribe in writing to the number of shares stipulated by the articles of association of the company. In the case of capital contributions to be made in non-cash assets, the formalities for transfer of property rights shall be completed in accordance with the provisions of the law.

Promoters who fail to make capital contribution in accordance with the provisions of the preceding paragraph shall bear default liability in accordance with the provisions of the promoters' agreement.

Upon capital contribution fully subscribed by the promoters as stipulated in the company's articles of association, the board of directors and board of supervisors shall be elected, the board of directors shall submit the company's articles of association and other documents stipulated by the laws and administrative regulations to the company registration authorities to apply for incorporation and registration.

**Article 84** The shares subscribed by the promoters of a company limited by shares established by share float shall not be less than 35% of the share capital of the company, unless otherwise provided in the laws and administrative regulations.

**Article 85** Promoters shall make an announcement of the prospectus for a share offering to the public and prepare a subscription form. The subscription form shall state the items stipulated in Article 86 for the subscriber to fill in the number of shares subscribed, monetary amount and address; the subscriber shall sign and affix seal on the subscription form. The subscriber shall make payment based on the number of shares subscribed.

**Article 86** The prospectus shall include the articles of association of the company formulated by the promoters and state the following matters:

- (1) number of shares subscribed by the promoters;
- (2) par value of each share and the issue price;
- (3) total number of bearer shares to be issued;
- (4) usage of the funds raised;
- (5) rights and obligations of a subscriber; and
- (6) a statement stating the commencement and cut-off dates for the share offering and that where the shares are not fully subscribed by the cut-off date, the subscribers may withdraw their subscription.

**Article 87** A share offering by the promoters to the public shall be underwritten by a securities company established in accordance with the law and an underwriting agreement shall be entered into.

**Article 88** Promoters offering shares to the public shall enter into a custodial agreement with a receiving bank.

The receiving bank shall collect payments from the subscribers on behalf of the issuer in accordance with the agreement and issue receipts to the subscribers who have made payments, and shall have the obligation to show proof of collection to the relevant authorities.

**Article 89** Upon the issued share capital being fully paid up, a capital verification organisation established in accordance with the law shall conduct a capital verification and issue a certificate. The promoters shall convene the founding meeting within 30 days from the date on which the share capital is fully paid up. The founding meeting shall be constituted by the subscribers.

Where the issued share capital is not fully subscribed by the cut-off date stipulated in the prospectus or the promoters fail to convene the founding meeting within 30 days following the issued share capital being fully paid up, the subscribers may demand from the promoters a refund of the payment and bank deposit interest for the same period.

**Article 90** The promoters shall give notice to all subscribers 15 days in advance of the date of the founding meeting or make an announcement. The quorum of the founding meeting shall be promoters and subscribers holding more than half of the total number of shares.

The founding meeting shall exercise the following duties and powers:

- (1) review the report of promoters on preparatory status of the company;
- (2) adopt the articles of association of the company;
- (3) elect members of the board of directors;
- (4) elect members of the board of supervisors;
- (5) review the setting up expenses of the company;
- (6) review the consideration of the assets used for capital contribution by the promoters;
- (7) in the event of a force majeure event or a significant change in the business conditions which bears a direct influence on the establishment of the company, a resolution to halt the incorporation of the company may be made.

A resolution of the founding meeting on any of the matters stipulated in the aforesaid paragraph shall be passed by a simple majority of votes held by the subscribers.

**Article 91** The promoters and subscribers shall not withdraw their share capital after they have made their capital contribution, except where the shares are not fully subscribed by the deadline or the promoters fail to convene the founding meeting or the founding meeting passed a resolution on halting the incorporation of the company.

**Article 92** The board of directors shall submit the following documents to the company registration authorities within 30 days from conclusion of the founding meeting to apply for incorporation and registration:

- (1) application form for company registration;
- (2) minutes of the founding meeting;

- (3) articles of association of the company;
- (4) capital verification certificate;
- (5) letter of appointment for the legal representative, directors and supervisors and their identity documents;
- (6) legal person certificate or identity document of the promoters; and
- (7) certificate of company address.

A company limited by shares established by share float shall submit the approval document issued by the securities regulatory authorities of the State Council to the company registration authorities if it proposes to offer shares to the public.

**Article 93** Promoters of a company limited by shares who fail to make full capital contribution in accordance with the provisions of the articles of association of the company shall make up for the payment; other promoters shall bear joint liability.

Where it is discovered after the incorporation of a company limited by shares that the actual value of non-cash assets used for capital contribution for the incorporation is significantly lower than the amount stated in the articles of association of the company, the promoter who made the capital contribution shall make up for the difference; other promoters shall bear joint liability.

**Article 94** The promoters of companies limited by shares shall:

- (1) bear the debts and expenses incurred for the incorporation in the event that the incorporation is unsuccessful; and
- (2) bear joint liability for refund of the payments made by the subscribers and bank deposit interest for the same period in the event that the incorporation is unsuccessful;
- (3) compensate the company for damages incurred to the company in the course of incorporation due to the fault of the promoters.

**Article 95** In the case of a conversion from a limited liability company into a company limited by shares, the total amount of converted paid-up capital shall not exceed the net asset value of the company. A share offering by a company limited by shares converted from a limited liability company for the purpose of an increase in capital shall be handled in accordance with the provisions of the law.

**Article 96** Companies limited by shares shall keep the articles of association of the company, register of shareholders, corporate bonds counterfoil book, minutes of meetings of the board of shareholders, minutes of meetings of the board of directors, minutes of meetings of the board of supervisors and financial reports at the company.

**Article 97** Shareholders shall have the right to inspect the articles of association of the company, register of shareholders, corporate bonds counterfoil book, minutes of meetings of the board of shareholders, resolutions of the board of directors, resolutions of the board of supervisors and finance reports and may give suggestions on or query the operations of the company.

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

**Article 98** A shareholders' general meeting of a company limited by shares shall be constituted by all the shareholders; the shareholders' general meeting shall be the authority of the company and shall exercise duties and powers in accordance with the provisions of this Law.

**Article 99** The provisions of the first paragraph of Article 37 on the duties and powers of the board of shareholders of limited liability companies shall apply to shareholders' general meetings of companies limited by shares.

**Article 100** A shareholders' general meeting shall be convened once every year. An extraordinary shareholders' general meeting shall be convened within two months in any of the following events:

- (1) the number of directors falls below two-thirds of the quorum stipulated in this Law or articles of association of the company;
- (2) the losses of the company which have not been made good equal one-third of the paid-up capital of the company;
- (3) requisition of a shareholders' general meeting by a shareholder who holds 10% or more of the company's shares or several shareholders who hold 10% or more of the company's shares jointly;
- (4) the board of directors deems it necessary to convene a shareholders' general meeting;
- (5) the board of supervisors proposes to convene a shareholders' general meeting; or
- (6) other events stipulated by the articles of association of the company.

**Article 101** Shareholders' general meetings shall be convened by the board of directors and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall chair the meeting; where the deputy chairman is unable or fails to perform his/her duties, a director appointed by more than half of the board of directors shall chair the meeting.

Where the board of directors is unable to or fails to convene a shareholders' general meeting, the board of supervisors shall convene and chair a meeting promptly; where the board of supervisors fails to convene and chair the meeting, a shareholder who holds 10% or more of the shares of the company or several shareholders who hold 10% or more of the shares of the company jointly for 90 days or more consecutively may convene and chair the meeting.

**Article 102** All the shareholders shall be informed in writing 20 days in advance of a shareholders' general meeting of the date and venue of meeting and the agenda. All the shareholders shall be informed 15 days in advance of an extraordinary general meeting; where the agenda includes an issue of bearer shares, a notice of the meeting stating the date and venue of the meeting and the agenda shall be given 30 days in advance.

A shareholder who holds 3% or more of the shares of the company or several shareholders who hold 3% or more of the shares of the company jointly may submit a written proposal of an agenda item ten days before a shareholders' general meeting to the board of directors; the board of directors shall inform other shareholders of the proposal within two days from receipt of the proposal and table the proposal at the

shareholders' general meeting for review. The contents of the proposed agenda item shall be within the scope of duties and powers of the shareholders' general meeting and shall contain a specific topic and specific resolution.

The shareholders' general meeting shall not resolve on matters which are not set out in the notice of meeting stipulated in the two preceding paragraphs.

Holders of bearer shares attending a shareholders' general meeting shall deposit their share certificates with the company from five days before the meeting to the conclusion of the shareholders' general meeting.

**Article 103** Shareholders attending a shareholders' general meeting shall exercise one vote per share. Company shares held by the company shall not carry voting rights.

Resolutions of a shareholders' general meeting shall be passed by a simple majority of votes cast by shareholders present at the meeting. Resolutions of a shareholders' general meeting on amendment to the articles of association of the company, increase or reduction in registered capital, merger, division, dissolution or change of company structure shall be passed by two-thirds majority of votes cast by shareholders present at the meeting.

**Article 104** Where the provisions of this Law and the articles of association of the company require a resolution of the shareholders' general meeting for the transfer of major assets to others or vice versa or provision of guarantee to external parties etc, the board of directors shall convene a shareholders' general meeting promptly for the passing of a resolution on the aforesaid matter.

**Article 105** A cumulative voting system may be implemented for the election of directors and supervisors at a shareholders' general meeting in accordance with the provisions of the articles of association of the company or a resolution of the shareholders' general meeting.

The cumulative voting system referred to in this Law shall mean that the voting rights carried by each share shall correspond to the number of directors or supervisors to be elected and the shareholders may use their voting rights collectively for election of directors or supervisors at a shareholders' general meeting.

**Article 106** Shareholders may appoint their proxies to attend a shareholders' general meeting; the proxies shall submit a power of attorney to the company and exercise the voting rights within the scope of authorisation.

**Article 107** Minutes of shareholders' general meetings shall be recorded and signed by the chairman and directors who attended the meeting. The minutes of meetings shall be kept together with the record of shareholders' signatures and copies of power of attorney.

### **Section 3 Board of Directors and Managers**

**Article 108** The board of directors of companies limited by shares shall comprise 5 to 19 members.

The board of directors may comprise employees' representatives. Employees' representatives who sit on the board of directors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The provisions of Article 45 on the term of appointment of directors of limited liability companies shall apply to directors of companies limited by shares.

The provisions of Article 46 on duties and powers of the board of directors of limited liability companies shall apply to the board of directors of companies limited by shares.

**Article 109** The board of directors shall appoint a chairman and may appoint a deputy chairman. The chairman and a deputy chairman shall be elected by a simple majority of votes cast by all the directors.

The chairman shall convene and chair meetings of the board of directors, check the status of implementation of resolutions of the board of directors. The a deputy chairman shall assist the chairman to perform his/her duties; where the chairman is unable or fails to perform his/her duties, the deputy chairman shall perform the duties; where the deputy chairman is unable or fails to perform the duties, a director appointed by more than half of the board of directors shall perform the duties.

**Article 110** The board of directors shall convene at least two meetings every year. All the directors and supervisors shall be informed of the meeting ten days before a meeting.

Shareholders holding one-tenth or more of the voting rights or one-third or more of the board of directors or board of supervisors may propose to convene an ad hoc meeting of the board of directors. The chairman shall convene and chair a meeting of the board of directors within ten days from receipt of the proposal.

The board of directors may determine the method and period of notice in the case of an ad hoc meeting convened by the board of directors.

**Article 111** A meeting of board of directors shall be constituted by more than half of the board of directors. Resolutions of the board of directors shall be passed by a simple majority of votes cast by all the directors.

Each director shall have one vote for each resolution of the board of directors.

**Article 112** Directors shall attend meetings of the board of directors in person; a director who is unable to attend a meeting may issue a power of attorney to appoint another director to attend the meeting on his behalf; the power of attorney shall state the scope of authorisation.

Minutes of meetings of the board of directors shall be recorded and signed by the directors who attended the meeting.

The directors shall be liable for resolutions of the board of directors. Where a resolution of the board of directors violates the provisions of laws and administrative regulations or the articles of association of the company or a resolution of the shareholders' general meeting and causes the company to suffer serious damages, directors who participated in the resolution shall bear compensation liability towards the company; a director who can prove that he/she has objected to the resolution and such objection is recorded in the minutes of meeting, the liability of the director may be exempted.

**Article 113** Managers of companies limited by shares may be appointed or dismissed by the board of directors.

The provisions of Article 49 on duties and powers of the managers of limited liability companies shall apply to the managers of companies limited by shares.



**Article 114** The board of directors may appoint a director to take the post of manager concurrently.

**Article 115** A company shall not provide loans to its directors, supervisors or senior management personnel directly or through its subsidiaries.

**Article 116** Companies shall disclose information on remuneration of directors, supervisors and senior management personnel to their shareholders regularly.

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

**Article 117** Companies limited by shares shall establish a board of supervisors comprising not less than three members.

The board of supervisors shall include shareholders' representatives and an appropriate number of employees' representatives; the ratio of employees' representative therein shall not be less than one-third and such ratio shall be stipulated by the articles of association of the company. Employees' representatives sitting on the board of supervisors shall be appointed by company employees via an employees' representative congress or employees' congress or other forms of democratic election.

The board of supervisors shall appoint a chairman and may appoint a deputy chairman. The chairman and deputy chairman of the board of supervisors shall be elected by more than half of the board of supervisors. The chairman of the board of supervisors shall convene and chair meetings of the board of supervisors; where the chairman of the board of supervisors is unable or fails to perform his/her duties, the deputy chairman of the board of supervisors shall convene and chair meetings of the board of supervisors; where the deputy chairman of the board of supervisors is unable or fails to perform his/her duties, a supervisor appointed by more than half of the board of supervisors shall convene and chair the meetings of the board of supervisors.

Directors and senior management personnel shall not take the post of supervisor concurrently.

The provisions of Article 52 on the term of appointment of supervisors of limited liability companies shall apply to the supervisors of companies limited by shares.

**Article 118** The provisions of Article 53 and Article 54 on duties and powers of the board of supervisors of limited liability companies shall apply to the board of supervisors of companies limited by shares.

Expenses incurred by the board of supervisors in the exercising of duties and powers shall be borne by the company.

**Article 119** The board of supervisors shall convene at least one meeting every six months. A supervisor may propose to convene an ad hoc meeting of the board of supervisors.

The rules of procedure and voting procedures of the board of supervisors shall be stipulated by the articles of association of the company, unless otherwise provided in this Law.

Resolutions of the board of supervisors shall be passed by a simple majority.

Minutes of meetings of the board of supervisors shall be recorded and signed by the supervisors who attended the meeting.

## **Section 5 Special Provisions on Organisation of Listed Companies**

**Article 120** Listed companies referred to in this Law shall mean companies limited by shares whose shares are listed and traded on a stock exchange.

**Article 121** Where a listed company acquired or sold major assets or provided guarantee amount(s) which exceeds 30% or more of its assets, a resolution of the shareholders' general meeting passed by a two-third majority of shareholders who attended the meeting shall be required.

**Article 122** Listed companies shall appoint independent directors; the specific measures shall be provided by the State Council.

**Article 123** Listed companies shall appoint a board secretary to be responsible for preparation of meetings of the board of shareholders and board of directors, keeping of documents, management of shareholders' information and handling of information disclosure etc.

**Article 124** The board of directors and directors of a listed company shall abstain from voting on a resolution or vote on behalf of another director if they are related party in the resolution matter. The meeting of the board of directors may be constituted by more than half of those directors who are not a related party; the resolution of the board of directors shall be passed by a simple majority of votes cast by directors who are not a related party. Where the number of directors who are not a related party is less than 3, the matter shall be submitted to the board of shareholders of the listed company for review.

## **CHAPTER V SHARE ISSUES AND SHARE TRANSFERS OF COMPANIES LIMITED BY SHARES**

### **Section 1 Share Issues**

**Article 125** The capital of a company limited by shares is divided into shares of equal par value.

Shares of the companies shall be in script form. Share certificates shall be the proof issued by a company for the shares held by the shareholders.

**Article 126** Share issues shall comply with the principles of fairness and equity. Shares of the same type shall rank *pari passu*.

The terms and price shall be the same for all shares of the same type in a share issue. An organisation or individual shall pay the same price for each share subscribed.

**Article 127** Shares may be issued at the par value or at a premium but shall not be issued below par value.

**Article 128** Shares shall be issued in script form or other forms stipulated by the securities regulatory authorities of the State Council.

A share certificate shall state the following:

- (1) name of the company;
- (2) date of incorporation of the company;
- (3) type of shares, par value and number of shares; and
- (4) serial number of the share certificate.

Share certificates shall be signed by the legal representative and affixed with the company seal.

Share certificates for promoter's shares shall state the wordings "promoter's shares".

**Article 129** Shares issued by a company may be in the form of registered shares or bearer shares.

Shares issued by a company to promoters or legal persons shall take the form of registered shares and the share certificates shall state the name of the promoter or legal person and shall not state another name or the name of a representative.

**Article 130** Companies issuing registered shares shall keep a register of shareholders which records the following:

- (1) name and address of the shareholder;
- (2) number of shares held by each shareholder;
- (3) serial number of the share certificate of each shareholder; and
- (4) date of acquisition of shares of each shareholder.

Companies issuing bearer shares shall record the number of shares, serial number of share certificates and date of issue.

**Article 131** The State Council may formulate separate regulations on companies issuing other types of shares which are not provided in this Law.

**Article 132** A company limited by shares shall deliver share certificates to their shareholders upon its incorporation. A company shall not deliver share certificates to its shareholders prior to its incorporation.

**Article 133** A resolution on the following matters shall be passed in accordance with the provisions of the articles of association of the company for issue of new shares:

- (1) type and number of new shares;
- (2) issue price of new shares;
- (3) date of commencement and cut-off date for issue of new shares; and
- (4) type and number of new shares issued to existing shareholders.

**Article 134** Companies approved by the securities regulatory authorities of the State Council to issue new shares shall announce the prospectus of the new shares and financial report and prepare a subscription form.

The provisions of Article 87 and 88 shall apply to issue of new shares.

**Article 135** A company may determine the pricing scheme in accordance with its business and financial status for issue of new shares.

**Article 136** A company shall complete change of registration formalities with the company registration authorities and make an announcement after all the new shares issued are fully subscribed.

## **Section 2 Share Transfers**

**Article 137** Shareholders may transfer their shares in accordance with the provisions of the law.

**Article 138** Share transfers by shareholders shall be carried out at a stock exchange established in accordance with the law or via other methods stipulated by the State Council.

**Article 139** Transfer of registered shares shall be made by shareholders by way of endorsement or other methods stipulated by laws and administrative regulations; the company shall record the name and address of the transferee in the register of shareholders upon the transfer.

Alteration of records in the register of shareholders shall not be made within 20 days before the convening of a shareholders' general meeting or within five days from the record date for determination of dividend distribution by the company. Where the law provides otherwise for alteration of records in the register of shareholders of listed companies, such provisions shall prevail.

**Article 140** Transfer of bearer shares shall take effect upon delivery of the share certificate by the shareholder to the transferee.

**Article 141** Shares held by promoters shall not be transferred within one year from the date of incorporation of the company. Shares issued by the company before the public offering of shares shall not be transferred within one year from the date on which the shares of the company are listed on a stock exchange.

Directors, supervisors and senior management personnel of a company shall declare their shareholding in the company and changes in such shareholding to the company; and shall not transfer more than 25% of their shareholding in the company each year during their term of appointment or transfer their shares within one year from the date on which the shares of the company are listed on a stock exchange. The aforesaid persons shall not transfer their shares in the company within half a year after leaving their post. The articles of association of the company may make restrictive provisions on transfer of shares of the company held by directors, supervisors and senior management personnel.

**Article 142** A company shall not make a share buyback, except under any of the following circumstances:

(1) reduction of its registered capital;

- (2) merger with another company which holds its shares;
- (3) use of its shares for carrying out an employee stock ownership plan or equity incentive plan;
- (4) request from shareholders who object to a resolution of a shareholders' general meeting on merger or division of the company to acquire their shares by the company;
- (5) use of shares for conversion of convertible corporate bonds issued by a listed company; and
- (6) the share buyback is necessary for a listed company to maintain its company value and protect its shareholders' equity.

A resolution of a shareholders' general meeting is required for a share buyback by a company under either of the circumstances stipulated in item (1) or item (2) above; for a company's share buyback under any of the circumstances stipulated in item (3), item (5) or item (6) above, a resolution of the company's board of directors shall be made by a two-third majority of directors attending the meeting according to the provisions of the company's articles of association or as authorized by the shareholders' meeting.

The shares acquired under the circumstance stipulated in item (1) hereof shall be deregistered within ten days from the date of acquisition of shares; the shares shall be assigned or deregistered within six months if the share buyback is made under the circumstances stipulated in either item (2) or item (4); and the shares held in total by a company after a share buyback under any of the circumstances stipulated in item (3), item (5) or item (6) shall not exceed 10% of the company's total outstanding shares, and shall be assigned or deregistered within three years.

Listed companies making a share buyback shall perform their obligation of information disclosure according to the provisions of the Securities Law of the People's Republic of China. If the share buyback is made under any of the circumstances stipulated in item (3), item (5) or item (6) hereof, centralized trading shall be adopted publicly.

A company shall not accept its own shares as the subject matter of pledge.

**Article 143** A shareholder whose registered shares are stolen, lost or extinguished may request, pursuant to the public summon for exhortation stipulated in the Civil Litigation Law of the People's Republic of China for a people's court to declare the shares invalid. Upon declaration of the shares by the people's court to be void, the shareholder may apply for issue of replacement shares.

**Article 144** Shares of listed companies shall be listed and traded in accordance with the provisions of the relevant laws and administrative regulations and stock exchange rules.

**Article 145** Listed companies shall announce information on their financial status, business status and any major lawsuit in accordance with the provisions of laws and administrative regulations and announce half-year financial reports.

## **CHAPTER VI QUALIFICATIONS AND OBLIGATIONS OF COMPANY DIRECTORS, SUPERVISORS AND SENIOR MANAGEMENT PERSONNEL**

**Article 146** The following persons shall not act as a director, supervisor or senior management personnel:

- (1) a person who has no civil capacity or who has limited civil capacity;
- (2) a person who has been convicted for corruption, bribery, misappropriation of property or disruption of the order of socialist market economy and a five-year period has not lapsed since expiry of the execution period or a person who has been stripped of political rights for being convicted of a crime and a five-year period has not lapsed since expiry of the execution period;
- (3) a person who acted as a director, factory manager, manager in a company which has been declared bankrupt or liquidated and who is personally accountable for the bankruptcy or liquidation of the company; and a three-year period has not lapsed since the completion of bankruptcy or liquidation of such company;
- (4) a person who has acted as a legal representative of a company which has its business licence revoked or being ordered to close down for a breach of law and who is personally accountable, and a three-year period has not lapsed since the revocation of the business licence of such company; and
- (5) a person who is unable to repay a relatively large amount of personal debts. Where the election or appointment of a director, supervisor or senior management personnel is in violation of the aforesaid provisions, such election or appointment shall be void. In the event of the circumstances stipulated in (1) above during the term of appointment of a director, supervisor or senior management personnel, the company shall remove the director, supervisor or senior management personnel.

Election or appointment of a director, supervisor or senior management staff which violates the aforesaid provisions shall be void.

A director, supervisor or senior management staff who encounters the circumstance set out in the first paragraph of this Article shall be dismissed by the company.

**Article 147** Directors, supervisors and senior management personnel shall comply with the provisions of laws and administrative regulations and the articles of association of the company and bear fiduciary duties towards the company.

Directors, supervisors and senior management personnel shall not abuse their duties and rights to receive bribes or other illegal income and shall not misappropriate company assets.

**Article 148** A director or senior executive shall not:

- (1) misappropriate company funds;
- (2) deposit company funds in a bank account opened in his/her name or in the name of others;
- (3) use of company funds to make loans to others or provide guarantee for others without the consent of the board of shareholders, a shareholders' general meeting or the board of directors and in violation of the provisions of the articles of association of the company;

(4) enter into contracts with the company or carry out transactions with the company in violation of the provisions of the articles of association of the company or without the consent of the board of shareholders or a shareholders' general meeting;

(5) abuse his/her duties and powers to seize commercial opportunities of the company for himself/herself or others or engage in similar business of the same kind with that of the company for himself/herself or for others without the consent of the board of shareholders or a shareholders' general meeting;

(6) pocket the commissions for transactions between the company and other parties;

(7) disclose company secrets arbitrarily; and

(8) do any other act which violates his/her fiduciary duties towards the company.

Income received by directors and senior management personnel in violation of the aforesaid provisions shall belong to the company.

**Article 149** A director, supervisor or senior management personnel who violates the provisions of laws and administrative regulations or the articles of association of the company in his/her performance of duties and powers and causing the company to suffer damages shall bear compensation liability.

**Article 150** Where the board of shareholders or a shareholders' general meeting requires a director, supervisor or senior management personnel to attend a meeting, the director, supervisor or senior management personnel shall attend the meeting and answer the queries of the shareholders.

Directors or senior management personnel shall provide the relevant information and data truthfully to the board of supervisors or the supervisor (in the case of a limited liability company which has not established a board of supervisors) and shall not obstruct the exercising of powers and performance of duties by the board of supervisors or the supervisor.

**Article 151** In the event of circumstances stipulated in Article 149 involving a director or senior executive, a shareholder or a group of shareholders of a limited liability company or shareholder(s) of a company limited by shares holding 1% or more of shares in the company for 180 days consecutively may submit a request in writing to the board of supervisors or the supervisor (in the case of a limited liability company which has not established a board of supervisors) to file a lawsuit with a people's court; Under any of the circumstances stipulated in Article 149 involving a supervisor, the aforesaid shareholder(s) may submit a request in writing to the board of directors or the executive director (in the case of a limited liability company which have not established a board of directors) to file a lawsuit with a people's court.

