

China - Company Law, 1993

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Company Law of the People’s Republic of China		
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1, 1994)

Chapter I - General Provisions 2

Article 1 3

This Law is formulated in accordance with the Constitution of the People's Republic of China in order to meet the needs of establishing a modern enterprise system, to standardize the organization and activities of companies, to protect the legitimate rights and interests of companies, shareholders and creditors, to maintain the socio-economic order and to promote the development of the socialist market economy. 4

Article 2 5

The term "company" as mentioned in this Law refers to a limited liability company or a joint stock limited company incorporated within the territory of the People's Republic of China in accordance with this Law. 6

Article 3 7

A "limited liability company" or "joint stock limited company" is an enterprise legal person. 8

In the case of a limited liability company, shareholders shall assume liability towards the company to the extent of their respective capital contributions, and the company shall be liable for its debts to the extent of all its assets. 9

In the case of a joint stock limited company, its total capital shall be divided into equal shares, shareholders shall assume liability towards the company to the extent of their respective shares, and the company shall be liable for its debts to the extent of all its assets. 10

Article 4 11

The shareholders of a company shall, in their capacity of contributors of capital, enjoy such rights of owners as benefiting from assets of the company, making major decisions and selecting managerial personnel in accordance with the amount of their respective capital investment in the company. 12

A company shall enjoy the right to the entire property of the legal person formed by the investments of the share holders and shall possess civil rights and bear the civil liabilities in accordance with the law. 13

The ownership of State-owned assets in a company shall vest in the State. 14

Article 5 15

A company shall, with all its legal person assets, operate independently and be responsible for its own profits and losses according to law. 16

A company shall, under the macro-adjustment and control of the State, organize its production and operation independently in accordance with market demand for the purpose of raising economic benefits and labor productivity and maintaining and increasing the value of its assets. 17

Article 6 18

An internal management mechanism shall be implemented within companies, which is characterized by clear definition of powers and responsibilities, scientific management and combination of encouragement and restraint. 19

Article 7 20

State-owned enterprises restructured to form companies must transform their operating mechanism, gradually produce an inventory of their assets and verify their funds, delimit their property rights, clear off their claims and debts, evaluate their assets and establish a standard internal management mechanism in accordance with the conditions and requirements set by laws, administrative rules and regulations. 21

Article 8 22

Incorporation of limited liability companies or joint stock limited companies must meet the conditions stipulated by the present Law. Companies meeting the conditions set by this Law shall be registered as limited liability companies or joint stock limited companies; while companies failing to meet the conditions set by this Law shall not be registered as limited liability companies or joint stock limited companies. 23

Where laws or administrative rules and regulations provide that incorporation of companies must be subject to examination and approval, the procedures of examination and approval shall be completed according to law prior to the registration of such companies. 24

Article 9

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A limited liability company established according to this Law must clearly indicate the words “limited liability company” in its name.

26

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

27

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

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Article 10

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

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Article 11

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

32

A company's scope of business shall be defined in its articles of association and registered in accordance with the law. Items within the company's “scope of business” that are subject to restrictions under laws, administrative rules and regulations shall be approved in accordance with the law.

33

Companies shall engage in business activities within their registered scope of business. A company may change its scope of business by amending its articles of association in accordance with statutory procedures and making such amendments registered with the Company Registration authority.

34

Article 12

35

A company may invest in other limited liability companies or joint stock limited companies and shall assume liability towards the company so invested in to the extent of such capital contributions.

36

In case a company, other than an investment company or a holding company as specified by the State Council, invests in other limited liability companies or joint stock limited companies, the aggregated amount of such investments shall not exceed fifty percent of its net assets; after the initial investment, the increase therein resulting from capitalization of the profit derived from the company invested in shall not be included.

37

Article 13

38

A company may establish branches, which shall not possess the status of enterprise legal persons and whose civil liabilities shall be borne by the company.

39

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

40

Article 14

41

A company must, when engaging in business activities, abide by the law, observe professional ethics, strengthen the construction of socialist culture and ideology and accept supervision of the government and the public.

42

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

43

Article 15

44

Companies must protect the lawful rights and interests of their staff and workers, and strengthen labor protection so as to achieve safety in production.

45

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

46

Article 16

47

Company's staff and workers shall, in accordance with the law, organize a trade union to carry out the trade union activities and protect the lawful rights and interests of the staff and workers. The company shall provide its trade union with conditions necessary for carrying out its activities.