Where the board of supervisors or the supervisor (in the case of a limited liability company which has not established a board of supervisors) or the board of directors or the executive director refuses to file a lawsuit pursuant to the written request of the shareholder(s) or fails to file a lawsuit within 30 days from receipt of the request or where the circumstances are urgent and the company will suffer irrecoverable losses if a lawsuit is not filed forthwith, the aforesaid shareholder(s) shall have the right to file a lawsuit with a people's court directly in their own name to protect the interests of the company.

In the event of an infringement of the legal interests of the company by others which causes the company to suffer damages, shareholders mentioned in the first paragraph of

this article may file a lawsuit with a people's court in accordance with the provisions of the aforesaid paragraphs.

**Article 152** In the event that a director or senior executive violates the provisions of the laws and administrative regulations or the articles of association of the company and infringes upon the interests of the shareholders, the shareholders may file a lawsuit with a people's court.

## **CHAPTER VII CORPORATE BONDS**

**Article 153** Corporate bonds referred to in this Law shall mean priced securities issued by companies in accordance with statutory procedures for which the issuer agrees to pay principal and interest to the holders within a stipulated period.

Issue of corporate bonds shall satisfy the issue requirements stipulated in the Securities Law of the People's Republic of China.

**Article 154** The method of offering of corporate bonds shall be announced upon approval of the application for issuance of corporate bonds by the authorised department of the State Council.

The method of offering of corporate bonds shall state the following matters:

- (1) name of the company;
- (2) usage of the funds raised;
- (3) issue size and par value;
- (4) how the coupon rate is determined;
- (5) period and method of principal repayment and interest payment;
- (6) guarantee for the issue;
- (7) issue price and time limit of the issue;
- (8) net assets of the company;
- (9) total amount of outstanding bonds previously issued; and
- (10) underwriter of the issue.

**Article 155** Corporate bond certificates shall state the name of the company, par value of the bond, coupon rate, repayment schedule etc and shall be signed by the legal representative and affixed with the company seal.

**Article 156** Corporate bonds may take the form of registered bonds or bearer bonds.

**Article 157** Companies shall keep a corporate bond counterfoil book.

The following matters shall be stated in the corporate bond counterfoil book for an issue of registered bonds:



- (1) name and address of bondholder;
- (2) date of acquisition of the bonds and serial number of the corporate bond certificate;
- (3) total amount of bonds, par value of the bonds, coupon rate, method and period of principal repayment and interest payment; and
- (4) date of issue.

The corporate bond counterfoil record book for bearer bonds shall state the total amount of bonds, coupon rate, schedule and method of repayment, date of issue and serial numbers of the bond certificates.

**Article 158** Registration and settlement organisations for registered bonds shall establish the relevant systems for bond registration, custodian, interest payment and redemption etc.

**Article 159** Corporate bonds shall be transferable and the transfer price shall be agreed between the transferor and the transferee.

Trading of corporate bonds on a stock exchange shall comply with the trading rules of the stock exchange.

**Article 160** Registered bonds shall be transferred by way of endorsement by the bondholder or other methods stipulated by the laws and administrative regulations. Upon completion of the transfer, the company shall record the name and address of the transferee in the corporate bond counterfoil record book.

Transfer of bearer bonds shall take effect upon delivery of the bond by the bondholder to the transferee.

**Article 161** A shareholders' general meeting of a listed company may pass a resolution on issuance of convertible corporate bonds and stipulate the method of conversion in the prospectus of the bond issue. Listed companies issuing convertible corporate bonds shall obtain the approval of the securities regulatory authorities of the State Council.

The corporate bond certificates for convertible corporate bonds shall state the wordings "convertible corporate bonds" and the balance of convertible corporate bonds shall be recorded in the corporate bond counterfoil record book.

**Article 162** Companies which have issued convertible corporate bonds shall convert such corporate bonds into shares for the bondholders in accordance with the method of conversion; however the bondholders shall have the right to opt for conversion of such corporate bonds into shares or not to convert.

## **CHAPTER VIII FINANCE AND ACCOUNTING OF COMPANIES**

**Article 163** Companies shall establish their finance and accounting system in accordance with the provisions of the laws and administrative regulations and the rules of the finance authorities of the State Council.

**Article 164** Companies shall prepare financial accounting reports at the end of each accounting year and such financial accounting reports shall be audited by an accounting firm in accordance with the provisions of the law.

Preparation of financial accounting reports shall comply with the provisions of the laws and administrative regulations and the rules of the finance authorities of the State Council.

**Article 165** Limited liability companies shall deliver their financial accounting reports to all shareholders by the deadline stipulated in the articles of association of the company.

The financial accounting reports of a company limited by shares shall be made available at the company at least 20 days before the date of the annual general meeting for inspection by the shareholders; companies limited by shares which have made public offering of shares shall announce their financial accounting reports.

**Article 166** Companies shall contribute 10% of the profits into their statutory capital reserve upon distribution of their post-tax profits of the current year. A company may discontinue the contribution when the aggregate sum of the statutory capital reserve is more than 50% of its registered capital.

Where the balance of the statutory capital reserve of a company is insufficient to make good its losses in the previous year, the company shall make good such losses using its profits of the current year before making contribution to the statutory capital reserve in accordance with the provisions of the preceding paragraph.

Upon contribution to the statutory capital reserve with its post-tax profits, a company may make further contribution to the capital reserve with its post-tax profits in accordance with a resolution of the board of shareholders or a shareholders' general meeting.

After making up its losses and accrued reserves, a limited liability company may distribute post-tax profits according to the provisions of Article 34 hereof, while a company limited by shares may make distribution based on the proportion of shares held by shareholders; Exception shall apply where the articles of association of a company limited by shares stipulate that distribution is not based on the proportion of shares held.

Where the board of shareholders, the shareholders' general meeting or the board of directors violates the provisions of the preceding paragraphs to make profit distribution to the shareholders before making up losses and accrual of statutory capital reserve, the shareholders shall return such distributed profits to the company.

The shares held by a company shall not be entitled to profit distribution.

**Article 167** The proceeds from shares of a company limited by shares issued at a premium and other income which are required to be contributed to the capital reserve as provided by the finance authorities of the State Council shall be contributed to the capital reserve accordingly.

**Article 168** The capital reserve of a company shall be used to make good the losses of the company or expand the business and production of the company or converted into additional capital. However, the statutory capital reserve shall not be used to make good the losses of the company.

In the event of a conversion of statutory capital reserve into additional capital, the balance of the statutory capital reserve after the conversion shall not be less than 25% of the registered capital of the company before the increase.

**Article 169** Appointment or dismissal of the accounting firm providing a company audit service shall comply with the provisions of the provisions of the articles of association of

the company and decided by the board of shareholders, a shareholders' general meeting or the board of directors.

The board of shareholders, a shareholders' general meeting or the board of directors shall allow the accounting firm to make a representation when passing a resolution on the dismissal of the accounting firm.

**Article 170** Companies shall provide accurate and complete accounting vouchers, accounting books, financial accounting reports and other accounting information to their auditor and shall not refuse to provide information, hide or provide false information.

**Article 171** Companies shall not establish separate accounting books other than statutory accounting books.

Company assets shall not be deposited in accounts opened and maintained in the name of an individual.

## **CHAPTER IX MERGER, DIVISION, INCREASE IN CAPITAL AND CAPITAL REDUCTION OF COMPANIES**

**Article 172** Mergers of companies may take the form of mergers by absorption or mergers by new establishment.

Mergers by absorption shall mean that one company admits one or more other companies into its own company, whereby the admitting company survives and the admitted company or companies are dissolved. Mergers by new establishment shall mean that two or more companies merge to establish a new company, whereby each party to the merger is dissolved.

**Article 173** The parties to a merger shall enter into a merger agreement for a company merger and prepare a balance sheet and a list of assets. The company shall notify its creditors within 10 days from the date of the resolution on the merger and publish an announcement on the newspapers within 30 days. The creditors may demand, within 30 days from receipt of the notice (or within 45 days for those creditors who did not receive the notice), that the company settles the debts or provide the corresponding guarantee.

**Article 174** The surviving company or the newly established company of a merger will assume the claims and debts of the parties to the merger.

**Article 175** In the event of a division, the assets of the company shall be divided accordingly.

A company which proposes a division shall prepare a balance sheet and a list of assets. The company shall notify their creditors within ten days from the date of resolution on the division and publish an announcement on the newspapers within 30 days.

**Article 176** The surviving company of a division shall bear joint liability for the debts of a company prior to its division, unless the company prior to the division and its creditors have entered into an agreement in writing on debt settlement.

**Article 177** A company which proposes to reduce its registered capital shall prepare a balance sheet and a list of assets.

The company shall notify its creditors within ten days from the date of resolution on reduction in registered capital and publish an announcement on the newspapers within 30 days. The creditors may demand, within 30 days from receipt of the notice (or within 45 days for those creditors who did not receive the notice), that the company settles the debts or provide the corresponding guarantee.

**Article 178** Contribution to the additional capital of a limited liability company by its shareholders shall comply with the relevant provisions of this Law on capital contribution by shareholders of limited liability companies at the time of establishment.

Subscription by shareholders to new shares issued by a company limited by shares for an increase in registered capital shall comply with the relevant provisions of this Law on subscription of shares by shareholders of companies limited by shares at the time of establishment.

**Article 179** In the event of a merger or division or change in registration details, change of registration formalities shall be completed with the company registration authorities in accordance with the provisions of the law; when a company is dissolved, de-registration formalities shall be completed in accordance with the provisions of the law; registration formalities shall be completed in accordance with the provisions of the law for establishment of a new company.

Change in registration formalities shall be completed with the company registration authorities in accordance with the provisions of the law for increase or reduction of registered capital.

## **CHAPTER X DISSOLUTION AND LIQUIDATION OF COMPANIES**

**Article 180** A company shall be dissolved for the following reasons:

(1) expiry of the term of operation stipulated in the articles of association of the company or occurrence of an event which triggers the dissolution as provided in the articles of association of the company;

(2) a resolution on dissolution has been passed by the board of shareholders or a shareholders' general meeting;

(3) where the dissolution is required by a merger or division;

(4) the business licence is revoked or the company is ordered to be closed down;

(5) a dissolution of the company is ordered by a people's court in accordance with the provisions of Article 182.

**Article 181** In the event of any of the circumstances set out in item (1) of Article 180, the company may continue to exist by making an amendment to its articles of association.

Amendment to the articles of association of a limited liability company in accordance with the provisions of the preceding paragraph shall require a resolution passed by a two-third majority of votes cast by its shareholders; in the case of a company limited by shares, such a resolution shall be passed by a two-third majority of votes cast by its shareholders present at a shareholders' general meeting.

**Article 182** Where a company experiences serious difficulties in its business and the shareholders will suffer serious damages if the company continues its operation, a

shareholder or a group of shareholders holding 10% or more of the shares of the company may, in the absence of any other means, request for a mandatory dissolution of the company by a people's court.

**Article 183** Where a company is dissolved in accordance with the provisions of item (1), (2), (4) or (5) of Article 180, a liquidation group shall be established to commence liquidation within 15 days from the occurrence of the event which triggers the dissolution. The liquidation group of a limited liability company shall be formed by the shareholders; the liquidation group of a company limited by shares shall comprise members appointed by the directors or the board of shareholders. Where the liquidation group is not established by the deadline to conduct liquidation, the creditors may apply to a people's court to appoint a liquidation group to conduct liquidation. The people's court shall accept the application and form a liquidation group promptly to conduct liquidation.

**Article 184** The liquidation group shall exercise the following duties and powers during the liquidation period:

- (1) clearance of company assets, preparation of balance sheet and list of assets;
- (2) notification to creditors and public announcement;
- (3) handling outstanding business of the company which relates to the liquidation;
- (4) settlement of outstanding tax payments and tax payments which arise during the liquidation period;
- (5) settlement of creditors' rights and debts;
- (6) disposal of assets remaining after settlement of the company's debts; and
- (7) representing the company in civil litigation.

**Article 185** The liquidation group shall notify the creditors within ten days from the date of its establishment and publish an announcement on the newspapers within 60 days. The creditors may, within 30 days from receipt of the notice (or within 45 days for those creditors who did not receive the notice), declare their creditors' rights to the liquidation group.

Creditors declaring their creditors' rights shall provide details of the creditors' rights and the relevant proof. The liquidation group shall register the creditors' rights.

During the declaration period, the liquidation group shall not settle any creditors' rights.

**Article 186** Upon clearance of company assets and preparation of the balance sheet and list of assets by the liquidation group, a liquidation plan shall be formulated and reported to the board of shareholders, a shareholders' general meeting or a people's court for confirmation.

The company assets shall be applied for the payment of liquidation expenses, employees' wages, social security premiums and statutory compensation, payment of outstanding taxes and settlement of company debts; the remaining assets shall be distributed to shareholders in accordance with the ratio of capital contribution in the case of a limited liability company and in accordance with the ratio of shareholders in the case of a company limited by shares.

During the liquidation period, a company shall not engage in business operations which are not related to the liquidation. Company assets shall not be distributed to the shareholders prior to settlement of the aforesaid liabilities.

**Article 187** Where the liquidation group discovers upon clearance of company assets and preparation of the balance sheet and list of assets that the company assets are insufficient to settle the debts, an application shall be made to a people's court to declare the company bankrupt.

Where a company has been declared bankrupt by a people's court, the liquidation group shall transfer the liquidation task to the people's court.

**Article 188** Upon completion of the liquidation, the liquidation group shall prepare and submit a liquidation report to the board of shareholders, a shareholders' general meeting or a people's court for confirmation, submit a copy of the liquidation report to the company registration authorities to apply for de-registration and make a public announcement of the termination of the company.

**Article 189** Members of a liquidation group shall perform their duties diligently and perform liquidation obligations in accordance with the provisions of the law.

Members of a liquidation group shall not abuse their duties and rights to accept bribes or other illegal income and shall not misappropriate company assets.

Members of a liquidation group shall bear compensation liability towards the company or its creditors for damages suffered by the company or its creditors due to an intentional or serious mistake of the member(s) of the liquidation group.

**Article 190** Where a company is declared bankrupt in accordance with the provisions of the law, bankruptcy liquidation shall be conducted in accordance with the provisions of enterprise bankruptcy laws.

## **CHAPTER XI BRANCHES OF FOREIGN COMPANIES**

**Article 191** Foreign companies referred to in this Law shall mean companies established outside China in accordance with the provisions of foreign laws.

**Article 192** An application for establishment of a branch in China by a foreign company, the articles of association of the company and certificate of incorporation issued by the country of origin etc shall be submitted to the authorities in China. Upon approval, registration formalities shall be completed with the company registration authorities and a business licence shall be obtained.

Measures on examination and approval of branches of foreign companies shall be provided separately by the State Council.

**Article 193** A foreign company shall appoint a representative or an agent for its branch in China and allocate funds corresponding to the operations of the branch.

The State Council shall provide regulations on the statutory minimum operating funds of branches of foreign companies separately.

**Article 194** A branch of a foreign company shall state in its name the nationality and form of liability of the foreign company.

A branch of a foreign company shall keep a copy of the articles of association of the foreign company in its office.

**Article 195** Branches established in China by foreign companies do not qualify as a Chinese legal person.

Foreign companies shall bear civil liability for the businesses carried out by their branches in China.

**Article 196** Branches of foreign companies duly established in China to engage in business activities shall comply with the provisions of China laws and shall not infringe upon public interest; their legal rights and interests shall be protected by China laws.

**Article 197** A foreign company shall settle all debts of its branch in China in accordance with the provisions of the law when it closes down its branch in China and shall conduct liquidation in accordance with company liquidation procedures stipulated in this Law. Prior to settlement of the debts, a foreign company shall not transfer the assets of its branch out of China.

## **CHAPTER XII LEGAL LIABILITY**

**Article 198** Any party who violates the provisions of this Law in making a fraudulent declaration of its registered capital, submitting false materials or adopt other fraudulent means to conceal important fact to obtain company registration shall be ordered by the company registration authorities to make correction; a fine ranging from 5% to 15% of the registered capital shall be imposed on a company which has made fraudulent declaration; a fine ranging from RMB50,000 to RMB500,000 shall be imposed on a company which has submitted false materials or adopt other fraudulent means to conceal important fact; where the circumstances are serious, the company shall be de-registered or have its business licence revoked.

**Article 199** Promoters or shareholders who made false capital contribution or fail to make cash or non-cash contribution in accordance with the schedule shall be ordered by the company registration authorities to make correction and imposed with a fine ranging from 5% to 15% of the amount of false capital contribution.

**Article 200** Promoters or shareholders who withdraw their capital contribution after the company is incorporated shall be ordered by the company registration authorities to make correction and a fine ranging from 5% to 15% of the amount of withdrawn capital contribution.

**Article 201** A company which violates the provisions of this Law in establishing separate accounting books other than statutory accounting books shall be ordered by the finance authorities of a people's government of county level and above to make correction and be imposed with a fine ranging from RMB50,000 to RMB500,000.

**Article 202** Where a company made false records or concealed important fact on financial accounting reports etc provided to the relevant authorities as required by the law, the person-in-charge and other personnel who are directly responsible shall be imposed a fine ranging from RMB30,000 to RMB300,000 by the relevant authorities.

**Article 203** A company which fails to contribute to statutory capital reserve in accordance with the provisions of this Law shall be ordered by a people's government of county level and above to make up for the contribution and may be imposed a fine of not more than RMB200,000.

**Article 204** A company which fails to notify its creditors or make an announcement for its merger, division, reduction in registered capital or liquidation in accordance with the provisions of this Law shall be ordered by the company registration authorities to make correction and be imposed a fine ranging from RMB10,000 to RMB100,000.

A company in liquidation which concealed its assets or made false records on its balance sheet or list of assets or distribute company assets before settlement of its debts shall be ordered by the company registration authorities to make correction and be imposed a fine ranging from 5% to 10% of the amount of company assets concealed or the amount of company assets distributed prior to debt settlement; the person-in-charge and other personnel who are directly responsible shall be imposed a fine ranging from RMB10,000 to RMB100,000.

**Article 205** The company registration authorities shall issue a warning to a company in liquidation which engages in business operations unrelated to the liquidation and confiscate its illegal income.

**Article 206** A liquidation group which fails to submit a liquidation report to the company registration authorities in accordance with the provisions of this Law or concealed an important fact or made a major omission in the liquidation report shall be ordered by the company registration authorities to make correction.

A member of a liquidation group who abuses his/her duties and powers to obtain dishonest gains, illegal income or misappropriation of company assets shall be ordered by the company registration authorities to return the company asset and surrender the illegal income and be imposed a fine ranging from one to five times the amount of the illegal income.

**Article 207** The company registration authorities shall confiscate the illegal income of an asset valuation organisation or a capital verification organisation which provides false materials and impose a fine ranging from one to five times of the amount of illegal income; the relevant authorities may order the organisation to cease operations or revoke the qualification certificate of those personnel who are directly responsible or revoke the business licence of the organisation.

An asset valuation organisation or a capital verification organisation which provides a report containing a major omission by mistake shall be ordered by the company registration authorities to make correction; where the circumstances are serious, a fine ranging from one to five times of the income shall be imposed and the relevant authorities may order the organisation to cease operations or revoke the qualification certificate of those personnel who are directly responsible or revoke the business licence of the organisation.

Where the creditors of the company suffer damages due to an inaccurate valuation or capital verification issued by an asset valuation organisation or a capital verification organisation, the valuation organisation or capital verification organisation shall bear compensation liability within the scope of the inaccurate valuation or verification unless it is able to prove that the fault does not lie with the organisation.

**Article 208** Where the company registration authorities grant registration to applicants which do not satisfy the requirements stipulated in this Law or reject registration applications which satisfy the requirements stipulated in this Law, the person-in-charge and other personnel who are directly responsible shall be subject to administrative punishment in accordance with the provisions of the law.



**Article 209** Where the higher company registration authorities order the company registration authorities to grant registration to applicants which do not satisfy the requirements stipulated in this Law or to reject registration applications which satisfy the requirements stipulated in this Law or to cover up illegal registration, the person-in-charge and other personnel who are directly responsible shall be subject to administrative punishment in accordance with the provisions of the law.

**Article 210** An entity which is not duly registered as a limited liability company or a company limited by shares but uses the name of a limited liability company or a company limited by shares or an entity which is not duly registered as a branch company of a limited liability company or a company limited by shares but uses the name of a branch company of a limited liability company or a company limited by shares shall be ordered by the company registration authorities to make correction or to be closed down and may be imposed a fine of not more than RMB100,000.

**Article 211** A company which fails to commence operations after six months from its incorporation or cease operations for more than six months after commencement of operations arbitrarily without any justification shall have its business licence revoked by the company registration authorities.

A company which fails to complete change of registration formalities for a change in company registration details in accordance with the provisions of the Law shall be ordered by the company registration authorities to complete the registration formalities by a stipulated deadline; if the registration formalities are not completed by a stipulated deadline, a fine ranging from RMB10,000 to RMB100,000 shall be imposed.

**Article 212** A foreign company which violates the provisions of this Law in establishing a branch company in China shall be ordered by the company registration authorities to make correction or to be closed down and may be imposed a fine ranging from RMB50,000 to RMB200,000.

**Article 213** A company which uses the name of a company to engage in activities which compromise national security or public interest shall have its business licence revoked.

**Article 214** A company which violates the provisions of this Law shall bear civil compensation liability and pay fines and penalties; where its assets are insufficient for payment, civil compensation shall take precedence.

**Article 215** Where a violation of the provisions of this Law constitutes a criminal offence, criminal liability shall be pursued in accordance with the provisions of the law.

## **CHAPTER XIII SUPPLEMENTARY PROVISIONS**

**Article 216** The following terms used in this Law shall take the following definitions:

(1) Senior management personnel shall mean the manager, deputy manager, financial controller, board secretary of a listed company and other personnel stipulated in the articles of association of the company.

(2) Controlling shareholder shall mean a shareholder who contributes to 50% or more of the capital of a limited liability company or a shareholder who holds 50% or more of the shares of a company limited by shares or a shareholder who is able to exercise significant influence on the resolutions of the board of shareholders or a shareholders'

general meeting even though it contributes to less than 50% of the capital or holds less than 50% of the shares.

(3) Actual controlling party shall mean a party which exercises actual control over a company as investor or through other agreements or arrangements even though it is not a shareholder of the company.

(4) The term "association relationship" refers to the relationship between a company's controlling shareholders, actual controllers, directors, supervisors and senior managers and an enterprise directly or indirectly controlled by the company, as well as any other relationship that may lead to the transfer of the company's interests. However, fellow State-controlled enterprises shall not be deemed as having association relationship merely because they are commonly controlled by the State.

**Article 217** The provisions of this Law shall apply to foreign-invested limited liability companies and companies limited by shares; where the laws on foreign investment provide otherwise, such provisions shall prevail.

**Article 218** This Law shall come into force on 1 January 2006.

# 国务院关于股份有限公司境外募集股份及上市的特别规定

国务院令 第 160 号

《国务院关于股份有限公司境外募集股份及上市的特别规定》已经 1994 年 7 月 4 日国务院第 22 次常务会议通过，现予发布，自发布之日起施行。

一九九四年八月四日

**第一条** 为适应股份有限公司境外募集股份及境外上市的需要，根据《中华人民共和国公司法》第八十五条、第一百五十五条，制定本规定。

**第二条** 股份有限公司经国务院证券委员会批准，可以向境外特定的、非特定的投资人募集股份，其股票可以在境外上市。

本规定所称境外上市，是指股份有限公司向境外投资人发行的股票，在境外公开的证券交易场所流通转让。

**第三条** 股份有限公司向境外投资人募集并在境外上市的股份（以下简称境外上市外资股），采取记名股票形式，以人民币标明面值，以外币认购。

境外上市外资股在境外上市，可以采取境外存股证形式或者股票的其他派生形式。

**第四条** 国务院证券委员会或者其监督管理执行机构中国证券监督管理委员会，可以与境外证券监督管理机构达成谅解、协议，对股份有限公司向境外投资人募集股份并在境外上市及相关活动进行合作监督管理。

**第五条** 股份有限公司向境外投资人募集股份并在境外上市，应当按照国务院证券委员会的要求提出书面申请并附有关材料，报经国务院证券委员会批准。

**第六条** 国有企业或者国有资产占主导地位的企业按照国家有关规定改建为向境外投资人募集股份并在境外上市的股份有限公司，以发起方式设立的，发起人可以少于 5 人；该股份有限公司一经成立，即可以发行新股。

**第七条** 向境外投资人募集股份并在境外上市的股份有限公司（以下简称公司）向境内投资人发行的股份（以下简称内资股），采取记名股票形式。

**第八条** 经国务院证券委员会批准的公司发行境外上市外资股和内资股的计划，公司董事会可以作出分别发行的实施安排。

公司依照前款规定分别发行境外上市外资股和内资股的计划，可以自国务院证券委员会批准之日起 15 个月内分别实施。

**第九条** 公司在发行计划确定的股份总数内，分别发行境外上市外资股和内资股的，应当分别一次募足；有特殊情况不能一次募足的，经国务院证券委员会批准，也可以分次发行。

**第十条** 公司发行计划确定的股份未募足的，不得在该发行计划外发行新股。公司需要调整发行计划的，由股东大会作出决议，经国务院授权的公司审批部门核准后，报国务院证券委员会审批。

公司增资发行境外上市外资股与前一次发行股份的间隔期间，可以少于 12 个月。

**第十一条** 公司在发行计划确定的股份总数内发行境外上市外资股，经国务院证券委员会批准，可以与包销商在包销协议中约定，在包销数额之外预留不超过该次拟募集境外上市外资股数额 15% 的股份。预留股份的发行，视为该次发行的一部分。

**第十二条** 公司分别发行境外上市外资股和内资股的计划，应当在公司各次募集股份的招股说明材料中全面、详尽披露。对已经批准并披露的发行计划进行调整的，必须重新披露。

**第十三条** 国务院证券委员会会同国务院授权的公司审批部门，可以对公司章程必备条款作出规定。

公司章程应当载明公司章程必备条款所要求的内容；公司不得擅自修改或者删除公司章程中有关公司章程必备条款的内容。

**第十四条** 公司应当在公司章程中载明公司的营业期限。公司的营业期限，可以为永久存续。

**第十五条** 公司章程对公司及其股东、董事、监事、经理和其他高级管理人员具有约束力。

公司及其股东、董事、监事、经理和其他高级管理人员均可以依据公司章程主张权利，提出仲裁或者提起诉讼。

本条第一款、第二款所称其他高级管理人员包括公司财务负责人、董事会秘书和公司章程规定的其他人员。

**第十六条** 依法持有境外上市外资股、其姓名或者名称登记在公司的股东名册上的境外投资人，为公司的境外上市外资股股东。

境外上市外资股的权益拥有人可以依照境外上市外资股股东名册正本存放地或者境外上市地的法律规定，将其股份登记在股份的名义持有人名下。

境外上市外资股股东名册为证明境外上市外资股股东持有公司股份的充分证据；但是有相反证据的除外。

**第十七条** 依据本规定第四条所指的谅解、协议，公司可以将境外上市外资股股东名册正本存放在境外，委托境外代理机构管理；公司应当将境外代理机构制作的境外上市外资股股东名册的副本备置于公司的住所。受委托的境外代理机构应当随时保证境外上市外资股股东名册正本、副本的一致性。

**第十八条** 境外上市外资股股东名册正本的更正需要依据司法裁定作出的，可以由名册正本存放地有管辖权的法院裁定。

**第十九条** 境外上市外资股股东遗失股票，申请补发的，可以依照境外上市外资股股东名册正本存放地的法律、证券交易所规则或者其他有关规定处理。

**第二十条** 公司召开股东大会，应当于会议召开 45 日前发出书面通知，将会议拟审议的事项以及会议日期和地点告知所有在册股东。

拟出席股东大会的股东应当于会议召开 20 日前，将出席会议的书面回复送达公司。

书面通知和书面回复的具体形式由公司在公司章程中作出规定。

**第二十一条** 公司召开股东大会年会，持有公司有表决权的股份 5% 以上的股东有权以书面形式向公司提出新的提案，公司应当将提案中属于股东大会职责范围内的事项，列入该次会议的议程。

**第二十二条** 公司根据股东大会召开前 20 日时收到的书面回复，计算拟出席会议的股东所代表的有表决权的股份数。拟出席会议的股东所代表的有表决权的股份数达到公司有表决权的股份总数二分之一的，公司可以召开股东大会；达不到的，公司应当于 5 日内将会议拟审议的事项、会议日期和地点以公告形式再次通知股东，经公告通知，公司可以召开股东大会。

**第二十三条** 公司的董事、监事、经理和其他高级管理人员对公司负有诚信和勤勉的义务。

前款所列人员应当遵守公司章程，忠实履行职务，维护公司利益，不得利用在公司的地位和职权为自己谋取私利。

**第二十四条** 公司应当聘用符合国家有关规定的、独立的会计师事务所，审计公司的年度报告，并复核公司的其他财务报告。

公司应当向其聘用的会计师事务所提供有关资料和答复询问。

公司聘用会计师事务所的聘期，自公司本次股东年会结束时起至下次股东年会结束时止。

**第二十五条** 公司解聘或者不再续聘会计师事务所，应当事先通知会计师事务所，会计师事务所所有权向股东大会陈述意见。

会计师事务所提出辞聘的，应当向股东大会说明公司有无不当情事。

**第二十六条** 公司聘用、解聘或者不再续聘会计师事务所由股东大会作出决定，并报中国证券监督管理委员会备案。

**第二十七条** 公司向境外上市外资股股东支付股利以及其他款项，以人民币计价和宣布，以外币支付。公司所筹集的外币资本金的结汇和公司向股东支付股利以及其他款项所需的外币，按照国家有关外汇管理的规定办理。

公司章程规定由其他机构代为兑换外币并付给股东的，可以依照公司章程的规定办理。

**第二十八条** 公司所编制的向境内和境外公布的信息披露文件，内容不得相互矛盾。

分别依照境内、境外法律、法规、证券交易场所规则的规定，公司在境内、境外或者境外不同国家和地区披露的信息有差异的，应当将差异在有关的证券交易场所同时披露。

**第二十九条** 境外上市外资股股东与公司之间，境外上市外资股股东与公司董事、监事和经理之间，境外上市外资股股东与内资股股东之间发生的与公司章程规定的内容以及公司其他事务有关的争议，依照公司章程规定的解决方式处理。

解决前款所述争议，适用中华人民共和国法律。

**第三十条** 本规定自发布之日起施行。



# **Special Regulations of the State Council concerning Floating and Listing of Shares Overseas by Companies Limited by Shares**

Adopted 4 July 1994 by the Twenty-second Session of the Standing Committee of the State Council

Promulgated 4 August 1994 by the State Council.

## **Article 1.**

These Regulations are formulated in accordance with the provisions of Articles 85 and 155 of the Company Law of the People's Republic of China in order to meet the requirements of floating and listing of shares overseas by companies limited by shares.

## **Article 2.**

Subject to approval by the Securities Committee of the State Council, a company limited by shares may issue shares to designated or non-designated investors overseas and its shares may be listed overseas.

For the purposes of these Regulations, listing overseas shall refer to shares being issued to investors overseas by companies limited by shares and such shares being freely transferable on overseas public stock exchanges.

## **Article 3.**

The shares which are issued to overseas investors and which are listed overseas (hereinafter referred to as foreign capital shares listed overseas) by companies limited by shares shall be in the form of registered share certificates, with the face value indicated in renminbi and subscription in foreign currencies.

Foreign capital shares listed overseas may adopt the form of overseas depository receipts or other derivative forms.

## **Article 4.**

The Securities Committee of the State Council or its supervisory and management executive organisation - the China Securities Supervision and Management Committee may, through mutual understanding, enter into an agreement with overseas stock exchange supervision and management authorities to carry out cooperative supervision and management of companies limited by shares issuing shares to overseas investors, listing shares overseas and conducting related activities.

## **Article 5.**

A company limited by shares wishing to issue shares to overseas investors and to list those shares overseas shall, in accordance with the requirements of the Securities Committee of the State Council, lodge a written application, together with relevant documents, to the Securities Committee of the State Council for approval.

## **Article 6.**

When a State-owned enterprise or an enterprise with the majority of its assets owned by the State is transformed into a company limited by shares pursuant to relevant State regulations, and which is able to issue shares to overseas investors and to list shares overseas, the promoters may number less than five (5) if the company is established by way of promotion. A company limited by shares may issue new shares once it is established.

#### **Article 7.**

Shares issued to domestic investors (hereinafter referred to as "domestic capital shares") by a company limited by shares (hereinafter referred to as a company) shall adopt the form of registered share certificates.

#### **Article 8.**

Subject to the approval of the Securities Committee of the State Council of a plan for issuing and listing of foreign capital shares and domestic capital shares, the board of directors of a company may make appropriate arrangements for the respective issue.

The plans for the issuing and listing of foreign capital shares and domestic capital shares shall be prepared by a company pursuant to the provisions of the preceding paragraph and may be separately implemented within fifteen (15) days from the date of approval by the Securities Committee of the State Council.

#### **Article 9.**

Foreign capital shares listed overseas and domestic capital shares which are to be separately issued as part of the total amount of shares fixed in a company's issue plan shall be floated in full at the one time. Under special circumstances, where the total amount of shares of each issue cannot be entirely floated in full at the one time, such shares may, subject to approval by the Securities Committee of the State Council, be issued in installments.

#### **Article 10.**

If a company fails to fully float the total amount of shares fixed in its issue plan, new shares which were not included in the original issue plan shall not be issued by the company. Where the share issue plan needs to be amended, such amendment shall be subject to a resolution of the shareholders' meeting. After examination and approval by the company examining and approving department authorised by the State Council, an amendment to the share issue price plan shall be reported to the Securities Committee of the State Council for approval.

The interval between the date of increasing share capital by issuing foreign capital shares and the date of the previous issue can be less than twelve (12) months.

#### **Article 11.**

Where issuing foreign capital shares listed overseas within the total amount of shares fixed in the share issue plan, a company may, subject to approval by the Securities Committee of the State Council, agree with the underwriters in the underwriting agreement to retain not more than 15% of the intended total amount of foreign capital shares listed overseas, after accounting for the amount of shares underwritten. The issue of shares retained by a company shall be regarded as part of the total shares issued under the original issue plan.

**Article 12.**

A company with an approved plan to issue foreign capital shares and domestic capital shares respectively shall reveal complete and detailed information in the respective prospectus. Any amendments to the approved and revealed issue plan shall also be disclosed.

**Article 13.**

The Securities Committee of the State Council, in conjunction with the company examining and approving department authorised by the State Council, may formulate certain essential clauses in the company's articles of association.

A company's articles of association shall clearly specify contents required by essential clauses. A company shall not be permitted to amend or delete the contents of these essential clauses in its articles of association.

**Article 14.**

A company shall specify the term of its business operations in its articles of association. The term of the business operations of a company may be perpetual.

**Article 15.**

The articles of association of a company shall have binding force on the company and its shareholders, directors, supervisors, managers and other senior management personnel.

A company and its shareholders, directors, supervisors and other senior management personnel shall, in accordance with the company's articles of association, have the right to apply for arbitration or take legal action.

"Other senior management personnel" referred to in the first and second paragraphs of this Article shall include persons responsible for the company financial affairs, the secretaries of the board of directors and other personnel as stipulated in the company's articles of association.

**Article 16.**

Overseas investors who legally hold foreign capital shares and whose names or titles are registered in the company's register of shareholders shall be the holders of foreign capital shares listed overseas of the company.

A beneficial owner of stock equity of foreign capital shares listed overseas may, in accordance with the statutory regulations of the place in which the original register of shareholders is kept or where the shares are listed, register its shares in the name of a nominee.

The register of shareholders of foreign capital shares listed overseas is regarded as sufficient evidence to verify the holding of a company's foreign capital shares, unless there is contradictory evidence.

**Article 17.**

In accordance with the mutual understanding and agreement as referred to in Article 4 of these Regulations, the original copy of a company's register of foreign capital

shareholders may be kept overseas and managed by an overseas agency entrusted by the company. A duplicate copy of a company's register shall be kept at the business premises of the company. The entrusted overseas agency shall ensure the consistency of the original and duplicate copies of the register of foreign capital shareholders.

#### **Article 18.**

When it is necessary to make amendments to the original copy of a register of foreign capital shareholders based on a judicial ruling, such a ruling may be made by the court in the place at which the original copy of the register of foreign shareholders is kept.

#### **Article 19.**

In the case of loss of a share certificate for foreign capital shares, an application for re-issue may be made in accordance with the law of the place where the original copy of the register of foreign capital shareholders is kept, rules of the stock exchange or other relevant regulations.

#### **Article 20.**

When convening a shareholders' meeting, a company shall send written notice forty-five (45) days before the commencement of the meeting to all registered shareholders, specifying the agenda, date and place of the meeting.

Shareholders wishing to attend the shareholders' meeting shall make written reply to the company twenty-one (21) days prior to the meeting.

The detailed format of the written notice and written reply forms shall be stipulated by the company in its articles of association.

#### **Article 21.**

When convening an annual shareholders' meeting of a company, shareholders who hold shares representing more than 5% of the voting rights may raise written proposals to the company for resolution. Those matters in such proposals which require resolution by a shareholders' meeting shall be included in the agenda of the annual shareholders' meeting.

#### **Article 22.**

A company shall count the number of voting shares represented by shareholders intending to attend the meeting based on the reply slips received by the company twenty (20) days before the date of the shareholders' meeting. A shareholders' meeting may be convened when the written replies representing 50% of the voting rights of the company have been received; where replies representing 50% of the voting rights are not received, the company shall, within five (5) days, inform the shareholders once again by way of public notice. This notice shall include the agenda and date and place of the meeting. A shareholders' meeting may be convened after a public notice has been made.

#### **Article 23.**

The directors, supervisors, managers and other senior management personnel of a company shall have the obligations of honesty, trustworthiness and diligence toward the company.

Those personnel mentioned in the preceding paragraph shall abide by the company's articles of association and shall carry out their duties faithfully, protect the rights and interests of the company, and shall not be permitted to seek personal gain by taking advantage of their positions of power within the company.

#### **Article 24.**

A company shall appoint an independent accounting firm, which is qualified to conduct auditing under relevant State Council regulations, to audit the annual report of the company and to review other financial reports of the company.

A company shall provide relevant information to the appointed accounting firm and shall answer its inquiries.

The period of appointment of an accounting firm shall commence from the date of conclusion of the current annual shareholders' meeting and end at the conclusion of the subsequent annual shareholders' meeting.

#### **Article 25.**

A company shall advise the accounting firm in advance if it is to be dismissed or is not to be re-appointed. The accounting firm shall have the right to make a statement in respect of its dismissal or non re-appointment at the shareholders' meeting.

An accounting firm which resigns from its office shall state to the shareholders' meeting whether or not the company has conducted any inappropriate transactions.

#### **Article 26.**

Decisions on matters relating to the appointment of an accounting firm, removal of an accounting firm or non re-appointment of an accounting firm shall be taken at a shareholders' meeting and such decisions shall be reported to the China Securities Supervision and Management Committee for the record.

#### **Article 27.**

Dividends or other payments which are to be made by the company to shareholders of the company's foreign capital shares listed overseas shall be calculated and declared in renminbi and paid in foreign currency. The exchange settlement of the capital raised by a company in foreign currencies and the foreign exchange needed by a company to pay share dividends and make other payments to its shareholders shall be handled in accordance with the regulations of the State concerning foreign exchange control.

If the articles of association of a company provide that the aforesaid payments shall be converted into foreign currencies and paid to shareholders by other organisations on the company's behalf, such provisions shall apply.

#### **Article 28.**

The contents of those documents prepared by a company to reveal certain information about the company in China and overseas shall not be contradictory.

If there is a difference between the information revealed in China and overseas due to respective laws and statutory regulations of the stock exchanges, such a difference shall be revealed in the respective stock exchanges simultaneously.

**Article 29.**

Disputes in relation to the contents of a company's articles of association and other matters between the shareholders of foreign capital shares listed overseas and the company, between shareholders of foreign capital shares listed overseas and the company's directors, supervisors and managers, or between the shareholders of foreign capital shares listed overseas and shareholders of domestic capital shares shall be resolved in accordance with the provisions of the company's articles of association.

The laws of the People's Republic of China shall apply to settlement of disputes in the preceding paragraph.

**Article 30.**

These Regulations shall take effect from the date of promulgation.

# 关于执行《到境外上市公司章程必备条款》的通知

证券委、体改委 证委发〔1994〕 21 号

为适应股份有限公司向境外募集股份和到境外上市的需要，规范到境外上市的股份有限公司的行为，国务院证券委、国家体改委根据《国务院关于股份有限公司境外募集股份及上市的特别规定》第十三条，制定了《到境外上市公司章程必备条款》（以下简称《必备条款》），现印发给你们，请遵照执行。

到境外上市的股份有限公司（以下简称“到境外上市公司”），应当在其公司章程中载明《必备条款》所要求的内容，并不得擅自修改或者删除《必备条款》的内容。到境外上市公司可以根据具体情况，在其公司章程中规定《必备条款》要求载明以外的、适合本公司实际需要的其他内容，也可以在不改变《必备条款》规定含意的前提下，对《必备条款》作文字和条文顺序的变动。《必备条款》中明确规定到香港上市的股份有限公司章程所应当载明的内容，无须载入到香港以外的其他地区或者国家上市的股份有限公司的公司章程。

《必备条款》自本通知印发之日起执行。在此之前已经获得批准的到境外上市公司的公司章程不符合《必备条款》规定要求的，有关公司应当在本通知发出后的第一次股东年会上，对其公司章程作出相应修改。

中国证券监督管理委员会 国家经济体制改革委员会

1994 年 8 月 27 日

附件：到境外上市公司章程必备条款

## 第一章 总 则

**第一条** 本公司系依照《中华人民共和国公司法》（简称《公司法》）、《国务院关于股份有限公司境外募集股份及上市的特别规定》（简称《特别规定》）和国家其他有关法律、行政法规成立的股份有限公司。

公司经〔批准机关和批准文件名称〕批准，于〔设立日期〕，以发起方式〔或募集方式〕设立，于〔登记日期〕在〔公司登记机关所在地名〕工商行政管理局注册登记，取得公司营业执照。公司的营业执照号码为：〔号码数字〕

公司的发起人为：〔发起人全称〕

**第二条** 公司注册名称：〔中文全称〕

〔英文全称〕

**第三条** 公司住所：〔公司住所全称，邮政编码，电话、电传号码〕

**第四条** 公司的法定代表人是公司董事长。

**第五条** 公司的营业期限为〔年数〕年〔或公司为永久存续的股份有限公司〕。

**第六条** 公司章程自公司成立之日起生效。

自公司章程生效之日起，公司章程即成为规范公司的组织与行为、公司与股东之间、股东与股东之间权利义务的，具有法律约束力的文件。

**第七条** 公司章程对公司及其股东、董事、监事、经理和其他高级管理人员均有约束力；前述人员均可以依据公司章程提出与公司事宜有关的权利主张。

股东可以依据公司章程起诉公司；公司可以依据公司章程起诉股东；股东可以依据公司章程起诉股东；股东可以依据公司章程起诉公司的董事、监事、经理和其他高级管理人员。

前款所称起诉，包括向法院提起诉讼或者向仲裁机构申请仲裁。



**第八条** 公司可以向其他有限责任公司、股份有限公司投资，并以该出资额为限对所投资公司承担责任。

经国务院授权的公司审批部门批准，公司可以根据经营管理的需要，按照《公司法》第十二条第二款所述控股公司运作。

## **第二章 经营宗旨和范围**

**第九条** 公司的经营宗旨是：〔宗旨内容〕。

**第十条** 公司的经营范围以公司登记机关核准的项目为准。

公司的主营范围包括〔公司登记机关核准的项目〕。

公司的兼营范围包括〔公司登记机关核准的项目〕。

## **第三章 股份和注册资本**

**第十一条** 公司在任何时候均设置普通股;公司根据需要，经国务院授权的公司审批部门批准，可以设置其他种类的股份。

**第十二条** 公司发行的股票，均为有面值股票，每股面值人民币一元。

**第十三条** 经国务院证券主管机构批准，公司向境内投资人和境外投资人发行股票。

前款所称境外投资人是指认购公司发行股份的外国和香港、澳门、台湾地区的投资人;境内投资人是指认购公司发行股份的，除前述地区以外的中华人民共和国境内的投资人。

**第十四条** 公司向境内投资人发行的以人民币认购的股份，称为内资股。公司向境外投资人发行的以外币认购的股份，称为外资股。外资股在境外上市的，称为境外上市外资股。

**第十五条** 经国务院授权的公司审批部门批准，公司可以发行的普通股总数为〔股份数额〕股，成立时向发起人发行〔股份数额〕股，占公司可发行的普通股总数的百分之〔百分比数〕。

**第十六条** 公司成立后发行普通股〔股份数额〕股，包括不少于〔股份数额〕股，不超过〔股份数额〕股的境外上市外资股，占公司可发行的普通股总数的百分之〔百分比数〕，以及向社会公众发行的〔股份数额〕股的内资股。

公司的股本结构为:普通股〔股份数额〕股，其中发起人〔各发起人姓名或者名称〕持有〔股份数额〕股，其他内资股股东持有〔股份数额〕股，境外上市外资股股东持有〔股份数额〕股。

**第十七条** 经国务院证券主管机构批准的公司发行境外上市外资股和内资股的计划，公司董事会可以作出分别发行的实施安排。

公司依照前款规定分别发行境外上市外资股和内资股的计划，可以自国务院证券委员会批准之日起 15 个月内分别实施。

**第十八条** 公司在发行计划确定的股份总数内，分别发行境外上市外资股和内资股的，应当分别一次募足;有特殊情况不能一次募足的，经国务院证券委员会批准，也可以分次发行。

**第十九条** 公司的注册资本为人民币〔资本数额〕元。

**第二十条** 公司根据经营和发展的需要，可以按照公司章程的有关规定批准增加资本。

公司增加资本可以采取下列方式:

- (一) 向非特定投资人募集新股;
- (二) 向现有股东配售新股;

(三) 向现有股东派送新股;

(四) 法律、行政法规许可的其他方式。

公司增资发行新股，按照公司章程的规定批准后，根据国家有关法律、行政法规规定的程序办理。

**第二十一条** 除法律、行政法规另有规定外，公司股份可以自由转让，并不附带任何留置权。

#### **第四章 减资和购回股份**

**第二十二条** 根据公司章程的规定，公司可以减少其注册资本。

**第二十三条** 公司减少注册资本时，必须编制资产负债表及财产清单。

公司应当自作出减少注册资本决议之日起 10 日内通知债权人，并于 30 日内在报纸上至少公告 3 次。债权人自接到通知书之日起 30 日内，未接到通知书的自第一次公告之日起 90 日内，有权要求公司清偿债务或者提供相应的偿债担保。

公司减少资本后的注册资本，不得低于法定的最低限额。

**第二十四条** 公司在下列情况下，可以经公司章程规定的程序通过，报国家有关主管机构批准，购回其发行在外的股份：

(一) 为减少公司资本而注销股份;

(二) 与持有本公司股票的其他公司合并;

(三) 法律、行政法规许可的其他情况。

**第二十五条** 公司经国家有关主管机构批准购回股份，可以下列方式之一进行：

(一) 向全体股东按照相同比例发出购回要约;

(二) 在证券交易所通过公开交易方式购回;

(三) 在证券交易所外以协议方式购回。

**第二十六条** 公司在证券交易所外以协议方式购回股份时，应当事先经股东大会按公司章程的规定批准。经股东大会以同一方式事先批准，公司可以解除或者改变经前述方式已订立的合同，或者放弃其合同中的任何权利。

前款所称购回股份的合同，包括（但不限于）同意承担购回股份义务和取得购回股份权利的协议。

公司不得转让购回其股份的合同或者合同中规定的任何权利。

**第二十七条** 公司依法购回股份后，应当在法律、行政法规规定的期限内，注销该部分股份，并向原公司登记机关申请办理注册资本变更登记。

被注销股份的票面总值应当从公司的注册资本中核减。

**第二十八条** 到香港上市公司，应当将下列内容载入公司章程：

除非公司已经进入清算阶段，公司购回其发行在外的股份，应当遵守下列规定：

(一) 公司以面值价格购回股份的，其款项应当从公司的可分配利润账面余额、为购回旧股而发行的新股所得中减除；

(二) 公司以高于面值价格购回股份的，相当于面值的部分从公司的可分配利润账面余额、为购回旧股而发行的新股所得中减除；高出面值的部分，按照下述办法办理：

(1) 购回的股份是以面值价格发行的，从公司的可分配利润账面余额中减除；

(2) 购回的股份是以高于面值的价格发行的，从公司的可分配利润账面余额、为购回旧股而发行的新股所得中减除；但是从发行新股所得中减除的金额，不得超过购回的旧股发行时所得的溢价总额，也不得超过购回时公司溢价账户〔或资本公积金账户〕上的金额（包括发行新股的溢价金额）；

(三) 公司为下列用途所支付的款项，应当从公司的可分配利润中支出：

- (1) 取得购回其股份的购回权；
- (2) 变更购回其股份的合同；
- (3) 解除其在购回合同中的义务。

(四) 被注销股份的票面总值根据有关规定从公司的注册资本中核减后，从可分配的利润中减除的用于购回股份面值部分的金额，应当计入公司的溢价账户〔或资本公积金账户〕中。

## **第五章 购回公司股份的财务资助**

**第二十九条** 公司或者其子公司在任何时候均不应当以任何方式，对购买或者拟购买公司股份的人提供任何财务资助。前述购买公司股份的人，包括因购买公司股份而直接或者间接承担义务的人。

公司或者其子公司在任何时候均不应当以任何方式，为减少或者解除前述义务人的义务向其提供财务资助。

本条规定不适用于本章第三十一条所述的情形。

**第三十条** 本章所称财务资助，包括（但不限于）下列方式：

（一）馈赠；

（二）担保（包括由保证人承担责任或者提供财产以保证义务人履行义务）、补偿（但是不包括因公司本身的过错所引起的补偿）、解除或者放弃权利；

（三）提供贷款或者订立由公司先于他方履行义务的合同，以及该贷款、合同当事方的变更和该贷款、合同中权利的转让等；

（四）公司在无力偿还债务、没有净资产或者将会导致净资产大幅度减少的情形下，以任何其他方式提供的财务资助。

本章所称承担义务，包括义务人因订立合同或者作出安排（不论该合同或者安排是否可以强制执行，也不论是由其个人或者与任何其他人共同承担），或者以任何其他方式改变了其财务状况而承担的义务。

**第三十一条** 下列行为不视为本章第二十九条禁止的行为：

（一）公司提供的有关财务资助是诚实地为了公司利益，并且该项财务资助的主要目的不是为购买本公司股份，或者该项财务资助是公司某项总计划中附带的一部分；

（二）公司依法以其财产作为股利进行分配；

（三）以股份的形式分配股利；

（四）依据公司章程减少注册资本、购回股份、调整股权结构等；

（五）公司在其经营范围内，为其正常的业务活动提供贷款（但是不应当导致公司的净资产减少，或者即使构成了减少，但该项财务资助是从公司的可分配利润中支出的）；

（六）公司为职工持股计划提供款项（但是不应当导致公司的净资产减少，或者即使构成了减少，但该项财务资助是从公司的可分配利润中支出的）。

## **第六章 股票和股东名册**

### **第三十二条 公司股票采用记名式。**

公司股票应当载明的事项，除《公司法》规定的外，还应当包括公司股票上市的证券交易所要求载明的其他事项。

**第三十三条** 股票由董事长签署。公司股票上市的证券交易所要求公司其他高级管理人员签署的，还应当由其他有关高级管理人员签署。股票经加盖公司印章或者以印刷形式加盖印章后生效。公司董事长或者其他有关高级管理人员在股票上的签字也可以采取印刷形式。