48

Wholly State-owned companies and limited liability companies invested in and established by two or more State-owned enterprises or by two or more other State-owned investment entities shall, through staff and workers' congresses or other forms, practice democratic management in accordance with the provisions of the Constitution and relevant laws.

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Article 17

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The grass-root organizations of the Communist Party of China in companies shall carry out their activities in accordance with the Constitution of the Communist Party of China.

51

Article 18

52

The present Law shall apply of limited liability companies with foreign investment. Where laws concerning Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-funded enterprises provide otherwise, such provisions shall prevail.

53

Chapter II - Incorporation and Organizational Structure of Limited Liability Companies

54

Section 1 - Incorporation

55

Article 19

56

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

57

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

58

(2) the capital contributions of the shareholders reach the statutory minimum amount of capital;

59

(3) the shareholders have jointly formulated the articles of association of the company;

60

(4) the company has a name and an organizational structure established in compliance with the requirements for a limited liability company; and

61

(5) there are fixed premises and necessary conditions for production and operation.

62

Article 20

63

A limited liability company shall be jointly invested in and incorporated by not less than two and not more than fifty shareholders.

64

State-authorized investment institutions or departments authorized by the State may independently invest in and establish wholly State-owned limited liability companies.

65

Article 21

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If State-owned enterprises established prior to the implementation of this Law comply with the conditions stipulated in this Law for the incorporation of limited liability companies, they may, in the case of enterprises with a single investing entity, be restructured as wholly State-owned limited liability companies in accordance with this Law, or in the case of enterprises with multiple investing entities, be restructured as limited liability companies as specified in the first paragraph of the preceding Article .

67

The implementation procedures and specific measures for restructuring State-owned enterprises as companies shall be formulated separately by the State Council. 68

Article 22 69

The articles of association of limited liability companies shall specify the following particulars: 70

- (1) the name and domicile of the company; 71
- (2) the scope of business of the company; 72
- (3) the registered capital of the company; 73
- (4) the names or titles of the shareholders; 74
- (5) the rights and obligations of the shareholders; 75
- (6) the method and amount of capital contributions by the shareholders; 76
- (7) the conditions for transfer of capital contributions by shareholders; 77
- (8) the organization of the company, its method of creation, functions and powers and the rules of procedure; 78
- (9) the legal representative of the company; 79
- (10) the reasons for dissolution of the company and method of liquidation; and 80
- (11) other items which the shareholders deem necessary to be specified. 81

The shareholders shall sign and affix their seals to the company's articles of association. 82

Article 23 83

The registered capital of a limited liability company shall be the amount of the paid-up capital contributions of all its shareholders as registered with the Company Registration Authority. 84

The registered capital of a limited liability company shall be no less than the following minima: 85

- (1) RMB 500 000 yuan for a company engaged mainly in production and operation; 86
- (2) RMB 500 000 yuan for a company engaged mainly in commodity wholesale; 87
- (3) RMB 300 000 yuan for a company engaged mainly in commercial retailing; and 88
- (4) RMB 100 000 yuan for a company engaged in science and technology development, consultancy* or services. 89

Where the minimum registered capital of a limited liability company in specified trades needs to be higher than those stipulated in the preceding paragraph, it shall be stipulated by the laws and administrative rules and regulations separately. 90

Article 24

91

A shareholder may make its capital contributions to a company in currency or by contributing material objects, industrial property rights, non-patented technology and land-use rights at their appraised value. The material objects, industrial property rights, non-patented technology or land-use rights to be contributed as capital must undergo an asset valuation and verification, and shall not be overvalued or undervalued. The appraisal and valuation of land-use rights shall be handled in accordance with the laws and administrative rules and regulations.

92

The investment in the form of industrial property rights and non-patented technology at their appraised value shall not exceed twenty percent of the registered capital of a limited liability company, except where special State regulations in respect of the application of high and new technological achievement provide otherwise.

93

Article 25

94

Each shareholder shall make in full the amount of the capital contribution subscribed for under the articles of association of the company. Where a shareholder makes its capital contribution in currency, it shall deposit the full amount of such capital contribution in currency in the interim bank account opened by the limited liability company to be established. Where a shareholder makes its capital contribution in the form of material objects, industrial property rights, non-patented technology or land-use rights, the transfer procedures for the property rights shall be handled in accordance with the law.