### **第三十四条 公司应当设立股东名册，登记以下事项：**

- （一）各股东的姓名（名称）、地址（住所）、职业或性质；
- （二）各股东所持股份类别及其数量；
- （三）各股东所持股份已付或者应付的款项；
- （四）各股东所持股份的编号；
- （五）各股东登记为股东的日期；
- （六）各股东终止为股东的日期。

股东名册为证明股东持有公司股份的充分证据;但是有相反证据的除外。

**第三十五条** 公司可以依据国务院证券主管机构与境外证券监管机构达成的谅解、协议,将境外上市外资股股东名册存放在境外,并委托境外代理机构管理。公司应当将境外上市外资股股东名册的副本备置于公司住所;受委托的境外代理机构应当随时保证境外上市外资股股东名册正、副本的一致性。

境外上市外资股股东名册正、副本的记载不一致时,以正本为准。

**第三十六条** 公司应当保存有完整的股东名册。

股东名册包括下列部分:

(一) 存放在公司住所的、除本款(二)、(三)项规定以外的股东名册;

(二) 存放在境外上市的证券交易所所在地的公司境外上市外资股股东名册;

(三) 董事会为公司股票上市的需要而决定存放在其他地方的股东名册。

**第三十七条** 股东名册的各部分应当互不重叠。在股东名册某一部分注册的股份的转让,在该股份注册存续期间不得注册到股东名册的其他部分。

股东名册各部分的更改或者更正,应当根据股东名册各部分存放地的法律进行。

**第三十八条** 股东大会召开前 30 日内或者公司决定分配股利的基准日前 5 日内,不得进行因股份转让而发生的股东名册的变更登记。



**第三十九条** 公司召开股东大会、分配股利、清算及从事其他需要确认股权的行为时，应当由董事会决定某一日为股权确定日，股权确定日终止时，在册股东为公司股东。

**第四十条** 任何人对股东名册持有异议而要求将其姓名（名称）登记在股东名册上，或者要求将其姓名（名称）从股东名册中删除的，均可以向有管辖权的法院申请更正股东名册。

**第四十一条** 任何登记在股东名册上的股东或者任何要求将其姓名（名称）登记在股东名册上的人，如果其股票（即“原股票”）遗失，可以向公司申请就该股份（即“有关股份”）补发新股票。

内资股股东遗失股票，申请补发的，依照《公司法》第一百五十条的规定处理。

境外上市外资股股东遗失股票，申请补发的，可以依照境外上市外资股股东名册正本存放地的法律、证券交易场所规则或者其他有关规定处理。

到香港上市公司的境外上市外资股股东遗失股票申请补发的，其股票的补发应当符合下列要求：

（一）申请人应当用公司指定的标准格式提出申请并附上公证书或者法定声明文件。公证书或者法定声明文件的内容应当包括申请人申请的理由、股票遗失的情形及证据，以及无其他任何人可就有关股份要求登记为股东的声明。

（二）公司决定补发新股票之前，没有收到申请人以外的任何人对该股份要求登记为股东的声明。

（三）公司决定向申请人补发新股票，应当在董事会指定的报刊上刊登准备补发新股票的公告；公告期间为 90 日，每 30 日至少重复刊登一次。

（四）公司在刊登准备补发新股票的公告之前，应当向其挂牌上市的证券交易所提交一份拟刊登的公告副本，收到该证券交易所的回复，确认已在证券交易所内展示该公告后，即可刊登。公告在证券交易所内展示的期间为 90 日。

如果补发股票的申请未得到有关股份的登记在册股东的同意，公司应当将拟刊登的公告的复印件邮寄给该股东。

（五）本条（三）、（四）项所规定的公告、展示的 90 日期限届满，如公司未收到任何人对补发股票的异议，即可以根据申请人的申请补发新股票。

（六）公司根据本条规定补发新股票时，应当立即注销原股票，并将此注销和补发事项登记在股东名册上。

（七）公司为注销原股票和补发新股票的全部费用，均由申请人负担。在申请人未提供合理的担保之前，公司有权拒绝采取任何行动。

**第四十二条** 公司根据公司章程的规定补发新股票后，获得前述新股票的善意购买者或者其后登记为该股份的所有者的股东（如属善意购买者），其姓名（名称）均不得从股东名册中删除。

**第四十三条** 公司对于任何由于注销原股票或者补发新股票而受到损害的人均无赔偿义务，除非该当事人能证明公司有欺诈行为。

## **第七章 股东的权利和义务**

**第四十四条** 公司股东为依法持有公司股份并且其姓名（名称）登记在股东名册上的人。

股东按其持有股份的种类和份额享有权利，承担义务；持有同一种类股份的股东，享有同等权利，承担同种义务。

**第四十五条** 公司普通股股东享有下列权利：

- （一）依照其所持有的股份份额领取股利和其他形式的利益分配；
- （二）参加或者委派股东代理人参加股东会议，并行使表决权；
- （三）对公司的业务经营活动进行监督管理，提出建议或者质询；
- （四）依照法律、行政法规及公司章程的规定转让股份；
- （五）依照公司章程的规定获得有关信息，包括：
  - 1. 在缴付成本费用后得到公司章程；
  - 2. 在缴付了合理费用后有权查阅和复印：
    - （1）所有各部分股东的名册；
    - （2）公司董事、监事、经理和其他高级管理人员的个人资料，包括：
      - （a）现在及以前的姓名、别名；
      - （b）主要地址（住所）；
      - （c）国籍；
      - （d）专职及其他全部兼职的职业、职务；
      - （e）身份证明文件及其号码。

(3) 公司股本状况;

(4) 自上一会计年度以来公司购回自己每一类别股份的票面总值、数值、最高价和最低价, 以及公司为此支付的全部费用的报告;

(5) 股东会议的会议记录。

(六) 公司终止或者清算时, 按其所持有的股份份额参加公司剩余财产的分配;

(七) 法律、行政法规及公司章程所赋予的其他权利。

**第四十六条** 公司普通股股东承担下列义务:

(一) 遵守公司章程;

(二) 依其所认购股份和入股方式缴纳股金;

(三) 法律、行政法规及公司章程规定应当承担的其他义务。

股东除了股份的认购人在认购时所同意的条件外, 不承担其后追加任何股本的责任。

**第四十七条** 除法律、行政法规或者公司股份上市的证券交易所的上市规则所要求的义务外, 控股股东在行使其股东的权力时, 不得因行使其表决权在下列问题上作出有损于全体或者部分股东的利益的决定:

(一) 免除董事、监事应当真诚地以公司最大利益为出发点行事的责任;

(二) 批准董事、监事(为自己或者他人利益)以任何形式剥夺公司财产, 包括(但不限于)任何对公司有利的机会;

(三) 批准董事、监事（为自己或者他人利益）剥夺其他股东的个人权益，包括（但不限于）任何分配权、表决权，但不包括根据公司章程提交股东大会通过的公司改组。

**第四十八条** 前条所称控股股东是具备以下条件之一的人：

(一) 该人单独或者与他人一致行动时，可以选出半数以上的董事；

(二) 该人单独或者与他人一致行动时，可以行使公司 30%以上（含 30%）的表决权或者可以控制公司的 30%以上（含 30%）表决权的行使；

(三) 该人单独或者与他人一致行动时，持有公司发行在外 30%以上（含 30%）的股份；

(四) 该人单独或者与他人一致行动时，以其他方式在事实上控制公司。

## **第八章 股东大会**

**第四十九条** 股东大会是公司的权力机构，依法行使职权。

**第五十条** 股东大会行使下列职权：

(一) 决定公司的经营方针和投资计划；

(二) 选举和更换董事，决定有关董事的报酬事项；

(三) 选举和更换由股东代表出任的监事，决定有关监事的报酬事项；

(四) 审议批准董事会的报告；

- (五) 审议批准监事会的报告;
- (六) 审议批准公司的年度财务预算方案、决算方案;
- (七) 审议批准公司的利润分配方案和弥补亏损方案;
- (八) 对公司增加或者减少注册资本作出决议;
- (九) 对公司合并、分立、解散和清算等事项作出决议;
- (十) 对公司发行债券作出决议;
- (十一) 对公司聘用、解聘或者不再续聘会计师事务所作出决议;
- (十二) 修改公司章程;
- (十三) 审议代表公司有表决权的股份 5%以上 (含 5%) 的股东的提案;
- (十四) 法律、行政法规及公司章程规定应当由股东大会作出决议的其他事项。

**第五十一条** 非经股东大会事前批准, 公司不得与董事、监事、经理和其他高级管理人员以外的人订立将公司全部或者重要业务的管理交予该人负责的合同。

**第五十二条** 股东大会分为股东年会和临时股东大会。股东大会由董事会召集。股东年会每年召开一次, 并应于上一会计年度完结之后的 6 个月之内举行。

有下列情形之一的, 董事会应当在两个月内召开临时股东大会:

(一) 董事人数不足《公司法》规定的人数或者少于公司章程要求的数额的 2/3 时;

(二) 公司未弥补亏损达股本总额的 1/3 时;

(三) 持有公司发行在外的有表决权的股份 10%以上 (含 10%) 的股东以书面形式要求召开临时股东大会时;

(四) 董事会认为必要或者监事会提出召开时。

**第五十三条** 公司召开股东大会, 应当于会议召开 45 日前发出书面通知, 将会议拟审议的事项以及开会的日期和地点告知所有在册股东。拟出席股东大会的股东, 应当于会议召开 20 日前, 将出席会议的书面回复送达公司。

**第五十四条** 公司召开股东大会年会, 持有公司有表决权的股份总数 5%以上 (含 5%) 的股东, 有权以书面形式向公司提出新的提案, 公司应当将提案中属于股东大会职责范围内的事项, 列入该次会议的议程。

**第五十五条** 公司根据股东大会召开前 20 日时收到的书面回复, 计算拟出席会议的股东所代表的有表决权的股份数。拟出席会议的股东所代表的有表决权的股份数达到公司有表决权的股份总数 1/2 以上的, 公司可以召开股东大会;达不到的, 公司应当在 5 日内将会议拟审议的事项、开会日期和地点以公告形式再次通知股东, 经公告通知, 公司可以召开股东大会。

临时股东大会不得决定通知未载明的事项。

**第五十六条** 股东会议的通知应当符合下列要求:

(一) 以书面形式作出;

(二) 指定会议的地点、日期和时间;

(三) 说明会议将讨论的事项;

(四) 向股东提供为使股东对将讨论的事项作出明智决定所需要的资料及解释;此原则包括(但不限于)在公司提出合并、购回股份、股本重组或者其他改组时,应当提供拟议中的交易的具体条件和合同(如果有的话),并对其起因和后果作出认真的解释;

(五) 如任何董事、监事、经理和其他高级管理人员与将讨论的事项有重要利害关系,应当披露其利害关系的性质和程度;如果将讨论的事项对该董事、监事、经理和其他高级管理人员作为股东的影响有别于对其他同类别股东的影响,则应当说明其区别;

(六) 载有任何拟在会议上提议通过的特别决议的全文;

(七) 以明显的文字说明,有权出席和表决的股东有权委任一位或者一位以上的股东代理人代为出席和表决,而该股东代理人不必为股东;

(八) 载明会议投票代理委托书的送达时间和地点。

**第五十七条** 股东大会通知应当向股东(不论在股东大会上是否有表决权)以专人送出或者以邮资已付的邮件送出,受件人地址以股东名册登记的地址为准。对内资股股东,股东大会通知也可以用公告方式进行。

前款所称公告,应当于会议召开前 45 日至 50 日的期间内,在国务院证券主管机构指定的一家或者多家报刊上刊登,一经公告,视为所有内资股股东已收到有关股东会议的通知。

**第五十八条** 因意外遗漏未向某有权得到通知的人送出会议通知或者该等人没有收到会议通知,会议及会议作出的决议并不因此无效。



**第五十九条** 任何有权出席股东会议并有权表决的股东，有权委任一人或者数人（该人可以不是股东）作为其股东代理人，代为出席和表决。该股东代理人依照该股东的委托，可以行使下列权利：

（一）该股东在股东大会上的发言权；

（二）自行或者与他人共同要求以投票方式表决；

（三）以举手或者投票方式行使表决权，但是委任的股东代理人超过一人时，该等股东代理人只能以投票方式行使表决权。

**第六十条** 股东应当以书面形式委托代理人，由委托人签署或者由其以书面形式委托的代理人签署；委托人为法人的，应当加盖法人印章或者由其董事或者正式委任的代理人签署。

**第六十一条** 表决代理委托书至少应当在该委托书委托表决的有关会议召开前 24 小时，或者在指定表决时间前 24 小时，备置于公司住所或者召集会议的通知中指定的其他地方。委托书由委托人授权他人签署的，授权签署的授权书或者其他授权文件应当经过公证。经公证的授权书或者其他授权文件，应当和表决代理委托书同时备置于公司住所或者召集会议的通知中指定的其他地方。

委托人为法人的，其法定代表人或者董事会、其他决策机构决议授权的人作为代表出席公司的股东会议。

**第六十二条** 任何由公司董事会发给股东用于任命股东代理人的委托书的格式，应当让股东自由选择指示股东代理人投赞成票或者反对票，并就会议每项议题所要作出表决的事项分别作出指示。委托书应当注明如果股东不作指示，股东代理人可以按自己的意思表决。

**第六十三条** 表决前委托人已经去世、丧失行为能力、撤回委任、撤回签署委任的授权或者有关股份已被转让的，只要公司在有关会议开始

前没有收到该等事项的书面通知，由股东代理人依委托书所作出的表决仍然有效。

**第六十四条** 股东大会决议分为普通决议和特别决议。

股东大会作出普通决议，应当由出席股东大会的股东（包括股东代理人）所持表决权的 1/2 以上通过。

股东大会作出特别决议，应当由出席股东大会的股东（包括股东代理人）所持表决权的 2/3 以上通过。

**第六十五条** 股东（包括股东代理人）在股东大会表决时，以其所代表的有表决权的股份数额行使表决权，每一股份有一票表决权。

**第六十六条** 除非下列人员在举手表决以前或者以后，要求以投票方式表决，股东大会以举手方式进行表决：

- （一）会议主席；
- （二）至少两名有表决权的股东或者有表决权的股东的代理人；
- （三）单独或者合并计算持有在该会议上有表决权的股份 10%以上（含 10%）的一个或者若干股东（包括股东代理人）。

除非有人提出以投票方式表决，会议主席根据举手表决的结果，宣布提议通过情况，并将此记载在会议记录中，作为最终的依据，无须证明该会议通过的决议中支持或者反对的票数或者其比例。

以投票方式表决的要求可以由提出者撤回。

**第六十七条** 如果要求以投票方式表决的事项是选举主席或者中止会议，则应当立即进行投票表决；其他要求以投票方式表决的事项，由主席决定何时举行投票，会议可以继续进行，讨论其他事项，投票结果仍被视为在该会议上所通过的决议。

**第六十八条** 在投票表决时，有两票或者两票以上的表决权的股东（包括股东代理人），不必把所有表决权全部投赞成票或者反对票。

**第六十九条** 当反对和赞成票相等时，无论是举手还是投票表决，会议主席有权多投一票。

**第七十条** 下列事项由股东大会的普通决议通过：

- （一）董事会和监事会的工作报告；
- （二）董事会拟订的利润分配方案和亏损弥补方案；
- （三）董事会和监事会成员的罢免及其报酬和支付方法；
- （四）公司年度预、决算报告，资产负债表、利润表及其他财务报表；
- （五）除法律、行政法规规定或者公司章程规定应当以特别决议通过以外的其他事项。

**第七十一条** 下列事项由股东大会以特别决议通过：

- （一）公司增、减股本和发行任何种类股票、认股证和其他类似证券；
- （二）发行公司债券；
- （三）公司的分立、合并、解散和清算；
- （四）公司章程的修改；
- （五）股东大会以普通决议通过认为会对公司产生重大影响的、需要以特别决议通过的其他事项。

**第七十二条** 股东要求召集临时股东大会或者类别股东会议，应当按照下列程序办理：

（一）合计持有在该拟举行的会议上有表决权的股份 10%以上（含 10%）的两个或者两个以上的股东，可以签署一份或者数份同样格式内容的书面要求，提请董事会召集临时股东大会或者类别股东会议，并阐明会议的议题。董事会在收到前述书面要求后应当尽快召集临时股东大会或者类别股东会议。前述持股数按股东提出书面要求日计算。

（二）如果董事会在收到前述书面要求后 30 日内没有发出召集会议的通告，提出该要求的股东可以在董事会收到该要求后 4 个月内自行召集会议，召集的程序应当尽可能与董事会召集股东会议的程序相同。

股东因董事会未应前述要求举行会议而自行召集并举行会议的，其所发生的合理费用，应当由公司承担，并从公司欠付失职董事的款项中扣除。

**第七十三条** 股东大会由董事会召集并担任会议主席；董事长因故不能出席会议的，应当由副董事长召集会议并担任会议主席；董事长和副董事长均无法出席会议的，董事会可以指定一名公司董事代其召集会议并且担任会议主席；未指定会议主席的，出席会议的股东可以选举一人担任主席；如果因任何理由，股东无法选举主席，应当由出席会议的持有最多表决权股份的股东（包括股东代理人）担任会议主席。

**第七十四条** 会议主席负责决定股东大会的决议是否通过，其决定为终局决定，并应当在会上宣布和载入会议记录。

**第七十五条** 会议主席如果对提交表决的决议结果有任何怀疑，可以对所投票数进行点算；如果会议主席未进行点票，出席会议的股东或者股东代理人对会议主席宣布结果有异议的，有权在宣布后立即要求点票，会议主席应当即时进行点票。

**第七十六条** 股东大会如果进行点票，点票结果应当记入会议记录。

会议记录连同出席股东的签名簿及代理出席的委托书，应当在公司住所保存。

**第七十七条** 股东可以在公司办公时间免费查阅会议记录复印件。任何股东向公司索取有关会议记录的复印件，公司应当在收到合理费用后 7 日内把复印件送出。

## **第九章 类别股东表决的特别程序**

**第七十八条** 持有不同种类股份的股东，为类别股东。

类别股东依据法律、行政法规和公司章程的规定，享有权利和承担义务。

**第七十九条** 公司拟变更或者废除类别股东的权利，应当经股东大会以特别决议通过和经受影响的类别股东在按第八十一条至第八十五条分别召集的股东会议上通过，方可进行。

**第八十条** 下列情形应当视为变更或者废除某类别股东的权利：

（一）增加或者减少该类别股份的数目，或者增加或减少与该类别股份享有同等或者更多的表决权、分配权、其他特权的类别股份的数目；

（二）将该类别股份的全部或者部分换作其他类别，或者将另一类别的股份的全部或者部分换作该类别股份或者授予该等转换权；

（三）取消或者减少该类别股份所具有的、取得已产生的股利或者累积股利的权利；

（四）减少或者取消该类别股份所具有的优先取得股利或者在公司清算中优先取得财产分配的权利；

(五) 增加、取消或者减少该类别股份所具有的转换股份权、选择权、表决权、转让权、优先配售权、取得公司证券的权利;

(六) 取消或者减少该类别股份所具有的, 以特定货币收取公司应付款项的权利;

(七) 设立与该类别股份享有同等或者更多表决权、分配权或者其他特权的新类别;

(八) 对该类别股份的转让或所有权加以限制或者增加该等限制;

(九) 发行该类别或者另一类别的股份认购权或者转换股份的权利;

(十) 增加其他类别股份的权利和特权;

(十一) 公司改组方案会构成不同类别股东在改组中不按比例地承担责任;

(十二) 修改或者废除本章所规定的条款。

**第八十一条** 受影响的类别股东, 无论原来在股东大会上是否有表决权, 在涉及第八十条 (二) 至 (八)、(十一) 至 (十二) 项的事项时, 在类别股东会上具有表决权, 但有利害关系的股东在类别股东会上没有表决权。

前款所述有利害关系股东的含义如下:

(一) 在公司按本章程第二十五条的规定向全体股东按照相同比例发出购回要约或者在证券交易所通过公开交易方式购回自己股份的情况下, “有利害关系的股东” 是指本章程第四十八条所定义的控股股东;

(二) 在公司按照本章程第二十五条的规定在证券交易所外以协议方式购回自己股份的情况下,“有利害关系的股东”是指与该协议有关的股东;

(三) 在公司改组方案中,“有利害关系股东”是指以低于本类别其他股东的比例承担责任的股东或者与该类别中的其他股东拥有不同利益的股东。

**第八十二条** 类别股东会的决议,应当经根据第八十一条由出席类别股东会议的有表决权的 2/3 以上的股权表决通过,方可作出。

**第八十三条** 公司召开类别股东会议,应当于会议召开 45 日前发出书面通知,将会议拟审议的事项以及开会日期和地点告知所有该类别股份的在册股东。拟出席会议的股东,应当于会议召开 20 日前,将出席会议的书面回复送达公司。

拟出席会议的股东所代表的在该会议上有表决权的股份数,达到在该会议上有表决权的该类别股份总数 1/2 以上的,公司可以召开类别股东会议;达不到的,公司应当在 5 日内将会议拟审议的事项、开会日期和地点以公告形式再次通知股东,经公告通知,公司可以召开类别股东会议。

**第八十四条** 类别股东会议的通知只须送给有权在该会议上表决的股东。

类别股东会议应当以与股东大会尽可能相同的程序举行,公司章程中有关股东大会举行程序的条款适用于类别股东会议。

**第八十五条** 如果公司股票上市的证券交易所的规则有要求,公司章程应当载入“除其他类别股份股东外,内资股股东和境外上市外资股股东视为不同类别股东”的内容。

载有前款规定内容的公司章程，应当同时规定“下列情形不适用类别股东表决的特别程序：（一）经股东大会以特别决议批准，公司每间隔 12 个月单独或者同时发行内资股、境外上市外资股，并且拟发行的内资股、境外上市外资股的数量各自不超过该类已发行在外股份的 20%的；（二）公司设立时发行内资股、境外上市外资股的计划，自国务院证券委员会批准之日起 15 个月内完成的。”

## **第十章 董 事 会**

**第八十六条** 公司设董事会，董事会由〔人数〕名董事组成，设董事长一人，副董事长〔人数〕人，董事〔人数〕人。

**第八十七条** 董事由股东大会选举产生，任期〔年数〕年。董事任期届满，可以连选连任。

董事长、副董事长由全体董事的过半数选举和罢免，董事长、副董事长任期〔年数〕年，可以连选连任。

董事无须持有公司股份。

**第八十八条** 董事会对股东大会负责，行使下列职权：

- （一）负责召集股东大会，并向股东大会报告工作；
- （二）执行股东大会的决议；
- （三）决定公司的经营计划和投资方案；
- （四）制定公司的年度财务预算方案、决算方案；
- （五）制定公司的利润分配方案和弥补亏损方案；
- （六）制定公司增加或者减少注册资本的方案以及发行公司债券的方案；



(七) 拟定公司合并、分立、解散的方案;

(八) 决定公司内部管理机构的设置;

(九) 聘任或者解聘公司经理, 根据经理的提名, 聘任或者解聘公司副经理、财务负责人, 决定其报酬事项;

(十) 制定公司的基本管理制度;

(十一) 制订公司章程修改方案。

董事会作出前款决议事项, 除第(六)、(七)、(十一)项必须由 2/3 以上的董事表决同意外, 其余可以由半数以上的董事表决同意。

**第八十九条** 董事会在处置固定资产时, 如拟处置固定资产的预期价值, 与此项处置建议前 4 个月内已处置了的固定资产所得到的价值的总和, 超过股东大会最近审议的资产负债表所显示的固定资产价值的 33%, 则董事会在未经股东大会批准前不得处置或者同意处置该固定资产。

本条所指对固定资产的处置, 包括转让某些资产权益的行为, 但不包括以固定资产提供担保的行为。

公司处置固定资产进行的交易的有效性, 不因违反本条第一款而受影响。

**第九十条** 董事长行使下列职权:

(一) 主持股东大会和召集、主持董事会会议;

(二) 检查董事会决议的实施情况;

(三) 签署公司发行的证券;

(四) 董事会授予的其他职权。

董事长不能履行职权时，可以由董事长指定副董事长代行其职权。

**第九十一条** 董事会每年至少召开两次会议，由董事长召集，于会议召开〔日数〕日以前通知全体董事。有紧急事项时，经〔人数〕名以上董事或者公司经理提议，可以召开临时董事会会议。

**第九十二条** 董事会及临时董事会会议召开的通知方式为：〔具体通知方式〕；通知时限为：〔具体通知时限〕。

**第九十三条** 董事会会议应当由 1/2 以上的董事出席方可举行。

每名董事有一票表决权。董事会作出决议，必须经全体董事的过半数通过。

当反对票和赞成票相等时，董事长有权多投一票。

**第九十四条** 董事会会议，应当由董事本人出席。董事因故不能出席，可以书面委托其他董事代为出席董事会，委托书中应当载明授权范围。

代为出席会议的董事应当在授权范围内行使董事的权利。董事未出席某次董事会会议，亦未委托代表出席的，应当视作已放弃在该次会议上的投票权。

**第九十五条** 董事会应当对会议所议事项的决定作成会议记录，出席会议的董事和记录员应当在会议记录上签名。董事应当对董事会的决议承担责任。董事会的决议违反法律、行政法规或者公司章程，致使公司遭受严重损失的，参与决议的董事对公司负赔偿责任；但经证明在表决时曾表明异议并记载于会议记录的，该董事可以免除责任。

## **第十一章 公司董事会秘书**

**第九十六条** 公司设董事会秘书。董事会秘书为公司的高级管理人员。

**第九十七条** 公司董事会秘书应当是具有必备的专业知识和经验的自然人，由董事会委任。其主要职责是：

- (一) 保证公司有完整的组织文件和记录;
- (二) 确保公司依法准备和递交有权机构所要求的报告和文件;
- (三) 保证公司的股东名册妥善设立，保证有权得到公司有关记录和文件的人及时得到有关记录和文件。

**第九十八条** 公司董事或者其他高级管理人员可以兼任公司董事会秘书。公司聘请的会计师事务所的会计师不得兼任公司董事会秘书。

当公司董事会秘书由董事兼任时，如某一行为应当由董事及公司董事会秘书分别作出，则该兼任董事及公司董事会秘书的人不得以双重身份作出。

## **第十二章 公司经理**

**第九十九条** 公司设经理一名，由董事会聘任或者解聘。

**第一百条** 公司经理对董事会负责，行使下列职权：

- (一) 主持公司的生产经营管理工作，组织实施董事会决议;
- (二) 组织实施公司年度经营计划和投资方案;
- (三) 拟订公司内部管理机构设置方案;
- (四) 拟订公司的基本管理制度;

(五) 制定公司的基本规章;

(六) 提请聘任或者解聘公司副经理、财务负责人;

(七) 聘任或者解聘除应由董事会聘任或者解聘以外的负责管理人员;

(八) 公司章程和董事会授予的其他职权。

**第一百零一条** 公司经理列席董事会会议;非董事经理在董事会会议上没有表决权。

**第一百零二条** 公司经理在行使职权时, 应当根据法律、行政法规和公司章程的规定, 履行诚信和勤勉的义务。

### **第十三章 监 事 会**

**第一百零三条** 公司设监事会。

**第一百零四条** 监事会由〔人数〕人组成, 其中一人出任监事会主席。监事任期〔年数〕年, 可以连选连任。

**第一百零五条** 监事会成员由〔人数〕名股东代表和〔人数〕名公司职工代表组成。股东代表由股东大会选举和罢免, 职工代表由公司职工民主选举和罢免。

**第一百零六条** 公司董事、经理和财务负责人不得兼任监事。

**第一百零七条** 监事会每年至少召开〔次数〕次会议, 由监事会主席负责召集。

**第一百零八条** 监事会向股东大会负责, 并依法行使下列职权:

(一) 检查公司的财务;

(二) 对公司董事、经理和其他高级管理人员执行公司职务时违反法律、行政法规或者公司章程的行为进行监督;

(三) 当公司董事、经理和其他高级管理人员的行为损害公司的利益时, 要求前述人员予以纠正;

(四) 核对董事会拟提交股东大会的财务报告、营业报告和利润分配方案等财务资料, 发现疑问的, 可以公司名义委托注册会计师、执业审计师帮助复审;

(五) 提议召开临时股东大会;

(六) 代表公司与董事交涉或者对董事起诉;

(七) 公司章程规定的其他职权。

监事列席董事会会议。

**第一百零九条** 监事会的议事方式为:〔具体议事方式〕;表决程序为:〔具体表决程序〕。

**第一百一十条** 监事会行使职权时聘请律师、注册会计师、执业审计师等专业人员所发生的合理费用, 应当由公司承担。

**第一百一十一条** 监事应当依照法律、行政法规及公司章程的规定, 忠实履行监督职责。

## **第十四章 公司董事、监事、经理和其他高级管理人员的资格和义务**

**第一百一十二条** 有下列情况之一的, 不得担任公司的董事、监事、经理或者其他高级管理人员:

(一) 无民事行为能力或者限制民事行为能力;

(二) 因犯有贪污、贿赂、侵占财产、挪用财产罪或者破坏社会经济秩序罪，被判处刑罚，执行期满未逾 5 年，或者因犯罪被剥夺政治权利，执行期满未逾 5 年；

(三) 担任因经营管理不善破产清算的公司、企业的董事或者厂长、经理，并对该公司、企业的破产负有个人责任的，自该公司、企业破产清算完结之日起未逾 3 年；

(四) 担任因违法被吊销营业执照的公事、企业的法定代表人，并负有个人责任的，自该公司、企业被吊销营业执照之日起未逾 3 年；

(五) 个人所负数额较大的债务到期未清偿；

(六) 因触犯刑法被司法机关立案调查，尚未结案；

(七) 法律、行政法规规定不能担任企业领导；

(八) 非自然人；

(九) 被有关主管机构裁定违反有关证券法规的规定，且涉及有欺诈或者不诚实的行为，自该裁定之日起未逾 5 年。

**第一百一十三条** 公司董事、经理和其他高级管理人员代表公司的行为对善意第三人的有效性，不因其在任职、选举或者资格上有任何不合规行为而受影响。

**第一百一十四条** 除法律、行政法规或者公司股票上市的证券交易所的上市规则要求的义务外，公司董事、监事、经理和其他高级管理人员在行使公司赋予他们的职权时，还应当对每个股东负有下列义务：

(一) 不得使公司超越其营业执照规定的营业范围；

(二) 应当真诚地以公司最大利益为出发点行事;

(三) 不得以任何形式剥夺公司财产, 包括 (但不限于) 对公司有利的机会;

(四) 不得剥夺股东的个人权益, 包括 (但不限于) 分配权、表决权, 但不包括根据公司章程提交股东大会通过的公司改组。

**第一百一十五条** 公司董事、监事、经理和其他高级管理人员都有责任在行使其权利或者履行其义务时, 以一个合理的谨慎的人在相似情形下所应表现的谨慎、勤勉和技能为其所应为的行为。

**第一百一十六条** 公司董事、监事、经理和其他高级管理人员在履行职责时, 必须遵守诚信原则, 不应当置自己于自身的利益与承担的义务可能发生冲突的处境。此原则包括 (但不限于) 履行下列义务:

(一) 真诚地以公司最大利益为出发点行事;

(二) 在其职权范围内行使权力, 不得越权;

(三) 亲自行使所赋予他的酌量处理权, 不得受他人操纵; 非经法律、行政法规允许或者得到股东大会在知情的情况下的同意, 不得将其酌量处理权转给他人行使;

(四) 对同类别的股东应当平等, 对不同类别的股东应当公平;

(五) 除公司章程另有规定或者由股东大会在知情的情况下另有批准外, 不得与公司订立合同、交易或者安排;

(六) 未经股东大会在知情的情况下同意, 不得以任何形式利用公司财产为自己谋取利益;

(七) 不得利用职权收受贿赂或者其他非法收入，不得以任何形式侵占公司的财产，包括（但不限于）对公司有利的机会；

(八) 未经股东大会在知情的情况下同意，不得接受与公司交易有关的佣金；

(九) 遵守公司章程，忠实履行职责，维护公司利益，不得利用其在公司的地位和职权为自己谋取私利；

(十) 未经股东大会在知情的情况下同意，不得以任何形式与公司竞争；

(十一) 不得挪用公司资金或者将公司资金借贷给他人，不得将公司资产以其个人名义或者以其他名义开立账户存储，不得以公司资产为本公司的股东或者其他个人债务提供担保；

(十二) 未经股东大会在知情的情况下同意，不得泄露其在任职期间所获得的涉及本公司的机密信息；除非以公司利益为目的，亦不得利用该信息；但是，在下列情况下，可以向法院或者其他政府主管机构披露该信息：

1. 法律有规定；
2. 公众利益有要求；
3. 该董事、监事、经理和其他高级管理人员本身的利益有要求。

**第一百一十七条** 公司董事、监事、经理和其他高级管理人员，不得指使下列人员或者机构（“相关人”）做出董事、监事、经理和其他高级管理人员不能做的事：



(一) 公司董事、监事、经理和其他高级管理人员的配偶或者未成年子女;

(二) 公司董事、监事、经理和其他高级管理人员或者本条(一)项所述人员的信托人;

(三) 公司董事、监事、经理和其他高级管理人员或者本条(一)、(二)项所述人员的合伙人;

(四) 由公司董事、监事、经理和其他高级管理人员在事实上单独控制的公司,或者与本条(一)、(二)、(三)项所提及的人员或者公司其他董事、监事、经理和其他高级管理人员在事实上共同控制的公司;

(五) 本条(四)项所指被控制的公司的董事、监事、经理和其他高级管理人员。

**第一百一十八条** 公司董事、监事、经理和其他高级管理人员所负的诚信义务不一定因其任期结束而终止,其对公司商业秘密保密的义务在其任期结束后仍有效。其他义务的持续期应当根据公平的原则决定,取决于事件发生时与离任之间时间的长短,以及与公司的关系在何种情况和条件下结束。

**第一百一十九条** 公司董事、监事、经理和其他高级管理人员因违反某项具体义务所负的责任,可以由股东大会在知情的情况下解除,但是本章程第四十七条所规定的情形除外。

**第一百二十条** 公司董事、监事、经理和其他高级管理人员,直接或者间接与公司已订立的或者计划中的合同、交易、安排有重要利害关系时(公司与董事、监事、经理和其他高级管理人员的聘任合同除外),

不论有关事项在正常情况下是否需要董事会批准同意，均应当尽快向董事会披露其利害关系的性质和程度。

除非有利害关系的公司董事、监事、经理和其他高级管理人员按照本条前款的要求向董事会做了披露，并且董事会在不将其计入法定人数，亦未参加表决的会议上批准了该事项，公司有权撤销该合同、交易或者安排，但在对方是对有关董事、监事、经理和其他高级管理人员违反其义务的行为不知情的善意当事人的情形下除外。

公司董事、监事、经理和其他高级管理人员的相关人与某合同、交易、安排有利害关系的，有关董事、监事、经理和其他高级管理人员也应被视为有利害关系。

**第一百二十一条** 如果公司董事、监事、经理和其他高级管理人员在公司首次考虑订立有关合同、交易、安排前以书面形式通知董事会，声明由于通知所列的内容，公司日后达成的合同、交易、安排与其有利害关系，则在通知阐明的范围内，有关董事、监事、经理和其他高级管理人员视为做了本章前条所规定的披露。

**第一百二十二条** 公司不得以任何方式为其董事、监事、经理和其他高级管理人员缴纳税款。

**第一百二十三条** 公司不得直接或者间接向本公司和其母公司的董事、监事、经理和其他高级管理人员提供贷款、贷款担保；亦不得向前述人员的相关人提供贷款、贷款担保。

前款规定不适用于下列情形：

（一）公司向其子公司提供贷款或者为子公司提供贷款担保；

（二）公司根据经股东大会批准的聘任合同，向公司的董事、监事、经理和其他高级管理人员提供贷款、贷款担保或者其他款项，使之支付为了公司目的或者为了履行其公司职责所发生的费用；

(三) 如公司的正常业务范围包括提供贷款、贷款担保, 公司向有关董事、监事、经理和其他高级管理人员及其相关人提供贷款、贷款担保, 但提供贷款、贷款担保的条件应当是正常商务条件。

**第一百二十四条** 公司违反前条规定提供贷款的, 不论其贷款条件如何, 收到款项的人应当立即偿还。

**第一百二十五条** 公司违反第一百二十三条第一款的规定所提供的贷款担保, 不得强制公司执行;但下列情况除外:

(一) 向公司或者其母公司的董事、监事、经理和其他高级管理人员的相关人提供贷款时, 提供贷款人不知情的;

(二) 公司提供的担保物已由提供贷款人合法地售予善意购买者的。

**第一百二十六条** 本章前述条款中所称担保, 包括由保证人承担责任或者提供财产以保证义务人履行义务的行为。

**第一百二十七条** 公司董事、监事、经理和其他高级管理人员违反对公司所负的义务时, 除法律、行政法规规定的各种权利、补救措施外, 公司有权采取以下措施:

(一) 要求有关董事、监事、经理和其他高级管理人员赔偿由于其失职给公司造成的损失;

(二) 撤销任何由公司与有关董事、监事、经理和其他高级管理人员订立的合同或者交易, 以及由公司与第三人(当第三人明知或者理应知道代表公司的董事、监事、经理和其他高级管理人员违反了对公司应负的义务)订立的合同或者交易;

(三) 要求有关董事、监事、经理和其他高级管理人员交出因违反义务而获得的收益;

(四) 追回有关董事、监事、经理和其他高级管理人员收受的本应为公司所收取的款项, 包括(但不限于) 佣金;

(五) 要求有关董事、监事、经理和其他高级管理人员退还因本应交予公司的款项所赚取的、或者可能赚取的利息。

**第一百二十八条** 公司应当就报酬事项与公司董事、监事订立书面合同, 并经股东大会事先批准。前述报酬事项包括:

(一) 作为公司的董事、监事或者高级管理人员的报酬;

(二) 作为公司的子公司的董事、监事或者高级管理人员的报酬;

(三) 为公司及其子公司的管理提供其他服务的报酬;

(四) 该董事或者监事因失去职位或者退休所获补偿的款项。

除按前述合同外, 董事、监事不得因前述事项为其应获取的利益向公司提出诉讼。

**第一百二十九条** 公司在与公司董事、监事订立的有关报酬事项的合同应当规定, 当公司将被收购时, 公司董事、监事在股东大会事先批准的条件下, 有权取得因失去职位或者退休而获得的补偿或者其他款项。前款所称公司被收购是指下列情况之一:

(一) 任何人向全体股东提出收购要约;

(二) 任何人提出收购要约, 旨在使要约人成为控股股东。控股股东的定义与本章程第四十八条中的定义相同。

如果有关董事、监事不遵守本条规定，其收到的任何款项，应当归那些由于接受前述要约而将其股份出售的人所有，该董事、监事应当承担因按比例分发该等款项所产生的费用，该费用不得从该等款项中扣除。

## **第十五章 财务会计制度与利润分配**

**第一百三十条** 公司依照法律、行政法规和国务院财政部门制定的中国会计准则的规定，制定本公司的财务会计制度。

**第一百三十一条** 公司应当在每一会计年度终了时制作财务报告，并依法经审查验证。

**第一百三十二条** 公司董事会应当在每次股东年会上，向股东呈交有关法律、行政法规、地方政府及主管部门颁布的规范性文件所规定由公司准备的财务报告。

**第一百三十三条** 公司的财务报告应当在召开股东大会年会的 20 日以前备置于本公司，供股东查阅。公司的每个股东都有权得到本章中所提及的财务报告。

到香港上市的公司至少应当将前述报告以邮资已付的邮件寄给每个境外上市外资股股东，受件人地址以股东的名册登记的地址为准。

**第一百三十四条** 公司的财务报表除应当按中国会计准则及法规编制外，还应当按国际或者境外上市地会计准则编制。如按两种会计准则编制的财务报表有重要出入，应当在财务报表附注中加以注明。公司在分配有关会计年度的税后利润时，以前述两种财务报表中税后利润数较少者为准。

**第一百三十五条** 公司公布或者披露的中期业绩或者财务资料应当按中国会计准则及法规编制，同时按国际或者境外上市地会计准则编制。

**第一百三十六条** 公司每一会计年度公布两次财务报告，即在一会计年度的前 6 个月结束后的 60 天内公布中期财务报告，会计年度结束后的 120 天内公布年度财务报告。

**第一百三十七条** 公司除法定的会计账册外，不得另立会计账册。

**第一百三十八条** 资本公积金包括下列款项：

- (一) 超过股票面额发行所得的溢价款；
- (二) 国务院财政主管部门规定列入资本公积金的其他收入。

**第一百三十九条** 公司可以下列形式分配股利：

- (一) 现金；
- (二) 股票。

**第一百四十条** 公司应当为持有境外上市外资股股份的股东委任收款代理人。收款代理人应当代有关股东收取公司就境外上市外资股股份分配的股利及其他应付的款项。

公司委任的收款代理人应当符合上市地法律或者证券交易所有关规定的要求。

## **第十六章 会计师事务所的聘任**

**第一百四十一条** 公司应当聘用符合国家有关规定、独立的会计师事务所，审计公司的年度财务报告，并审核公司的其他财务报告。

公司的首任会计师事务所可以由创立大会在首次股东年会前聘任，该会计师事务所的任期在首次股东年会结束时终止。

创立大会不行使前款规定的职权时，由董事会行使该职权。

**第一百四十二条** 公司聘用会计师事务所的聘期，自公司本次股东年会结束起至下次股东年会结束时为止。

**第一百四十三条** 经公司聘用的会计师事务所享有下列权利：

（一）随时查阅公司的账簿、记录或者凭证，并有权要求公司的董事、经理或者其他高级管理人员提供有关资料和说明；

（二）要求公司采取一切合理措施，从其子公司取得该会计师事务所为履行职务而必需的资料和说明；

（三）出席股东会议，得到任何股东有权收到的会议通知或者与会议有关的其他信息，在任何股东会议上就涉及其作为公司的会计师事务所的事宜发言。

**第一百四十四条** 如果会计师事务所职位出现空缺，董事会在股东大会召开前，可以委任会计师事务所填补该空缺。但在空缺持续期间，公司如有其他在任的会计师事务所，该等会计师事务所仍可行事。

**第一百四十五条** 不论会计师事务所与公司订立的合同条款如何规定，股东大会可以在任何会计师事务所任期届满前，通过普通决议决定将该会计师事务所解聘。有关会计师事务所如有因被解聘而向公司索偿的权利，有关权利不因此而受影响。

**第一百四十六条** 会计师事务所的报酬或者确定报酬的方式由股东大会决定。由董事会聘任的会计师事务所的报酬由董事会确定。

**第一百四十七条** 公司聘用、解聘或者不再续聘会计师事务所由股东大会作出决定，并报国务院证券主管机构备案。

**第一百四十八条** 公司解聘或者不再续聘会计师事务所，应当事先通知会计师事务所，会计师事务所所有权向股东大会陈述意见。会计师事务所提出辞聘的，应当向股东大会说明公司有无不当情事。

## **第十七章 公司的合并与分立**

**第一百四十九条** 公司合并或者分立，应当由公司董事会提出方案，按公司章程规定的程序通过后，依法办理有关审批手续。反对公司合并、分立方案的股东，有权要求公司或者同意公司合并、分立方案的股东，以公平价格购买其股份。公司合并、分立决议的内容应当作成专门文件，供股东查阅。

对到香港上市公司的境外上市外资股股东，前述文件还应当以邮件方式送达。

**第一百五十条** 公司合并可以采取吸收合并和新设合并两种形式。

公司合并，应当由合并各方签订合并协议，并编制资产负债表及财产清单。公司应当自作出合并决议之日起 10 日内通知债权人，并于 30 日内在报纸上至少公告 3 次。

公司合并后，合并各方的债权、债务，由合并后存续的公司或者新设的公司承继。

**第一百五十一条** 公司分立，其财产应当作相应的分割。

公司分立，应当由分立各方签订分立协议，并编制资产负债表及财产清单。公司应当自作出分立决议之日起 10 日内通知债权人，并于 30 日内在报纸上至少公告 3 次。

公司分立前的债务按所达成的协议由分立后的公司承担。

**第一百五十二条** 公司合并或者分立，登记事项发生变更的，应当依法向公司登记机关办理变更登记;公司解散的，依法办理公司注销登记;设立新公司的，依法办理公司设立登记。

## **第十八章 公司解散的清算**

**第一百五十三条** 公司有下列情形之一的，应当解散并依法进行清算:



- (一) 营业期限届满;
- (二) 股东大会决议解散;
- (三) 因公司合并或者分立需要解散;
- (四) 公司因不能清偿到期债务被依法宣告破产;
- (五) 公司违反法律、行政法规被依法责令关闭。

**第一百五十四条** 公司因前条（一）、（二）项规定解散的，应当在 15 日之内成立清算组，并由股东大会以普通决议的方式确定其人选。

公司因前条（四）项规定解散的，由人民法院依照有关法律的规定，组织股东、有关机关及有关专业人员成立清算组，进行清算。

公司因前条（五）项规定解散的，由有关主管机关组织股东、有关机关及有关专业人员成立清算组，进行清算。

**第一百五十五条** 如董事会决定公司进行清算（因公司宣告破产而清算的除外），应当在为此召集的股东大会的通知中，声明董事会对公司的状况已经做了全面的调查，并认为公司可以在清算开始后 12 个月内全部清偿公司债务。

股东大会进行清算的决议通过之后，公司董事会的职权立即终止。

清算组应当遵循股东大会的指示，每年至少向股东大会报告一次清算组的收入和支出，公司的业务和清算的进展，并在清算结束时向股东大会作最后报告。

**第一百五十六条** 清算组应当自成立之日起 10 日内通知债权人，并于 60 日内在报纸上至少公告 3 次。清算组应当对债权进行登记。

**第一百五十七条** 清算组在清算期间行使下列职权：

- (一) 清理公司财产，分别编制资产负债表和财产清单;
- (二) 通知或者公告债权人;
- (三) 处理与清算有关的公司未了结的业务;
- (四) 清缴所欠税款;
- (五) 清理债权、债务;
- (六) 处理公司清偿债务后的剩余财产;
- (七) 代表公司参与民事诉讼活动。

**第一百五十八条** 清算组在清理公司财产、编制资产负债表和财产清单后，应当制定清算方案，并报股东大会或者有关主管机关确认。

公司财产按下列顺序清偿：〔清偿顺序〕。

公司财产按前款规定清偿后的剩余财产，由公司股东按其持有股份的种类和比例进行分配。

清算期间，公司不得开展新的经营活动。

**第一百五十九条** 因公司解散而清算，清算组在清理公司财产、编制资产负债表和财产清单后，发现公司财产不足清偿债务的，应当立即向人民法院申请宣告破产。

公司经人民法院裁定宣告破产后，清算组应当制作清算事务移交书，移交人民法院。

**第一百六十条** 公司清算结束后，清算组应当制作清算报告以及清算期内收支报表和财务账册，经中国注册会计师验证后，报股东大会或者有关主管机关确认。

清算组应当自股东大会或者有关主管机关确认之日起 30 日内，将前述文件报送公司登记机关，申请注销公司登记，公告公司终止。

## **第十九章 公司章程的修订程序**

**第一百六十一条** 公司根据法律、行政法规及公司章程的规定，可以修改公司章程。

**第一百六十二条** 公司章程的修改，涉及《到境外上市公司章程必备条款》（简称《必备条款》）内容的，经国务院授权的公司审批部门和国务院证券委员会批准后生效；涉及公司登记事项的，应当依法办理变更登记。

## **第二十章 争议的解决**

**第一百六十三条** 凡境外上市外资股股东与公司之间，境外上市外资股股东与公司董事、监事、经理或者其他高级管理人员之间，境外上市外资股股东与内资股股东之间，基于公司章程及有关法律、行政法规所规定的权利义务发生的与公司事务有关的争议或者权利主张，国务院证券主管机构未就争议解决方式与境外有关证券监管机构达成谅解、协议的，有关当事人可以依照法律、行政法规规定的方式解决，也可以双方协议确定的方式解决。

到香港上市的公司，应当将下列内容载入公司章程：

（一）凡境外上市外资股股东与公司之间，境外上市外资股股东与公司董事、监事、经理或者其他高级管理人员之间，境外上市外资股股东与同资股股东之间，基于公司章程、《公司法》及其他有关法律、行政法规所规定的权利义务发生的与公司事务有关的争议或者权利主张，有关当事人应当将此类争议或者权利主张提交仲裁解决。

前述争议或者权利主张提交仲裁时，应当是全部权利主张或者争议整体；所有由于同一事由有诉因的人或者该争议或权利主张的解决需要其

参与的人，如果其身份为公司或公司股东、董事、监事、经理或者其他高级管理人员，应当服从仲裁。

有关股东界定、股东名册的争议，可以不用仲裁方式解决。

（二）申请仲裁者可以选择中国国际经济贸易仲裁委员会按其仲裁规则进行仲裁，也可以选择香港国际仲裁中心按其证券仲裁规则进行仲裁。申请仲裁者将争议或者权利主张提交仲裁后，对方必须在申请者选择的仲裁机构进行仲裁。

如申请仲裁者选择香港国际仲裁中心进行仲裁，则任何一方可以按香港国际仲裁中心的证券仲裁规则的规定请求该仲裁在深圳进行。

（三）以仲裁方式解决因（一）项所述争议或者权利主张，适用中华人民共和国的法律;但法律、行政法规另有规定的除外。

（四）仲裁机构作出的裁决是终局裁决，对各方均具有约束力。

## **第二十一章 附 则**

**第一百六十四条** 《必备条款》中明确规定到香港上市的股份有限公司章程所应当载明的内容，无须载入到香港以外的其他地区或者国家上市的股份有限公司的章程。

**第一百六十五条** 对于到香港上市的公司，《必备条款》中所称会计师事务所的含义与“核数师”相同。

**第一百六十六条** 《必备条款》中，以“〔 〕”标示的内容，由公司按照实际情况填入;以“（ ）”标示的内容，必须载入公司章程。

# **Notice on the Implementation of Essential Clauses in Articles of Association of Companies Listed Overseas**

Zhengweifa (1994) Document No 21

Promulgated 27 August 1994 by the Securities Committee of the State Council and the State Commission for Restructuring the Economic System.

TO: The various provincial, autonomous regional and directly administered municipal people's governments, the people's governments of municipalities subject to independent planning, the various ministries and commissions of the State Council and departments directly under the State Council:

Essential Clauses in Articles of Association of Companies Listed Overseas" (hereinafter referred to as "Essential Clauses") are formulated by the Securities Committee of the State Council and the State Article 13 of the Special Regulations of the State Council concerning Floating and Listing of Shares Overseas by Companies Limited by Shares, in order to meet the requirements of floating and listing of shares overseas by companies limited by shares and to standardise activities involving the listing of shares overseas by companies limited by shares. The Essential Clauses are hereby issued for implementation.