95

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

96

Article 26

97

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

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Article 27

99

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

100

Where the examination and approval of the relevant authorities is required by the laws or administrative rules and regulations, the approval documents shall be submitted on application for registration of incorporation. 101

The Company Registration Authority shall grant registration and issue a business license to a company that meets the requirements stipulated in this Law; the Company Registration Authority shall not register a company failing to meet the requirements stipulated in this Law. 102

The date of the issuance of the company business license shall be the date of the incorporation of a limited liability company. 103

Article 28 104

Where, after the incorporation of a limited liability company, it is discovered that the actual value of the material objects, industrial property rights, non-patented technology or land-use rights contributed as capital is notably less than the value stated in the articles of association, the shareholders that made such contributions shall make up the discrepancy. Those who are shareholders at the time of the incorporation of the company shall bear joint and several liability therefor. 105

Article 29 106

Where branches are established simultaneously with the incorporation of a limited liability company, application for registration of the branches established shall be made to, and business licenses shall be obtained from, the Company Registration Authority. 107

Where a limited liability company establishes branches after its incorporation, the company's legal representative shall apply for the registration to, and obtain business licenses from, the Company Registration Authority. 108

Article 30 109

After a limited liability company has been incorporated, it shall issue capital contribution certificates to its shareholders. 110

A capital contribution certificates shall specify the following items: 111

(1) the name of the company; 112

(2) the registration date of the company; 113

(3) the registered capital of the company; 114

(4) the name or title of the shareholder, the amount and date of its capital contribution; and 115

(5) the serial number of the capital contribution certificate and the date of its verification 116

and issuance.

A capital contribution certificate shall bear the seal of the company on it. 117

Article 31 118

A limited liability company shall prepare a roster of its shareholders with the following items therein: 119

(1) the names or titles and domiciles of the shareholders; 120

(2) the amounts of capital contributions of the shareholders; and 121

(3) the serial numbers of the capital contribution certificates. 122

Article 32 123

A shareholder shall have the right to look up the minutes of shareholders' meetings and the financial and accounting reports of the company. 124

Article 33 125

Shareholders shall draw dividends in proportion to their capital contributions. Where a company increases capital, the existing shareholders shall have priority in subscription for new shares. 126

Article 34 127

Once a company is registered, its shareholders may not withdraw their capital contributions. 128

Article 35 129

The shareholders of a company may assign among themselves all or part of their capital contributions. 130

Where a share holder intends to assign its capital contribution to persons who are not shareholders, the consent of over half of all the shareholders must be secured. Those shareholders disapproving the assignment shall purchase the capital contribution to be assigned. If such shareholders do not make the purchase, they shall be deemed to have consented to the assignment. 131

Other shareholders shall, under identical terms, have priority in purchasing the capital contribution to be assigned with the consent of the shareholders. 132

Article 36

133

After a shareholder has assigned its capital contribution according to law, the company shall record the name or title and domicile of the consignee and the amount of the capital contribution assigned in the roster of the shareholders.

134

Section 2 - Organizational Structure

135

Article 37

136

The shareholders' meeting* of a limited liability company shall be composed of all the shareholders. The shareholders meeting shall be the organ of power of the company and shall exercise its functions and powers in accordance with this Law.

137

Article 38

138

The shareholders meeting shall exercise the following functions and powers:

139

(1) to decide on the business policy and investment plan of the company;

140

(2) to elect and recall members of the board of directors and to decide on matters concerning the remuneration of directors;

141

(3) to elect and recall supervisors appointed from among the shareholders representatives, and to decide on matters concerning the remuneration of supervisors;

142

(4) to examine and approve reports of the board of directors;

143

(5) to examine and approve reports of the supervisory board or supervisors;

144

(6) to examine and approve the annual financial budget plan and final accounts plan of the company;

145

(7) to examine and approve plans for profit distribution of the company and plans for making up losses;

146

(8) to adopt resolutions on the increase or reduction of the registered capital of the company;

147

(9) to adopt resolutions on the issuance of company bonds;

148

(10) to adopt resolutions on the assignment of capital contribution by a shareholder to a person other than the shareholders;

149

(11) to adopt resolutions on matters such as the merger, division, transformation, dissolution and liquidation of the company; and

150

(12) to amend the articles of association of the company.

151

Article 39

152

The rules of deliberation and voting procedures of the Shareholders meeting shall, except where provided for by this Law, be stipulated by the articles of association of the company.