Companies limited by shares which are seeking to list shares overseas (hereinafter referred to as "companies listed overseas") shall record clearly the contents as required in the Essential Clauses in their articles of association and shall not be permitted to alter or delete the content of the Essential Clauses without authorisation. In addition to the contents of its articles of association as required in the Essential Clauses, a company listed overseas may, in accordance with its specific circumstances, stipulate other contents in order to meet the actual requirements of the company and may, without changing the meaning of the provisions of the Essential Clauses, make some changes to the order of wording and/or articles of the Essential Clauses. The contents which shall be included in the articles of association of companies limited by shares listed in Hong Kong, as clearly stipulated in the Essential Clauses, need not be included in the articles of association of companies limited by shares listed in other countries or regions other than Hong Kong.

The Essential Clauses shall take effect from the date of promulgation of this Notice. In the event of the articles of association of companies listed overseas which have been approved prior to the implementation of the Essential Clauses not meeting the requirements as stipulated in the Essential Clauses, the companies concerned shall make corresponding amendments to their articles of association at the first annual shareholders' meeting held after the issue of this Notice.

Essential Clauses in Articles of Association of Companies Listed Overseas

## **CHAPTER I — GENERAL PRINCIPLES**

**Article 1.** "The company" shall refer to a company limited by shares established in accordance with the Company Law of the People's Republic of China (hereinafter referred to as the Company Law), the Special Regulations of the State Council concerning Floating and Listing of Shares Overseas by Companies Limited by Shares (hereinafter referred to as the Special Regulations) and other State laws and statutory regulations.

Subject to approval by [name of approving authority and documents of approval], the company is established on [date of establishment] through the promoter method [or share float method] and registered with [name of the place where the company registration authority is located] administration for industry and commerce on [date of registration], and has obtained a business licence. The number of the company's business licence is: [number].

The promoters of the company are: [full names of the promoters].

**Article 2.** Registered name of the company: [full name in Chinese] and [full name in English].

**Article 3.** The company's address: [full details of the company address, postcode, telephone number(s) and telex number].

**Article 4.** The legal representative of the company is the chairman of the board of directors of the company.

**Article 5.** The duration of operations of the company is [number] of years, [or the company is a perpetual company limited by shares].

**Article 6.** The articles of association of the company shall take effect from the date of the company's establishment.

Once the articles of association have taken effect, it shall become a legally binding document to standardise the organisation and activities of the company, the rights and obligations between the company and its shareholders, and among its shareholders.

**Article 7.** The articles of association of the company shall have binding force on the company and its shareholders, directors, supervisors, managers and other senior management personnel, and the aforesaid personnel shall be entitled to assert their rights on matters in relation to the company in accordance with the articles of association of the company.

A shareholder may take legal action against the company in accordance with the articles of association of the company; the company may take legal action against a shareholder in accordance with the articles of association of the company; a shareholder may take legal action against other shareholders in accordance with the articles of association of the company; a shareholder may take legal action against a director, supervisor, manager or other senior management personnel in accordance with the articles of association of the company.

"Take legal action" as mentioned in the preceding paragraph shall include the filing of a suit in the court or application to an arbitral body for arbitration.

**Article 8.** The company may invest in other limited liability companies or companies limited by shares and shall assume an amount of liability toward the invested company equal to the amount of the investment.

Subject to approval by the company examination and approval department authorised by the State Council, the company may, in accordance with operation and management requirements, operate as a holding company as stated in paragraph 2 of Article 12 of the Company Law.

## **CHAPTER II — PURPOSE AND SCOPE OF BUSINESS**

**Article 9.** The company's business purpose is: [details of the purpose].

**Article 10.** The scope of business of the company shall be based on the projects examined and approved by the company registration authority.

The scope of business operations primarily engaged in by the company shall include [projects examined and approved by the company registration authority].

The scope of business operations which are concurrently engaged in by the company shall include [projects examined and approved by the company registration authority].

### **CHAPTER III — SHARES AND REGISTERED CAPITAL**

**Article 11.** The company may, at any time, issue ordinary shares; the company may, in accordance with requirements and subject to approval by the company examination and approval department authorised by the State Council, issue other classes of shares.

**Article 12.** Shares issued by the company shall have a face value. The face value of each share shall be RMB1 yuan.

**Article 13.** Subject to approval by the competent securities department of the State Council, the company may issue shares to domestic and overseas investors.

"Overseas investors" as mentioned in the preceding paragraph shall refer to investors from foreign countries or from Hong Kong, Macao and Taiwan who purchase shares issued by the company; "domestic investors" shall refer to investors within the territory of the People's Republic of China other than the aforesaid regions who purchase shares issued by the company.

**Article 14.** Shares issued by the company in renminbi to domestic investors shall be called domestic capital shares. Shares issued by the company in foreign currency to overseas investors shall be called foreign capital shares. Foreign capital shares which are listed overseas shall be called foreign capital shares listed overseas.

**Article 15.** Subject to approval by the company examination and approval department authorised by the State Council, the company may issue a total number of [number of shares] ordinary shares, with [number of shares] shares already issued to promoters at the time of the company's establishment, which constitutes [percentage]% of the total ordinary shares to be issued by the company.

**Article 16.** After its establishment, the company will issue [number of shares] ordinary shares, including no less than [number of shares] and no more than [number of shares] foreign capital shares listed overseas, and which constitutes a total of [percentage]% of shares to be issued as ordinary shares by the company and [number of shares] domestic capital shares to be issued to the general public.

The share capital structure of the company is: [number of shares] ordinary shares, of which [number of shares] are held by the promoters [name and title of each promoter], [number of shares] held by other domestic capital shareholders and [number of shares] held by holders of foreign capital shares listed overseas.

**Article 17.** Where the company has a scheme approved by the competent securities department of the State Council to issue foreign capital shares listed overseas and domestic capital shares, the board of directors of the company may implement arrangements to make separate issue.

A scheme for the separate issue of foreign capital shares listed overseas and domestic capital shares prepared by the company in accordance with the preceding paragraph may be implemented separately within fifteen (15) months from the date on which the issue scheme is approved by the Securities Committee of the State Council.

**Article 18.** If a company separately issues foreign capital shares listed overseas and domestic capital shares within the total amount of shares fixed in the company's issue scheme, foreign capital shares listed overseas and domestic capital shares shall separately be floated in full at the one time. Under special circumstances, where the total amount of shares in each issue cannot be entirely floated in full at the one time, such shares may, subject to approval by the Securities Committee of the State Council, be issued in instalments.

**Article 19.** The registered capital of the company is RMB [amount of capital] yuan.

**Article 20.** The company may, in accordance with the requirements of its business operations and development, increase its capital with approval as stipulated in the company's articles of association.

The company may adopt the following methods to increase its capital:

- (1) float new shares to non-designated investors;
- (2) conduct a rights issue of new shares to existing shareholders;
- (3) conduct a bonus issue of new shares to existing shareholders;
- (4) other methods as approved by laws and statutory regulations.

Where a company has increased its capital through a new share issue with approval as stipulated in the company's articles of association, the matter shall be handled in accordance with the procedures as stipulated in relevant State laws and statutory regulations.

**Article 21.** Except if laws and statutory regulations stipulate otherwise, shares of a company may be subject to free assignment and shall have no lien attached.

## **CHAPTER IV — REDUCTION OF CAPITAL AND BUY BACK OF SHARES**

**Article 22.** In accordance with the provisions of its articles of association, the company may reduce its registered capital.

**Article 23.** When reducing its registered capital, the company must prepare a balance sheet and inventory of property.

Within ten (10) days of the resolution proposing a reduction of registered capital, the creditors shall be notified by the company and a public announcement shall be made in the press three (3) times within thirty (30) days. A creditor shall, within thirty (30) days of receipt of such a notice or within ninety (90) days of the first public announcement where the creditor has not received notice, have the right to request that the company settle its claim or provide a relevant debt redemption guarantee.



The registered capital after its reduction shall not be less than the statutory minimum amount.

**Article 24.** In the following circumstances the company may buy back issued shares in accordance with procedures stipulated in the company's articles of association and following approval by the State department in charge:

- (1) when cancelling shares in order to reduce its capital;
- (2) when merging with other companies which hold the company's shares;
- (3) in other circumstances as stipulated in laws and statutory regulations.

**Article 25.** Subject to approval by the State department in charge, the following methods may be adopted to buy back shares:

- (1) issue of a buy back offer to all shareholders according to an equal percentage;
- (2) through means of open trading at the stock exchange;
- (3) through means of an agreement outside the Stock Exchange.

**Article 26.** When a company buys back shares by means of an agreement outside the stock exchange, the approval of a meeting of shareholders must be obtained in advance in accordance with the provisions of the company's articles of association. Subject to advance approval by the meeting of shareholders to buy back shares through means of an agreement, the company may dissolve or alter the contracts which have already been concluded after having undergone the procedure described above or may renounce any rights stipulated in those contracts.

The aforesaid share buy back contract shall include (but not be limited to) agreements to bear the obligation of buying back shares and to obtain share buy back rights.

The company shall not be permitted to transfer a contract for the buy back of its shares nor to assign any rights stipulated in the contract.

**Article 27.** After buying back shares in accordance with the law, the company shall, within the period of time stipulated by laws and statutory regulations, cancel that portion of shares and shall apply to the original company registration authority to register the amendment.

The total face value of the cancelled shares shall be offset against the registered capital of the company.

**Article 28.** For companies listed in Hong Kong, the following contents shall be included in the company's articles of association.

Unless the company has already entered into liquidation, the company shall abide by the following provisions when buying back its issued shares:

1. Where the company buys back its shares at face value, the funds expended shall be deducted from the book balance of the distributable profits and from proceeds derived from the issue of new shares for the buy back of old shares.

2. Where the company buys back shares at a price in excess of their face value, that portion of funds equal to the face value shall be deducted from the book balance of distributable profits and proceeds derived from the issue of new shares for the buy back of old shares; that portion of funds in excess of the face value shall be handled pursuant to the following measures:

(1) where bought back shares are issued at face value, the funds shall be deducted from the book balance of the distributable profits;

(2) where bought back shares are issued at a price in excess of their face value, the funds expended shall be deducted from the book balance of distributable profits and proceeds derived from the issue of new shares for the buy back of old shares; however, the amount deducted from the proceeds derived from the issue of new shares shall not exceed the total premium on the bought back old shares at the time when those shares were issued, and shall not exceed the amount (including the premium on the issue of new shares) in the premium account [or capital accumulation fund account] at the time of buying back of those shares.

3. Funds used for expenditure on the following shall be made from distributable profits of the company:

(1) obtaining buy back rights for the buying back of shares;

(2) amending the share buy back contract;

(3) dissolving the obligations in the share buy back contract.

4. After the total face value of cancelled shares has been offset against the registered capital of the company pursuant to relevant regulations, the amount spent on buying back the face value of shares which can be deducted from the distributable profits shall be charged to the premium account [or capital accumulation fund account] of the company.

## **CHAPTER V — FINANCIAL AID FOR THE PURCHASE OF THE COMPANY'S SHARES**

**Article 29.** The company or its subsidiaries shall not be permitted at any time or use any means to provide any financial aid to parties buying or intending to buy the company's shares. The aforesaid parties buying the company's shares shall include parties directly or indirectly bearing obligations because of the purchase of the company's shares.

The company or its subsidiaries shall not be permitted at any time or use any means to provide financial aid to the aforesaid obligated parties in order to reduce or dissolve their obligations.

The provisions of this Article shall not apply in the circumstances described in Article 31 of this Chapter.

**Article 30.** For the purposes of this Chapter, financial aid shall include (but not be limited to) the following:

(1) making of a gift;

(2) providing a guarantee (including an undertaking by the guarantor to bear liability or the guarantor providing property as a means of ensuring that the obligor fulfils an obligation), compensation (but not including such compensation made due to the company's own fault), dissolving or renouncing of rights;

(3) providing loans or concluding a contract which stipulates that the company assumes obligations ahead of another party, changing the parties to these loans or contracts, or assigning rights pertaining to these loans or contracts;

(4) providing financial aid through any other means when the company is unable to repay its debts, has no net assets or in circumstances likely to lead to a heavy reduction in net assets.

For the purposes of this Chapter, "assumes obligations" shall include an act whereby the obligor assumes obligations as a result of entering into a contract or making an arrangement (regardless of whether that contract or arrangement can be compulsorily enforced or not, or regardless of whether the obligor assumes obligations itself or jointly with others), or changing its financial position through any other means.

**Article 31.** The following actions shall not be regarded as actions prohibited by Article 29 of this Chapter:

(1) financial aid honestly provided by the company for the company's interests and where the main aim of such financial aid is not the purchase of the company's shares, or where the said financial aid is an incidental part of a certain overall plan of the company;

(2) the company using its property as dividends for distribution in accordance with the law;

(3) dividends distributed in the form of shares;

(4) reducing registered capital, buying back shares or adjusting stock equity structure in accordance with the company's articles of association;

(5) providing loans for its normal business operations within the scope of the company's business (however, this must not result in a reduction of the company's net assets, or, where there is a reduction in its net assets, the financial aid is sourced from the company's distributable profits);

(6) providing loans to enable employees to hold shares (however, this must not result in a reduction of the net assets of the company, or, where there is a reduction in its net assets, the financial aid is sourced from the company's distributable profits).

## **CHAPTER VI — SHARE CERTIFICATES AND SHARE LEDGER**

**Article 32.** The share certificates of the company shall adopt the form of registered share certificates.

In addition to the items which should be specified on a share certificate of the company as stipulated in the Company Law, other items as required by the stock exchange where the company's shares are listed shall also be included.

**Article 33.** A share certificate shall be signed by the chairman of the board of directors. If the stock exchange listing the company's shares requests that other senior management personnel shall sign the share certificates, a share certificate shall also be signed by those senior management personnel as requested. A share certificate shall

only become valid after it is affixed with the company seal or with the company seal in a printed format. Printed format may also be adopted for the signature of the chairman of the board of directors or other senior management personnel on a share certificate.

**Article 34.** A share ledger shall be established by the company to record the following items:

- (1) the name (or title), address (or residence) and occupation or nature of each shareholder;
- (2) the type and amount of shares held by each shareholder;
- (3) the amount paid for or amount payable for shares held by each shareholder;
- (4) the serial numbers of shares held by each shareholder;
- (5) the date on which the party registered as a shareholder;
- (6) the date on which the party ceased to be a shareholder.

The share ledger shall be sufficient evidence to verify that a shareholder holds company shares, except where evidence to the contrary exists.

**Article 35.** In accordance with the mutual understanding and agreement reached between the competent securities department of the State Council and an overseas stock exchange supervision and management authority, the original copy of a company's share ledger of foreign capital shares listed overseas may be kept overseas and managed by an overseas agency entrusted by the company. A duplicate copy of the company's share ledger of foreign capital shares listed overseas shall be kept at the business premises of the company as backup. The entrusted overseas agency shall ensure the consistency of the original and duplicate copies of the share ledger of capital shares listed overseas at all times.

In the event of a duplicate copy not being consistent with the original of a share ledger of foreign capital shares listed overseas, the original copy shall prevail.

**Article 36.** The company shall maintain a complete share ledger.

A share ledger shall consist of the following:

- (1) the share ledger other than those stipulated in items (2) and (3) of this paragraph to be kept at the business premises of the company;
- (2) a company's share ledger of foreign capital shares listed overseas to be kept at the location of the overseas stock exchange which lists the company's foreign capital shares;
- (3) a share ledger to be kept in another place designated by the board of directors so as to meet the requirements for listing of the company's shares.

**Article 37.** There shall be no overlap between the various parts of the share ledger. In the event of assignment of shares registered in a certain part of the share ledger, those shares shall not be permitted to be registered in another part of the share ledger during the period of time in which their registration is maintained in the other part of the ledger.

Alteration or correction of any part of a share ledger shall be carried out in accordance with the law prevailing in the places at which those parts of the share ledger are kept.

**Article 38.** The procedures to register amendments to a share ledger resulting from an assignment of shares shall not be carried out within thirty (30) days of the commencement of a shareholders' meeting or within five (5) days of the date on which dividends are to be distributed as decided by the company.

**Article 39.** When convening a shareholders' meeting, distributing dividends, in liquidation or conducting other activities involving the confirmation of stock equity, the board of directors of the company shall fix a certain date as the stock equity confirmation date. At the end of the stock equity confirmation date, shareholders registered in the share ledger shall be the company's shareholders.

**Article 40.** Any party which raises objection to a share ledger and requests its name (or title) to be registered in the share ledger or requests that its name (or title) be deleted from the share of ledger may apply to the court having jurisdiction to amend that share ledger.

**Article 41.** Any shareholder registered in the share ledger or any party who requests that its name (or title) be registered in the share ledger may apply to the company for supplementary issue of replacement certificates (ie "corresponding certificates" if its share certificates (ie "original share certificates") have been lost.

In the case of a domestic capital shareholder losing its share certificate and applying for supplementary issue of a replacement certificate, this shall be handled in accordance with the provisions of Article 150 of the Company Law.

In the case of a holder of foreign capital shares listed overseas losing its share certificate and applying for supplementary issue of a replacement certificate, this shall be handled in accordance with the law of the place where the original ledger of foreign capital shareholders is kept with the rules of the stock exchange or other relevant regulations.

If a holder of foreign capital shares listed in Hong Kong has lost its share certificate and applies for supplementary issue of a replacement certificate, the supplementary issue of a replacement certificate shall be in compliance with the following requirements:

1. The applicant shall lodge an application according to the standard format designated by the company and shall attach a notarial certificate or document of legal declaration. The contents of the notarial certificate or legal declaration shall include reasons for the application, details and evidence of the loss of the share certificate and a declaration that no other party can request the registration of such shares as a shareholder.
2. No declaration has been made by any party other than the applicant requesting the registration of those shares as a shareholder before the company makes a decision on supplementary issue of a replacement certificate.
3. Where the company decides to make supplementary issue of a replacement certificate, a public announcement of the intended supplementary issue of the replacement certificate shall be published in the newspaper(s) designated by the board of directors; the period for a public announcement shall be ninety (90) days and the public announcement shall be published at least once every thirty (30) days.
4. Before publication of a public announcement of the intended supplementary issue of a replacement share certificate, a duplicate copy of the public announcement to be published shall be submitted to the stock exchange which lists the company's shares.

The public announcement may then be published after receipt of a reply from the stock exchange confirming the display of the public announcement in the stock exchange has occurred. The period for display of a public announcement in the stock exchange shall be ninety (90) days.

If an application for the supplementary issue of a replacement share certificate is made without the consent of a shareholder registered in the share ledger who holds the relevant shares, the company shall post a copy of the public announcement to be published to the shareholder concerned.

5. Upon the expiration of the ninety (90) day period for a public announcement or display as stipulated in items 3 and 4 of this Article and where no objection against supplementary issue of a replacement share certificate has been raised by any party, the replacement share certificate may be issued pursuant to the application.

6. When making supplementary issue of a replacement share certificate pursuant to the provisions of this Article, the company shall promptly cancel the original share certificate and shall record such cancellation and supplementary issue of the replacement share certificate on the share ledger.

7. All expenses incurred by the company in the cancellation of the original share certificate and the supplementary issue of the replacement share certificate shall be borne by the applicant. The company shall have the right to refuse to undertake any action before an applicant provides a reasonable guarantee.

**Article 42.** After a replacement share certificate has been issued by the company in accordance with the provisions of the articles of association, a bona fide purchaser who obtains the said new shares or a shareholder (if a bona fide purchaser) who later registers as owners of the said shares shall not be permitted to have its name (or title) deleted from the share ledger.

**Article 43.** The company shall not bear liability to compensate for any loss incurred by any party as a result of cancellation of the original share certificate or issue of the replacement share certificate unless the party concerned can prove that the company has committed fraud.

## **CHAPTER VII — RIGHTS AND OBLIGATIONS OF A SHAREHOLDER**

**Article 44.** The shareholders of the company shall be the parties who legally hold the company's shares and whose names (or titles) have been registered on the share ledger.

A shareholder shall enjoy rights and assume obligations pursuant to the class and quantity of shares held; holders of the same type of share shall enjoy equal rights and assume equal obligations.

**Article 45.** A holder of ordinary shares of the company shall have the following rights:

(1) to receive dividends and beneficial distributions in other forms according to the quantity of shares held;

(2) to attend or entrust an agent to attend shareholders' meetings and to execute voting rights;

(3) to supervise and manage business operations of the company and to raise proposals or address inquiries accordingly;

(4) to assign shares pursuant to the provisions of laws, statutory regulations and the company's articles of association;

(5) to obtain information pursuant to the provisions of the company's articles of association including:

(i) obtain a copy of the company's articles of association after payment of a charge;

(ii) the right to consult or copy the following after reasonable fees have been paid:

A. all parts of the share ledger;

B. personal information concerning directors, supervisors and other senior management personnel of the company, including:

(a) current and previous names and/or alternative names;

(b) principal address (residence);

(c) nationality;

(d) full-time position and/or other concurrent positions and posts;

(e) ID documentation and numbers.

C. company share capital position;

D. reports on the total face value and quantity of each type of share bought back by the company since the last financial year, the highest buying price and the lowest buying price for such shares, and the total expenses incurred thereon;

E. minutes of shareholders' meetings.

(6) to participate in, upon the company's termination or liquidation, the distribution of the company's remaining assets according to the quantity of shares held;

(7) other rights as stipulated in laws, statutory regulations and the company's articles of association.

**Article 46.** A holder of ordinary shares of the company shall assume the following obligations:

(1) to abide by the company's articles of association.

(2) to pay funds pursuant to the quantity of subscribed shares and the method of subscription;

(3) other obligations as stipulated in laws, statutory regulations and the company's articles of association.

Apart from the conditions accepted at the time of subscribing to shares, a shareholder shall not bear liability for any additional share capital.

**Article 47.** In addition to obligations as required by laws, statutory regulations or the listing rules of the stock exchange which lists the company's shares, a controlling shareholder when executing its shareholding rights shall not be permitted to exercise its voting rights to make decisions on the following matters which harm the interests of all or some shareholders:

(1) to relieve a director or supervisor from his/her responsibility on the basis that this is in the best interests of the company;

(2) to approve that a director or supervisor (for his/her own interests or another's interests) expropriate company property using any means including (but not limited to) any opportunity which is beneficial to the company;

(3) to approve that a director or supervisor (for his/her own interests or another's interests) divest other shareholders of individual rights and interests including (but not limited to) any distribution rights and voting rights, but not including where the matter is submitted to the shareholders' meeting for adoption in accordance with the company's articles of association that there be reorganisation of the company.

**Article 48.** A controlling shareholder as stated in the preceding Article shall be a person who meets the following requirements:

(1) when taking independent action or acting in unison with others, that shareholder can elect a majority of directors;

(2) when taking independent action or acting in unison with others, that shareholder executes more than 30% (including 30%) of the company's voting rights or executes more than 30% (including 30%) control over the company's voting rights;

(3) when taking independent action or acting in unison with others, that shareholder holds more than 30% (including 30%) of the company's issued shares;

(4) when taking independent action or acting in unison with others, that shareholder has actual control of the company in other ways.

## **CHAPTER VIII — SHAREHOLDERS' MEETINGS**

**Article 49.** Shareholders' meetings shall be a company's most powerful authority and shall exercise its powers of office in accordance with the law.

**Article 50.** A shareholders' meeting shall exercise the following powers of office:

(1) determining the company's business policies and investment plans;

(2) election and replacement of directors and determining matters concerning the remuneration of directors;

(3) election and replacement of supervisors who are representatives of shareholders and determining the remuneration of those supervisors;

(4) discussion and approval of reports compiled by the board of directors;



- (5) discussion and approval of reports compiled by the supervisory committee;
- (6) discussion and approval of the company's annual budget and final accounting plans;
- (7) discussion and approval of the company's profit distribution and loss recovery plans;
- (8) passing resolutions on matters such as increase or reductions of the company's registered capital;
- (9) passing resolutions on matters such as company merger, division, dissolution or liquidation;
- (10) passing resolutions on the issue of corporate bonds;
- (11) passing resolutions on matters such as engagement, dismissal or non-renewal of engagement of the accounting firm;
- (12) amending the company's articles of association;
- (13) discussing proposals raised by the shareholders who represent more than 5% (including 5%) of the company's shareholders with voting rights;
- (14) other matters on which the shareholders meeting shall make resolutions as stipulated in laws, statutory regulations and the company's articles of association.

**Article 51.** Without the advance approval of a shareholders' meeting, a company shall not be permitted to enter into a contract with a person other than a director, supervisor, manager or other senior management personnel where such contract grants responsibility to that person for the management or major business activities of the company.

**Article 52.** Shareholders' meetings shall be separated into annual and interim meetings. A shareholders' meeting shall be convened by the board of directors. Annual shareholders' meetings shall be convened once each year within six (6) months after the end of the previous fiscal year.

The board of directors shall convene an interim shareholders' meeting within two (2) months in any of the following circumstances:

- (1) where the number of directors does not meet the number stipulated in the Company Law or is less than two-thirds of the number required in the articles of association of the company;
- (2) where the company's losses which have not yet been offset account for one-third of the total amount of actual share capital;
- (3) where shareholders holding more than 10% (including 10%) of the issued shares of the company with voting rights make written request for the convening of an interim shareholders' meeting;
- (4) the board of directors believes it necessary or the supervisory committee proposes that an interim shareholders' meeting be convened.

**Article 53.** When convening a shareholders' meeting, written notification shall be made to the shareholders registered in the share ledger forty-five (45) days before the

convening of the meeting of those matters to be discussed at the meeting and the date and location of the meeting. Shareholders intending to attend the shareholders' meeting shall send their written acknowledgments to the company twenty (20) days before the convening of the meeting.

**Article 54.** When convening an annual shareholders' meeting, shareholders with title to more than 5% (including 5%) of the company's total shares with voting rights shall be entitled to raise new proposals in writing to the company. Matters raised in proposals which are within the scope of the powers of office of the shareholders' meeting shall be listed in the meeting agenda.

**Article 55.** The company shall, based on the written replies received twenty (20) days before the commencement of the shareholders' meeting, calculate the shares with voting rights held by those shareholders intending to attend the meeting. A shareholders' meeting may be convened if those shareholders intending to attend have title to more than half of the company's shares with voting rights; if not, the company shall, within five (5) days, notify the shareholders once again through public announcement of those matters to be discussed at the meeting, and the date and location of the meeting. The company may convene the shareholders' meeting only after such public announcement has been made.

An interim shareholders' meeting shall not be permitted to propose resolutions on matters which were not included in the notice.

**Article 56.** The notice for a shareholders' meeting shall meet the following requirements:

- (1) be in writing;
- (2) specify the location, date and time of the meeting;
- (3) state those matters to be discussed at the meeting;
- (4) provide the shareholders with data and explanations necessary in order to make informed decisions on those matters to be discussed; this shall include (but not be restricted to) providing detailed conditions and contracts (if such exist) on deals to be conducted and proper explanation of consequences where the company proposes a merger, buy back of shares, share capital restructure or other reorganisation;
- (5) if a certain director, supervisor, manager or other senior management personnel is an interested party to a matter to be discussed at the meeting, the nature and degree of that interest shall be disclosed; if a matter to be discussed impacts upon such a director, supervisor, manager or other senior management personnel in their capacity as shareholders and such impact differs to the impact on other shareholders holding the same classes of shares, such difference shall be explained;
- (6) include the full text of any special resolution to be passed at the meeting;
- (7) unequivocally state in clear language that a shareholder with the right to attend the meeting and to vote shall be entitled to entrust one or more agents to attend the meeting and to vote on behalf of that shareholder, and that the agent(s) of that shareholder need not necessarily be shareholder(s);
- (8) state clearly the place and date by which a letter of proxy for voting shall be received.

**Article 57.** A notice of a shareholders' meeting shall be sent to shareholders (regardless of whether they have voting rights) by special delivery or pre-paid post.

The addresses registered in the share ledger shall be the addresses used. For domestic capital shareholders, a notice of a shareholders' meeting may be made through public announcement.

The aforesaid public announcement shall, within forty-five (45) to fifty (50) days before the commencement of the meeting, be published in one or several newspapers designated by the competent securities department of the State Council. Once a public announcement has been made, this shall be regarded as notice received by all domestic capital shareholders.

**Article 58.** In the event of failure to send notice due to accidental omission to a certain person who has the right to obtain notice or where that person failed to receive notice, the meeting and resolutions passed at that meeting shall not become invalid as a result.

**Article 59.** Any shareholder who has the right to attend a shareholders' meeting and the right to vote shall have the right to entrust one or several persons (such persons need not be shareholders) as agent(s) to attend the meeting and to exercise voting rights. An agent of a shareholder may exercise the following rights according to the scope of authority entrusted by the shareholder:

(1) the shareholder's right to speak at the shareholders' meeting;

(2) the right to request, alone or in conjunction with others, that a matter be decided upon through a ballot vote;

(3) the right to vote by a show of hands or by ballot; however, if more than one person has been entrusted as agent, such agents shall only be permitted to exercise the right to vote by ballot.

**Article 60.** A shareholder shall use written form when entrusting an agent. The letter of proxy shall be signed by the principal or the agent entrusted by the principal in writing. If a principal is a corporation, the letter of proxy shall be affixed with the seal of the corporation or shall be signed by its director or officially entrusted agent.

**Article 61.** A letter of proxy for voting shall be received and kept at the company's premises or at another place designated in the notice of the meeting at least twenty-four (24) hours prior to commencement of the relevant meeting or before the designated time of voting. If a letter of proxy is signed by another party as authorised by the principal, a power of attorney to sign the letter of proxy or other document of authorisation shall be subject to notarisation. The notarised power of attorney or other authorisation document shall be kept with the letter of proxy at the company's premises or other place as stipulated in the notice of meeting.

If the principal is a corporation, its legal representative or person authorised by its board of directors or other decision-making department shall be the representative to attend shareholders' meetings of the company.

**Article 62.** Any format of a letter of proxy issued by the board of directors used in appointing an agent on behalf of a shareholder shall allow the shareholder to freely choose to instruct that agent as to whether to make an affirmative or negative vote and to give instructions respectively on matters to be decided by vote at the meeting. A letter of proxy shall note that if a shareholder does not give instructions, the agent may vote according to his/her judgement.

**Article 63.** Where the principal dies before voting, loses the capacity to act, withdraws a letter of proxy, withdraws the power of attorney to sign a letter of proxy or if the relevant shares have been assigned, and if the company has not received written notice concerning this matter prior to commencement of the relevant meeting, a vote made by the shareholder's agent according to the letter of proxy shall remain valid.

**Article 64.** Resolutions of shareholders' meetings shall be divided into ordinary and special resolutions.

An ordinary resolution at a shareholders' meeting shall require the approval of a majority of the voting rights of shareholders (including their agents) who are present at the meeting in order to be valid.

A special resolution at a shareholders' meeting shall require the approval of a two-thirds majority of the voting rights of shareholders (including their agents) who are present at the meeting in order to be valid.

**Article 65.** When voting at a shareholders' meeting, a shareholder (including the agent of a shareholder) shall exercise voting rights according to the number of shares held. Each share held shall represent the equivalent of one voting right.

**Article 66.** A shareholders' meeting shall propose resolutions through a vote by a show of hands except where it is requested, either before or after the vote by show of hands, by the following personnel that a resolution be passed through a ballot vote:

(1) the chairman of the meeting;

(2) at least two (2) shareholders with voting rights or two (2) agents of shareholders with voting rights;

(3) one or several shareholders (including agents of shareholders) with title or combined title amounting to more than 10% (including 10%) of shares with voting rights present at the meeting.

Unless a party requests that a resolution on a matter be passed through vote by ballot, the chairman of the meeting shall, based on the result of a vote by a show of hands, declare the result of the vote on a proposal and this shall be recorded in the minutes of the meeting as final. It shall not be necessary to certify the number of affirmative or negative votes nor the percentages of each.

A request for a ballot vote may be withdrawn by the party which raised that request.

**Article 67.** If it has been requested that a decision to elect the chairman of the meeting or to stop the meeting be made through a ballot vote, the ballot vote shall be promptly conducted. In relation to other matters to be decided through vote by ballot as requested, the chairman shall decide when the ballot vote shall be conducted. The meeting may then be continued and other matters discussed. The results of the vote shall be regarded as a resolution passed by the meeting.

**Article 68.** When voting by ballot, a shareholder (including the agent of a shareholder) with two (2) or more voting rights need not cast all of their voting rights as affirmative or negative votes.

**Article 69.** Should there be a tie between negative and affirmative votes on a matter, the chairman of the meeting shall have the casting vote whether or not it is a vote by show of hands or by ballot.

**Article 70.** Ordinary resolutions shall be proposed on the following matters at a shareholders' meeting:

- (1) work reports of the board of directors and supervisory committee;
- (2) profit distribution plan and loss recovery plan prepared by the board of directors;
- (3) dismissal of members of the board of directors and supervisory committee and forms of their remuneration and payment methods;
- (4) the company's annual budget and financial accounting reports, balance sheets, profit and loss statements and other financial statements;
- (5) matters other than those on which special resolutions shall be proposed as stipulated in laws, statutory regulations or the company's articles of association.

**Article 71.** Special resolutions shall be proposed on the following matters at a shareholders' meeting:

- (1) company share capital expansion and reduction, and the issue of any types of share, share certificate subscription and other similar securities;
- (2) the issue of corporate bonds;
- (3) company division, merger, dissolution and liquidation;
- (4) amendments to the company's articles of association;
- (5) other matters which are deemed by the shareholders' meeting to have a major impact on the company and where it is passed by ordinary resolution at the shareholders' meeting that the matter be resolved by special resolution.

**Article 72.** Shareholders who request the convening of an interim shareholders' meeting or a meeting of a certain category of shareholders shall do so in accordance with the following procedures:

1. Two (2) or more shareholders with combined title to more than 10% (including 10%) of shares with voting rights at the meeting to be convened may sign one or several written requests in the same format and with the same contents to the board of directors to convene an interim shareholders' meeting or category shareholders' meeting and which shall also specify the meeting's agenda. After receiving the aforesaid written request, the board of directors shall promptly convene an interim shareholders' meeting or category shareholders' meeting. The aforesaid number of shares held by shareholders shall be calculated as at the date of the written request.
2. If the board of directors fails to issue notification convening a meeting within thirty (30) days after receiving the aforesaid written request, the shareholder who raised the request may convene the meeting within four (4) months after the board of directors received that request. The procedures for convening such a meeting shall be, as much as possible, the same as the procedures for convening a shareholders' meeting by the board of directors.

In the case of shareholders organising the convening of a meeting as a result of the failure of the board of directors to convene a meeting as requested above, reasonable expenses incurred on the meeting shall be borne by the company and shall be deducted from the bank funds of those directors who were negligent in the performance of their duties.

**Article 73.** A shareholders' meeting shall be convened by the chairman of the board of directors who shall be the chairman of the meeting. If the board chairman is unable to attend the meeting, the vice-chairman of the board of directors shall convene the meeting and shall be the chairman of the meeting. If, for some reason, both the chairman and the vice-chairman are unable to attend the meeting, the board of directors may designate a director of the company to convene the meeting and to chair the meeting on its behalf. If no chairman of the meeting is designated, shareholders at the meeting may elect a chairman. In a case where shareholders are unable, for any reason, to elect a chairman of the meeting, that shareholder who holds the most number of shares with voting rights shall be the chairman of the meeting (including an agent of a shareholder).

**Article 74.** The chairman of a meeting shall be responsible for making decisions regarding the adoption of resolutions at the meeting. Decisions made shall be final and shall be declared at the meeting and recorded in the minutes of the meeting.

**Article 75.** If the chairman of a meeting has any doubts as to the results of a resolution proposed at a meeting, the chairman may count the number of the votes; if the chairman of the meeting has not tallied the votes and a shareholder or an agent of a shareholder attending the meeting objects to a result declared by the chairman of the meeting, the shareholder or agent shall have the right to request a re-count of votes followed by an immediate declaration; the chairman of the meeting shall promptly count the votes.

**Article 76.** The result of vote counting at a shareholders' meeting shall be recorded in the minutes of the meeting.

Minutes of a shareholders' meeting and the registry of shareholders attending the meeting and letters of proxy shall be kept at the company's premises.

**Article 77.** A shareholder may consult the copy of the minutes of a shareholders' meeting free of charge during company business hours. If a shareholder asks for a copy of the minutes of a shareholders' meeting from the company, the company shall send a copy to that shareholder within seven (7) days after receipt of a reasonable fee.

## **CHAPTER IX — SPECIAL PROCEDURES FOR VOTING BY CATEGORIES OF SHAREHOLDERS**

**Article 78.** Shareholders holding different classes of shares shall be regarded as different categories of shareholders.

The various categories of shareholders shall enjoy rights and assume obligations in accordance with laws, statutory regulations and the company's articles of association.

**Article 79.** If a company intends to change or abolish the rights of a category of shareholder, this shall be subject to adoption of a special resolution proposed at a shareholders' meeting and at a meeting of that category of shareholder concerned, according to the provisions of Articles 81 to 85 respectively.

**Article 80.** In the following situations the rights of a certain category of shareholder shall be regarded as having been changed or abolished:

- (1) increase or reduction of the number of shares of that class, or increase or reduction of the number of that class of shares which have equal or greater voting rights, distribution rights and other rights to the said class of shares;
- (2) change to all or part of the said category of shares to another class, change to all or part of another class of shares to the said class, or grant equal conversation rights between the said class and another class of shares;
- (3) cancellation or reduction of the rights of a said class of shares to obtain dividends which have been gained or accumulated;
- (4) reduction or cancellation of the priority right of a said class of shares to obtain dividends or to obtain distributed property during the company's liquidation;
- (5) increase, cancellation or reduction of the conversion rights, options, voting rights, assignment rights, allocate priority rights or rights to obtain company securities pertaining to the said category of shares;
- (6) cancellation or reduction of the right of the said class of shares to use a specific currency to collect the company's funds payable;
- (7) establishment of a new class of shares which have voting rights, distribution rights or other rights equivalent or greater than the said class of shares;
- (8) restriction of assignment of or ownership rights to a said class of shares or the addition of further restrictions;
- (9) issue of the right to subscribe to the said class or to another class of shares or the right to convert shares;
- (10) increase of the rights and privileges of other classes of shares;
- (11) where the company's restructuring plan results in different categories of shareholders assuming disproportionate liabilities during the restructuring ;
- (12) amendment or abolition of articles stipulated in this Chapter.

**Article 81.** Regardless of whether an affected category of shareholders originally has voting rights or not, concerned shareholders shall have voting rights at a category shareholders' meeting on those matters mentioned in items (2) to (8) and items (11) and (12) of Article 80; however, if a shareholder is an interested party, he/she shall not have voting rights at a category shareholders' meeting.

The aforesaid interested shareholder shall include the following meanings:

1. In circumstances where, pursuant to the provisions of Article 25 of these Articles of Association, a company issues a buy back offer to all shareholders or buys back its own shares through open transactions at the stock exchange, "an interested shareholder" shall refer to a controlling shareholder as in Article 48 of these Articles of Association.
2. In circumstances whereby a company, pursuant to the provisions of Article 25 of these Articles of Association, buys back its own shares through means of an agreement outside of the stock exchange, "an interested shareholder" shall refer to a shareholder related to such an agreement.

3. Where a company is undergoing restructuring, "an interested shareholder" shall refer to a shareholder who assumes liability less than the proportion assumed by shareholders of the same category or who has interests different to other shareholders in the same category.

**Article 82.** A resolution at a category shareholders' meeting may be proposed only after obtaining approval of a two-thirds majority of that category of shareholders with voting rights present at the meeting, in accordance with the provisions of Article 81 of these Articles of Association.

**Article 83.** When convening a category shareholders' meeting, the company shall issue a written notice forty-five (45) days in advance of the meeting to notify that category of registered shareholders of those matters to be discussed at the meeting and of the date and location of the meeting. A shareholder who intends to attend the meeting shall send a written reply to the company twenty (20) days before the commencement of the meeting.

If the amount of shares with voting rights represented by shareholders intending to attend the meeting is more than half of the total amount of the said category of shares with voting rights, the company may convene the category shareholders' meeting. If not, the company shall, within five (5) days, make further notice on those matters to be discussed at the meeting and the date and location of the meeting, to shareholders through a public announcement. After this public announcement is made, the company may convene a category shareholders' meeting.

**Article 84.** The notice of a category shareholders' meeting shall only be to those shareholders who have the right to vote at the meeting.

The procedures to be followed at a category shareholders' meeting shall be, as far as possible, the same as the procedures to be followed at a shareholders' meeting. The articles in the company's articles of association dealing with the procedures to be followed at a shareholders' meeting shall apply to a category shareholders' meeting.

**Article 85.** If the rules of the stock exchange which lists the company's shares so require, the company's articles of association shall include "apart from shareholders with other classes of shares, holders of domestic capital shares and holders of foreign capital shares listed overseas shall be recognised as different categories of shareholder" as part of its content.

Articles of association which include the content stipulated in the preceding paragraph shall also provide that "the special procedures for voting by a category of shareholders shall not be applied in the following circumstances: (1) subject to approval by a special resolution of a shareholders' meeting, the company issues domestic capital shares and/or foreign capital shares listed overseas independently or simultaneously once every twelve (12) months, and each of the amounts of domestic capital shares and foreign capital shares listed overseas to be issued does not exceed 20% of the shares of this class already issued; (2) the scheme for the issue of domestic capital shares and/or foreign capital shares listed overseas when establishing the company has been fulfilled within fifteen (15) months from the date of approval from the Securities Committee of the State Council".

## **CHAPTER X — THE BOARD OF DIRECTORS**

**Article 86.** The company shall establish a board of directors which shall consist of [number] directors and have one chairman, [number] vice-chairmen and [number] directors.



**Article 87.** Directors shall be elected by a shareholders' meeting. The term of appointment of a director shall be [number] years. If the term of appointment of a director expires and he/she is re-elected, that director may be reappointed for consecutive terms.

A chairman and vice-chairman shall be elected or recalled by the board of directors with approval of a majority of all the directors. The term of appointment of a chairman and vice-chairman shall be [number] of years and they may be reappointed for consecutive terms if re-elected.

A director shall not be required to hold the company's shares.

**Article 88.** The board of directors shall be responsible to the shareholders' meeting and shall exercise the following powers of office:

- (1) responsibility for convening shareholders' meetings and to report to those meetings on work matters;
- (2) implementation of resolutions of a shareholders' meeting;
- (3) determination of the company's business plans and investment plans;
- (4) formulation of the company's annual budget and final accounting plan;
- (5) formulation of the company's profit distribution and loss recovery plans;
- (6) formulation of the company's registered capital expansion or reduction plans and corporate bond issue plans;
- (7) drafting of plans on such matters as company merger, division or dissolution;
- (8) determination of the internal administrative's structure of the company;
- (9) appointment of and dismissal of the company's manager and, based on candidates proposed by the manager, appointment and dismissal of the company's deputy manager and chief financial personnel and determination of their remuneration;
- (10) formulation of the company's general management system;
- (11) formulation of a plan for the amendment of the company's articles of association.

When the board of directors proposes resolutions on the aforesaid matters, apart from resolutions on matters in items (6), (7) and (11) which must be approved by a two-thirds majority of the directors, resolutions on other matters may be approved by a majority of directors.

**Article 89.** In the event of the board of directors disposing of a fixed asset, if the sum of the anticipated value of the fixed asset to be disposed of and the value of fixed assets already disposed of within four (4) months prior to this proposed disposal exceeds 33% of the value of fixed assets in the balance sheet most recently examined at the shareholders' meeting, the board of directors shall not be permitted to dispose of or to consent to the disposal of that fixed asset before the approval of the shareholders' meeting.

For the purposes of this Article, disposal of a fixed asset shall include assignment of certain assets and interests, but shall not include the use of the fixed asset to provide a guarantee.

The validity of a transaction to dispose of a fixed asset shall not be affected by violation of the provisions of paragraph 1 of this Article.

**Article 90.** The chairman of the board of directors shall exercise the following powers of office:

(1) to preside over shareholders' meetings and convene and preside over meetings of the board of directors;

(2) to examine the implementation of resolutions of the board of directors;

(3) to sign securities issued by the company;

(4) other powers of office granted by the board of directors.

When the chairman of the board of directors is unable to exercise his/her powers of office, he/shall appoint a vice-chairman to act on his/her behalf.

**Article 91.** Meetings of the board of directors shall be convened at least twice each year by the chairman of the board. When convening a meeting of the board of directors, all the directors shall be notified [number] days in advance. When urgent matters arise, subject to a proposal by more than [number] directors or the company manager, an interim meeting of the board of directors may be convened.

**Article 92.** The method of notification for convening a meeting or interim meeting of the board of directors is: [specific method of notification] and the notice period is [specific notice period].

**Article 93.** A meeting of the board of directors shall require a majority of the directors to be present in order to be convened.

Each director shall have one voting right. Resolutions proposed by the board of directors shall require the approval of a majority of all the directors in order to be valid.

Should there be a tie between negative and affirmative votes on a matter, the chairman of the board of directors shall have the casting vote.

**Article 94.** A director shall attend meetings of the board of directors in person. Where a director is unable to attend a board meeting due to special circumstances, he/she may entrust, in writing, another director to act as his/her representative at the meeting and the letter of proxy shall stipulate the scope of authority.

The entrusted director shall exercise the right of the entrusting director within the designated scope of authority. If a director did not attend a certain meeting of the board of directors and failed to entrust another director as his/her representative at that meeting, this shall be regarded as a renunciation of his/her voting rights at that meeting.

**Article 95.** Minutes of meetings of the board of directors shall be kept to record decisions on matters discussed at those meetings and shall be signed by the directors and minutes takers present. Directors shall assume responsibility for decisions adopted by the board of directors. If a decision of the board of directors is in violation of the law,

statutory regulations or the company's articles of association so as to result in the company incurring serious losses, those directors who participated in making those decisions shall bear liability for compensation towards the company. However, if a director is able to prove his/her objection to that decision, and such objection has been recorded in the minutes of the meeting, that director may be exempt from liability.

## **CHAPTER XI — SECRETARY OF THE BOARD OF DIRECTORS**

**Article 96.** The board of directors of the company shall have a secretary. The secretary of the board of directors shall be the company's senior management office.

**Article 97.** The secretary of the board of directors shall be a natural person who has the necessary professional knowledge and experience and shall be appointed by the board of directors. The main duties of the secretary are:

- (1) to guarantee that the company maintains complete organisational documents and records;
- (2) to ensure the company, in accordance with the law, prepares and submits required reports and documents to competent authorities;
- (3) to ensure the company's share ledger is properly established and to ensure that those who have the right to obtain relevant records and documents of the company are able to obtain them promptly.

**Article 98.** A director or other senior management personnel of the company may hold the post of secretary of the board of directors concurrently. An accountant of the accounting firm engaged by the company shall not be permitted to hold the post of secretary of the board of directors concurrently.

Where the post of secretary of the board of directors is concurrently held by a director and if a certain action requires separate conduct by the director and the secretary of the board of directors, that director holding the post of secretary shall not be permitted to act with dual capacity.

## **CHAPTER XII — THE COMPANY MANAGER**

**Article 99.** The company shall have one manager who shall be appointed and dismissed by the board of directors.

**Article 100.** The company's manager shall be responsible to the board of directors and shall have the following powers of the office:

- (1) to be in charge of the management of the company's production and operations and to organise the implementation of resolutions of the board of directors;
- (2) to organise the implementation of the company's annual business plan and investment plan;
- (3) to draft the company's internal administrative structure plan;
- (4) to draft the company's fundamental management system;
- (5) to formulate fundamental rules and regulations of the company;

(6) to propose the appointment and dismissal of the company's deputy managers and chief financial personnel;

(7) to appoint or dismiss management personnel other than those appointed and dismissed by the board of directors;

(8) other powers of office stipulated in the company's articles of association or authorised by the board of directors.

**Article 101.** The manager may attend meetings of the board of directors as a non-voting delegate. If the manager is not a director, he/she shall have no voting rights at meetings of the board of directors.

**Article 102.** When exercising powers of office, the company's manager shall abide by laws, statutory regulations and the company's articles of association and shall assume obligations of sincerity and diligence towards the company.

## **CHAPTER XIII — SUPERVISORY COMMITTEE**

**Article 103.** The company shall establish a supervisory committee.

**Article 104.** The supervisory committee shall consist of [number] members of which one member shall be appointed as chairman of the supervisory committee. The term of office of a supervisor shall be [number] years. After the term of office of a supervisor has expired, the supervisor, if re-elected, may be reappointed for consecutive terms.

**Article 105.** The members of the supervisory committee shall consist of [number] shareholder representatives and [number] employee representatives. The shareholder representatives shall be elected and recalled by the shareholders' meeting, and employee representatives shall be elected and recalled democratically by the company employees.

**Article 106.** A director, manager or chief financial officer of the company shall be prohibited from concurrently holding the position of supervisor.

**Article 107.** Meetings of the supervisory committee shall be convened at least [number] times a year and the chairman of the supervisory committee shall be responsible for the convening of the meeting.

**Article 108.** The supervisory committee shall be responsible to the shareholders' meeting and shall exercise the following powers of office:

(1) to investigate the company's financial affairs;

(2) to supervise acts conducted by the company's directors, managers and other senior management personnel during the performance of their duties which are in violation of the law, statutory regulations or the company's articles of association;

(3) to request the company's directors, managers and other senior management personnel to rectify the situation if their acts are harmful to the interests of the company;

(4) to check financial reports, business reports, profit distribution plans and other financial documents to be submitted to shareholders' meetings by the board of directors and, if questions are raised concerning such documents, to commission certified public

accountants and certified practising auditors in the company's name to assist in verification of doubtful documents;

(5) to propose the convening of interim shareholders' meetings;

(6) to represent the company in negotiations with directors or in initiating legal proceedings against a director;

(7) other powers of office as stipulated in the company's articles of association.

Supervisors shall attend meetings of the board of directors as non-voting delegates.

**Article 109.** The forms of procedure of the supervisory committee are: [specific forms of procedure] and voting procedures are: [specific voting procedures]

**Article 110.** If, when exercising its powers of office, a supervisory committee needs to employ a lawyer, certified public accountant, certified practising auditor or other professional, reasonable fees incurred in so doing shall be borne by the company.

**Article 111.** A supervisor shall faithfully perform his/her duties of supervision in accordance with the law, statutory regulations and the company's articles of association.

## **CHAPTER XIV — QUALIFICATIONS AND OBLIGATIONS OF COMPANY DIRECTORS, SUPERVISORS, MANAGERS AND OTHER SENIOR MANAGEMENT PERSONNEL**

**Article 112.** A person may not hold the position of company director, supervisor, manager or other senior management personnel in any of the following circumstances:

(1) the person has no civil capacity or has restricted civil capacity;

(2) a period of less than five (5) years has elapsed since the person was released after serving the full term of a sentence for corruption, bribery, seizure, embezzlement of property or crimes of disruption to the social economic order; or if a period of less than five (5) years has elapsed since the person has resumed his/her political rights which were forfeited due to a criminal offence;

(3) when the person has held the post of director, factory superintendent or manager of a company or enterprise which became bankrupt and was liquidated as a result of unsound business management and where that person has held personal responsibility for such and where a period of less than three (3) years has elapsed since the date of the conclusion of the liquidation.

(4) a period of less than three (3) years has elapsed since the date of the imposition of a decision to revoke the business licence of the company or enterprise of which the person was legal representative and who bears personal responsibility for such revocation where its business licence was revoked due to illegal business operations;

(5) personal debts of relatively large amounts have not been repaid on time;

(6) the person has been involved in illegal activities which are subject to investigation by the judicial authorities and the case has yet to be settled;

(7) provisions of laws and statutory regulations stipulate that the person is not permitted to assume the position of leader of an enterprise;

(8) the person is not a natural person;

(9) a period of less than five (5) years has elapsed since the date the person was found to be in violation of the provisions of relevant securities regulations and was involved in deceitful or dishonest activities as ruled by the competent authority.

**Article 113.** The validity of actions of the company director, manager or senior management personnel when acting as representatives of the company on bona fide third parties shall not be affected as a result of those representatives not conforming to the rules pertaining to the holding of their posts, their election or qualifications.

**Article 114.** Apart from obligations as stipulated in laws, statutory regulations or the listing rules of stock exchanges which list the company's shares, a company director, supervisor or other senior management personnel shall, in addition, when exercising his/her powers of office as stipulated by the company, assume the following obligations towards the shareholders:

(1) shall not allow the company to exceed the scope of its business operations as stipulated in its business licence;

(2) shall sincerely take the best interests of the company as fundamental when conducting business activities;

(3) shall not be permitted to expropriate the company's property using any means, including (but not limited to) when this involves opportunities beneficial to the company;

(4) shall not infringe upon the individual rights and interests of shareholders, including (but not limited to) distribution rights and voting rights; however, this shall not include the situation where a company restructure is proposed for adoption by the shareholders' meeting in accordance with the company's articles of association.

**Article 115.** Directors, supervisors, managers and other senior management personnel of the company shall all have responsibility, when exercising their rights and performing their obligations, to adopt the prudence, diligence and skill which would be displayed by a reasonably prudent person in similar circumstances.

**Article 116.** When performing their duties, directors, supervisors, managers and other senior management personnel of the company must abide by the principle of sincerity and shall not place themselves in unfavourable situations in which their interests may conflict with their obligations. this principle shall include (but not limited to) performing the following obligations:

(1) to sincerely take the best interests of the company as fundamental in their actions;

(2) to exercise authority within their powers of office and not exceed that power of authority;

(3) to personally exercise the authorised right to handle matters according to one's own judgement and not to be manipulated by others; the right to handle matters according to one's own judgement shall not be passed on to others without the authority of laws and statutory regulations or without the informed consent of the shareholders' meeting;

(4) to treat the same categories of shareholders equally and to treat different categories of shareholders fairly;

(5) the entering into contacts, deals or arrangements with the company unless it is stipulated otherwise in the company's articles of association or without the informed approval of the shareholders' meeting shall be prohibited;

(6) the use of the company's property to seek personal gains through any means without the informed consent of the shareholders' meeting shall be prohibited;

(7) the use of powers of office to receive bribes or other illicit gains and the seizure of the company's property through any means, including (but not limited to) opportunities which are beneficial to the company shall be prohibited;

(8) the receiving of commissions from company transactions without the informed consent of the shareholders' meeting shall be prohibited;

(9) to honour the company's articles of association, to faithfully perform one's duties and to safeguard the company's interests, and it shall be prohibited to use the position and powers of office to seek personal gain;

(10) without the informed consent of the shareholders' meeting, it shall be prohibited to engage in any activities which are in competition with the company;

(11) it shall be prohibited to embezzle company funds or to lend company funds to others, and it shall be prohibited to use company funds to open bank accounts in one's own name or using another's name or to use company assets to provide guarantees for debts of company shareholders or other persons;

(12) without the informed consent of the shareholders' meeting, it shall be prohibited to disclose confidential information concerning the company which became known in the course of holding the position; unless it be in the company's interests, such information shall not be used. However, such information may be disclosed to the court or other competent government organs in the following circumstances:

(i) where it is so provided in the law;

(ii) where the public interest so requires;

(iii) where the interests of such a director, supervisor, manager or other senior management personnel themselves so require.

**Article 117.** A director, supervisor, manager and other senior management personnel shall not be permitted to incite the following persons or organisations ("related parties") to do things which the director, supervisor, manager and other senior management personnel cannot do:

(1) the spouse or under age children of the director, supervisor, manager and other senior management personnel;

(2) the trustee of that director, supervisor, manager and other senior management personnel or of those mentioned in item (1) of this Article;

(3) the partner(s) of that director, supervisor, manager and other senior management personnel or of those mentioned in item (1) of this Article;

(4) the company, where it is in reality independently controlled by that director, supervisor, manager and other senior management personnel or, in reality, jointly controlled by that director, supervisor, manager and other senior management personnel together with those mentioned in items (1), (2) or (3) of this Article, or jointly controlled with another director, supervisor, manager and other senior management personnel;

(5) the directors, supervisors, managers and other senior management personnel of that controlled company as mentioned in item (4) of this Article.

**Article 118.** The obligations assumed in good faith by a company director, supervisor, manager or other senior management personnel are not necessarily terminated at the conclusion of his/her post and the obligations of maintaining confidential information concerning the company's business shall remain valid after the conclusion of his/her post. The periods of validity for other obligations shall be determined in accordance with the principle of fairness and shall depend on the length of time intervening between the occurrence of an event and the time of vacating the post and on the circumstances under which that director, supervisor, manager and other senior management personnel ended his/her relationship with the company.

**Article 119.** The responsibility borne by a director, supervisor, manager and other senior management personnel due to violation of a specific obligation may be relieved by an informed meeting of shareholders except in those circumstances stipulated in Article 47 of these articles of association.

**Article 120.** When a company director, supervisor, manager or other senior management personnel has significant direct or indirect interests in a contract, deal or arrangement concluded by or intended to be concluded by the company (apart from contracts of appointment concluded between the company and director, supervisor, manager or other senior management personnel), regardless of whether the matter is required to be approved by the board of directors under normal circumstances, the nature and degree of interest shall be promptly disclosed to the board of directors.

Unless the interested director, supervisor, manager or other senior management personnel has disclosed his/her interest to the board of directors according to provisions of the preceding paragraph of this Article, and the board of directors has approved the matter in a vote in which that director, supervisor, manager and other senior management personnel has not been included, the company shall have the right to cancel that contract, deal or arrangement. However, exception shall be made if the other party is a bona fide party which did not know that the actions of the director, supervisor, manager and other senior management personnel were in violation of his/her obligations.

If a party related to a company director, supervisor, manager and other senior management personnel has an interest in a contract, deal or arrangement, that director, supervisor, manager and other senior management personnel shall also be regarded as an interested party.

**Article 121.** If a company director, supervisor, manager or other senior management personnel has, before the company considers for the first time to conclude a contract, deal or arrangement, notified the board of directors in writing declaring the nature of his/her interest in that contract, deal or arrangement, that director, supervisor, manager and other senior management personnel shall be regarded as having made disclosure as stipulated in the preceding Article in this Chapter of those matters in the notification.

**Article 122.** The company shall not be permitted to pay, using any means, the taxes of its directors, supervisors, managers and other senior management personnel.



**Article 123.** The company shall not be permitted to, directly or indirectly, provide loans to or loan guarantees for directors, supervisors, managers and other senior management personnel of the company or its parent company and the company shall also not be permitted to provide loans to or loan guarantees for parties related to the aforesaid persons.

The provisions of the preceding paragraph shall not apply in the following circumstances:

(1) where the company provides loans to its subsidiaries or provides loan guarantees for its subsidiaries;

(2) where the company, in accordance with the contract of appointment approved by the shareholders' meeting, provides a company director, supervisor, manager and other senior management personnel with loans, loan guarantees or other funds for payments made on behalf of the company or for payments or expenses incurred in the performance of their duties;

(3) if the scope of the company's normal business operations includes provision of loans and loan guarantees, the company may provide loans to or provide loan guarantees for its directors, supervisors, managers and other senior management personnel and to their related parties; however, the conditions for the provision of such loans and loan guarantees shall be normal business conditions.

**Article 124.** In the event of the company providing a loan in violation of the provisions of the preceding Article, regardless of the conditions of provision of that loan, the party receiving the loan shall make prompt repayment.

**Article 125.** In the event of the company having provided a loan guarantee in violation of the provisions of paragraph 1 of Article 123, the company shall not be forced to implement that guarantee except in the following circumstances:

(1) when providing a loan to a related party of a director, supervisor, manager and other senior management personnel of the company or its parent company, the loan provider was unaware of the facts;

(2) the collateral security provided by the company has been legally sold to a bona fide purchaser.

**Article 126.** Guarantee as mentioned in the preceding articles of this Chapter shall include an act whereby the guarantor assumes liability or provides property to ensure that the obligor performs its obligations.

**Article 127.** Where a company director, supervisor, manager or other senior management personnel is found to have violated obligations to the company, apart from the various rights and remedial measures stipulated in laws and statutory regulations, the company has the power to adopt the following measures:

(1) to request that the director, supervisor, manager and other senior management personnel compensate for losses incurred by the company due to their negligence in the performance of their duties;

(2) to cancel any contract or deal concluded between the company and that director, supervisor, manager and other senior management personnel, and cancel any contract or deal concluded between the company and a third party (if the third party knew or

should have known that the director, supervisor, manager and other senior management personnel was representing the company in violation of obligations to the company);

(3) to request that the director, supervisor, manager and other senior management personnel hand over any gains derived in violation of his/her obligations;

(4) to recover funds including (but not limited to) commissions received by that director, supervisor, manager and other senior management personnel which should have been collected by the company;

(5) to request that the director, supervisor, manager and other senior management personnel return any interests gained or which may be gained from any funds which should be handed over to the company.

**Article 128.** The company shall enter into a written contract on remuneration matters with the company director or supervisor which shall be approved by the shareholders' meeting in advance. The aforesaid remuneration matters shall include:

(1) remuneration of company director, supervisor or senior management personnel;

(2) remuneration of directors, supervisors or senior management personnel of subsidiaries of the company;

(3) remuneration for the provision of other management services to the company and its subsidiaries;

(4) compensatory payments to directors or supervisors in case of retirement or loss of position.

Unless in accordance with the aforesaid contract, a director or supervisor shall not be permitted to initiate legal proceedings against the company based on benefits receivable for the aforesaid matters.

**Article 129.** A contract on remuneration matters concluded between the company and a company director or supervisor shall stipulate that upon purchase of the company, the company director or supervisor shall, under conditions of approval granted in advance by the shareholders' meeting, be entitled to obtain compensation or other payments as a result of loss of post or retirement. Purchase of the company as referred to in the preceding paragraph shall refer to any of the following instances:

(1) a purchase offer made to all shareholders by any party;

(2) a purchase offer made by any party intending to become a controlling shareholder. The definition of a controlling shareholder shall be the same as that defined in Article 48 of these Articles of Association.

If a director or supervisor is in violation of the provisions of this Article, any funds received by the director or supervisor shall be owned by those who accepted such offer and who sold their shares, expenses incurred on pro rata distribution of such funds shall be borne by that director or supervisor and expenses shall not be deducted from those funds.

## **CHAPTER XV — FINANCIAL AND ACCOUNTING SYSTEM AND DISTRIBUTION OF PROFITS**

**Article 130.** The company shall establish a financial and accounting system in accordance with the law, statutory regulations and the China accounting code formulated by the financial department in charge under the State Council.

**Article 131.** The company shall produce financial reports at the end of each fiscal year which shall be subject to examination and verification in accordance with the law.

**Article 132.** The board of directors of the company shall, at each annual shareholders' meeting, submit to the shareholders a financial report prepared by the company in accordance with the provisions of laws, statutory regulations and regulatory documents promulgated by the local government and departments in charge.

**Article 133.** The company shall make its financial report available for inspection by the shareholders of the company twenty (20) days before the convening of its annual shareholders' meeting. Every shareholder of the company shall have the right to obtain the financial reports as mentioned in this Chapter.

Companies listed in Hong Kong shall send financial reports to each holder of foreign capital shares listed overseas by pre-paid mail. The addresses of addresses shall be those registered in the share ledger.

**Article 134.** Financial statements of the company shall be prepared in accordance with the China accounting code and relevant regulations and, in addition, shall also be prepared in accordance with the international accounting code or the accounting code of the country or region where the company is listed. If there are significant discrepancies between the financial statements prepared according to two different accounting codes, such discrepancies shall be clearly indicated in the notes attached to the financial statements. When distributing post-tax profits in a fiscal year, the lesser amount of post-tax profits in the two financial statements shall be used as the standard amount.

**Article 135.** Reports on mid-term business results or financial information published or disclosed by the company shall be prepared in accordance with the China accounting code and relevant regulations and, simultaneously, shall also be prepared in accordance with the international accounting code or the accounting code of the country or region where the company is listed.

**Article 136.** The company shall publish its financial reports twice each fiscal year, ie a mid-term financial report shall be published within sixty (60) days of the end of the first six (6) months of that fiscal year and an annual financial report shall be published within 120 days after the end of the fiscal year.

**Article 137.** The company shall not be permitted to establish account books other than statutory account books.

**Article 138.** The capital accumulation fund shall include the following items:

- (1) premiums gained on shares issued for more than their face value;
- (2) other revenue to be charged to the capital accumulation fund as stipulated by the financial department in charge under the State Council.

**Article 139.** The company may use the following for distribution of dividends:

- (1) cash;

(2) share certificates.

**Article 140.** The company shall commission a collecting agent for holders of foreign shares listed overseas.

A collecting agent shall collect dividends on foreign capital shares and other payable items from the company on behalf of relevant shareholders.

A collecting agent commissioned by the company shall meet the requirements of the law in the place where the company is listed or relevant regulations of the stock exchange.

## **CHAPTER XVI — APPOINTMENT OF AN ACCOUNTING FIRM**

**Article 141.** The company shall appoint a State qualified independent accounting firm to audit the company's annual financial reports and to examine and verify other financial reports.

The company's first accounting firm may be appointed by the founding meeting before the first shareholders' meeting. The term of appointment of the first accounting firm shall terminate at the conclusion of the first shareholders' meeting.

Where the founding meeting does not exercise the powers of office stipulated in the preceding paragraph, the board of directors shall exercise the said powers of office.

**Article 142.** The term of appointment of an accounting firm shall commence from the date of conclusion of the current shareholders' meeting and end at the date of conclusion of the subsequent shareholders' meeting.

**Article 143.** An accounting firm appointed by the company shall have the following rights:

(1) to consult, at any time, the company's account books, records or vouchers, and shall have the right to request company directors, managers or other senior management personnel to provide relevant data and explanations;

(2) to request that the company adopt all reasonable measures to obtain from its subsidiaries data and explanations which the accounting firm requires for the performance of its duties;

(3) to attend shareholders' meetings and to obtain information which is available to any shareholder who has the right to receive notice of a meeting or on other matters related to the meeting, and to speak at any shareholders' meeting about matters related to its functions as accounting firm to the company.

**Article 144.** If the position of the accounting firm falls vacant, the board of directors may, before convening a shareholders' meeting, appoint an accounting firm to fill the vacancy. However, if, during the period of the vacancy, the company has other appointed accounting firms, those firms may continue to handle matters.

**Article 145.** Regardless of what is stipulated in a contract concluded between an accounting firm and the company, the shareholders' meeting may, before the duration of appointment of any accounting firm expires, decide to dismiss that firm through the adoption of an ordinary resolution. If such an accounting firm has the right to claim compensation from the company for reason of such dismissal, that right shall not be affected.

**Article 146.** The remuneration of an accounting firm or methods for determining remuneration shall be decided at a shareholders' meeting. The remuneration of an accounting firm appointed by the board of directors shall be determined by the board of directors.

**Article 147.** Decisions on matters relating to the appointment, removal or non-reappointment of an accounting firm shall be taken at shareholders' meetings and such decisions shall be reported to the competent securities department of the State Council for the record.

**Article 148.** The company shall advise the accounting firm in advance if it is to be dismissed or not to be reappointed. The accounting firm shall have the right to make a statement in respect of its dismissal or non-reappointment at the shareholders' meeting. If an accounting firm resigns, it shall explain to the shareholders' meeting whether or not the company has been involved in any improper dealings.

## **CHAPTER XVII — COMPANY MERGER AND DIVISION**

**Article 149.** In the case of company merger or division, a merger or division plan shall be drafted by the board of directors and after the plan is adopted according to the procedures stipulated in the company's articles of association, the relevant procedures for examination and approval shall then be carried out in accordance with the law. If a shareholder objects to a merger or division plan, that shareholder shall have the right to request the company or those shareholders who approve the merger or division plan to purchase his/her shares at a fair price. The content of a resolution on company merger or division shall be made into a special document to be available for inspection by shareholders.

For holders of foreign capital shares of the company listed in Hong Kong the aforesaid document shall be delivered by post.

**Article 150.** A company merger may be made by the consolidation by merger method or by the new establishment merger method.

When the company is undergoing a merger, the various parties to the merger shall sign a merger agreement and a balance sheet and property inventory shall be drawn up. Within ten (10) days of the proposal of a resolution on a company merger, the company shall notify the various creditors and a public announcement shall be made in the press at least three (3) times within thirty (30) days.

Following a merger, a takeover company or a company newly established as the result of a merger shall assume the debts receivable and debts payable of the parties to the merger.

**Article 151.** If a company is to be divided, its assets shall be divided accordingly.

When embarking on a division, the parties to the division shall sign a division agreement and a balance sheet and property inventory shall be drawn up.

Within ten (10) days of the proposal of a resolution on a company division, the company shall notify the various creditors and a public announcement shall be made in the press at least three (3) times in thirty (30) days.

The debts payable by a company before its division shall be assumed by the companies divided in accordance with the concluded agreement.

**Article 152.** Where registered items are changed as a result of a company merger or division, application shall be made to the company registration authority to register the amendment in accordance with the law. Where the company is dissolved, application shall be made to register the cancellation in accordance with the law; where a company is newly established, application shall be made to register the establishment.

## **CHAPTER XVIII — COMPANY DISSOLUTION AND LIQUIDATION**

**Article 153.** The company shall terminate its operation and enter into liquidation in accordance with the law in any of the following circumstances:

- (1) expiry of the company's term of business operations;
- (2) a shareholders' meeting resolves that there shall be a dissolution;
- (3) dissolution becomes necessary because of company merger or division;
- (4) the company is declared bankrupt in accordance with the law due to inability to discharge its debts;
- (5) the company has been ordered to close down in accordance with the law as a result of violations of the law and statutory regulations.

**Article 154.** In the case of the company being dissolved in accordance with the provisions of items (1) and (2) of the preceding Article, the company shall, within fifteen (15) days, establish a liquidation committee, the members of which shall be determined by the shareholders' meeting through an ordinary resolution.

In the case of the company being dissolved in accordance with the provisions of item (4) of the preceding Article, the People's Court shall, in accordance with laws and statutory regulations, organise shareholders, relevant authorities and relevant professionals to form a liquidation committee to conduct the liquidation.

In the case of the company being dissolved in accordance with the provisions of item (5) of the preceding Article, the competent authority shall organise shareholders, relevant authorities and relevant professionals to form a liquidation committee to conduct the liquidation.

**Article 155.** In the case of the board of directors deciding that the company should enter into liquidation (except if the company is declared bankrupt and enters into liquidation), the board of directors shall, in the notice for a shareholders' meeting convened for this reason, declare that the board of directors has already fully investigated the position of the company and considers that the company can fully repay its debts within twelve (12) months after commencement of the liquidation.

Following a resolution on liquidation passed by a shareholders' meeting, the powers of office of the board of directors shall immediately be terminated.

The liquidation committee shall adhere to the instructions given by the shareholders' meeting and shall report to the shareholders' meeting on the income and expenditure of the liquidation committee, the business operations of the company and progress of the liquidation of the company at least once each year. The liquidation committee shall submit a final report to the shareholders' meeting at the conclusion of liquidation proceedings.

**Article 156.** The liquidation committee shall, within ten (10) days of its establishment, notify creditors and make a public announcement in the press at least three (3) times within sixty (60) days. The liquidation committee shall register all claims.

**Article 157.** The liquidation committee shall exercise the following powers of office during the period of liquidation:

- (1) perform a stocktake of the company's property and formulate a balance sheet and property inventory;
- (2) notify creditors and make public announcement of the liquidation;
- (3) handle and finalise matters in relation to the unfinished business affairs of the company;
- (4) pay overdue taxes;
- (5) clear debts receivable and payable;
- (6) dispose of the remaining assets after all debts have been paid;
- (7) participate in civil proceedings on behalf of the company.

**Article 158.** A liquidation plan shall be formulated by the liquidation committee after the stocktake of the company property has been performed and the balance sheet and property inventory have been compiled, and this shall be submitted to the shareholders' meeting or to relevant authorities in charge for confirmation.

The company property shall be used to settle claims in the following order: [settlement order].

The assets remaining after the company has settled its debts pursuant to the preceding paragraph shall be distributed to the various shareholders according to the classes and percentages of shares held.

During the period of liquidation, the company shall not be permitted to embark on new operating activities.

**Article 159.** Where liquidation is carried out as a result of dissolution of the company, after dissolution and after a stocktake of the company's assets and compilation of a balance sheet and proper inventory, where the amount of assets is insufficient to settle debts, the liquidation committee shall promptly apply to the People's Court for a declaration of bankruptcy.

If a company has been declared bankrupt by the People's Court, the liquidation committee shall hand over liquidation matters to the People's Court.

**Article 160.** After the conclusion of liquidation proceedings, the liquidation committee shall compile a liquidation report as well as draw up income and expenditure statements and various financial accounts for the liquidation period which shall be submitted to the shareholders' meeting or relevant authorities in charge for confirmation following verification by a certified public accountant registered in China.

Within thirty (30) days of confirmation by the shareholders' meeting or the relevant authorities in charge, the liquidation committee shall submit the aforesaid documents to

the company registration authority and apply for cancellation of company registration and then publicly announce the company's termination.

## **CHAPTER XIX — PROCEDURES FOR AMENDMENT OF THE ARTICLES OF ASSOCIATION**

**Article 161.** The company may amend its articles of association in accordance with the law, statutory regulations and its articles of association.

**Article 162.** Amendment of articles of association which involves the contents of the "Essential Clauses in Articles of Association of Companies Listed Overseas" (hereinafter referred to as "Essential Clauses") shall, in order to be valid, be subject to approval by the Securities Committee of the State Council and the company examination and approval department authorised by the State Council; where the registered items have to be changed, the company shall apply to register the amendment in accordance with the law.

## **CHAPTER XX — RESOLUTION OF DISPUTES**

**Article 163.** In relation to disputes and claims relating to the company's affairs between the holders of foreign capital shares listed overseas and the company's directors, supervisors, managers and other senior management personnel, or between the holders of foreign capital shares listed overseas and the holders of domestic capital shares arising out of rights and obligations provided for in the company's articles of association, laws and statutory regulations, where the competent securities authority of the State Council has not reached an understanding or agreement with the relevant overseas securities supervisory authority on the method of resolution or disputes, the parties concerned may resolve the dispute through means provided for in laws and statutory regulations or may resolve the matter through means determined by agreement of both parties.

Companies listed in Hong Kong shall include the following contents in their articles of association:

1. In relation to disputes and claims relating to the company's affairs between the holders of foreign capital shares listed overseas and the company, between the holders of foreign capital shares listed overseas and the company's directors, supervisors, managers and other senior management personnel, or between the holders of foreign capital shares listed overseas and the holders of domestic capital shares arising out of rights and obligations provided for in the company's articles of association, the Company Law or other laws and statutory regulations, the parties concerned shall refer the dispute to arbitration for settlement.

When referring the aforesaid dispute or claim to arbitration, it shall be the whole dispute or entire claim which is so referred; where those persons who have a cause of action arising out of the same facts or those persons required to participate in the resolution of a dispute or claim are the company's shareholders, directors, supervisors or other senior management personnel or such person is the company itself, such person shall be subject to arbitration.

Disputes over shareholder status and the share ledger may be resolved through means other than arbitration.

2. An applicant for arbitration may select the China International Economic and Foreign Trade Arbitration Commission to undertake arbitration according to its rules or, alternatively,



may choose the Hong Kong International Arbitration Centre to undertake arbitration according to its rules on securities arbitration. After the applicant for arbitration refers the dispute or claim for arbitration, the opposing party shall participate in the arbitration at the arbitral body chosen by the applicant.

If an applicant chooses the Hong Kong Arbitration Centre, any party concerned may, in accordance with the rules of the Hong Kong Arbitration Centre on securities arbitration, request the arbitration to be undertaken in Shenzhen.

3. In resolving disputes or claims as mentioned in item 1 of this Article through arbitration, the law of the People's Republic of China shall apply except if laws and statutory regulations stipulate otherwise.

4. An award made by the arbitral body shall be final and have binding force on the parties concerned.

## **CHAPTER XXI — SUPPLEMENTARY PRINCIPLES**

**Article 164.** The contents which shall be included in the articles of association of companies limited by shares listed in Hong Kong as clearly stipulated in the Essential Clauses need not be included in the articles of association of companies limited by shares listed in regions other than Hong Kong or other countries.

**Article 165.** For companies listed in Hong Kong, the meaning of accounting firms as mentioned in the Essential Clauses shall be the same as that of "Heshushi".

**Article 166.** In the Essential Clauses, the contents indicated with [ ] shall be filled in by the company according to its actual circumstances; the contents marked with ( ) must be included in the company's articles of association.