153

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

154

Article 40

155

A company may amend its articles of association. A resolution on the amendment to the articles of association must be adopted by shareholders of the company representing two-thirds or more of the voting rights.

156

Article 41

157

Shareholders shall exercise their voting rights at the Shareholders meeting in proportion to their capital contributions.

158

Article 42

159

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

160

Article 43

161

Shareholders meetings shall be divided into regular meetings and interim meetings.

162

Regular shareholders meetings shall be convened on time as stipulated by the articles of associations of the company. Interim shareholders meetings may be convened upon proposal made by shareholders representing one-fourth or more of the voting rights, or, by one-third or more of directors or supervisors.

163

Where a limited liability company has set up a board of directors, its Shareholders meeting shall be convened by the board of directors and presided over by the chairman of the board. Where special circumstances preclude the chairman of the board from performing his function, the meeting shall be presided over by a vice-chairman or a director of the board designated by the chairman.

164

Article 44

165

All shareholders shall be notified fifteen days prior to the convening of a Shareholders meeting.

166

The shareholders meeting shall keep minutes of their decisions on matters discussed at it; the shareholders present at the meeting shall sign the minutes.

167

Article 45

168

A limited liability company shall have a board of directors, which shall be composed of three to thirteen members.

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The members of the board of directors of a limited liability company invested in the established by two or more State-owned enterprises, or by two or more other State-owned investment entities shall include representatives of the staff and workers of the company. Such representatives of the staff and workers shall be democratically elected by the staff and workers of the company.

170

A board of directors shall have a chairman and one or two vice-chairmen. The method for the creation of the chairman and vice-chairmen shall be stipulated in the articles of association of the company.

171

The chairman of the board of directors shall be the company's legal representative.

172

Article 46

173

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

174

(1) to be responsible for convening shareholders' meetings and to report on its work to the shareholders' meetings;

175

(2) to implement the resolutions of the shareholders' meetings;

176

(3) to decide on the business plans and investment plans of the company;

177

(4) to formulate the annual financial budget plan and final accounts plan of the company;

178

(5) to formulate plans for profit distribution and plans for making up losses of the company;

179

(6) to formulate plans for the increase or reduction of the registered capital of the company;

180

(7) to formulate plans for the merger, division, transformation and dissolution of the company;

181

(8) to decide on the establishment of the company's internal management organs;

182

(9) to appoint or dismiss the company's manager (general manager) (hereinafter re-

183

ferred to as manager), and , upon recommendation of the manager, to appoint and dismiss the company's deputy manager(s) and persons in charge of the financial affairs of the company, and to decide on matters concerning their remuneration; and

Article 47

184

The term of office of directors shall be stipulated by the articles of association of the company but may not exceed three years. A director may, if reelected upon expiration of his term of office, serve consecutive terms.

185

The shareholders' meeting of a company may not unwarrantedly dismiss a director of the board prior to the expiration of his term of office.

186

Article 48

187

Meetings of the board of directors shall be convened and presided over by the chairman of the board. Where special circumstances preclude the chairman from performing his function, the meeting shall be convened and presided over by a vice-chairman or a director of the board designated by the chairman. One-third or more of the members of the board of directors may propose the convening of a meeting of the board of directors.

188

Article 49

189

The rules of deliberation and voting procedures of the board of directors shall, except where provided for by this Law, be stipulated by the articles of association of the company.

190

All directors shall be notified ten days prior to the convening of a board meeting.

191

The board meeting shall keep minutes of decisions on matters discussed at it; directors present at the meeting shall sign the minutes.

192

Article 50

193

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

194

(1) to be in charge of the production, operation and management of the company, and to organize the implementation of the resolutions of the board of directors;

195

(2) to organize the implementation of the annual business plans and investment plans of the company;

196

(3) to draw up plans on the establishment of the internal management organs of the company;

197

- (4) to draw up the basic management system of the company; 198
 - (5) to formulate specific rules and regulations of the company; 199
 - (6) to recommend the appointment or dismissal of the deputy manager(s) and of persons in charge of the financial affairs of the company; 200
 - (7) to appoint or dismiss management personnel other than those to be appointed or dismissed by the board of directors; and 201
 - (8) other functions and powers granted by the articles of association of the company and the board of directors. 202
- The manager shall attend meetings of the board of directors as a non-voting attendant. 203

Article 51 204

Where a limited liability company has a small number of shareholders and is comparatively small in scale, it may have an executive director instead of a board of directors. The executive director may concurrently serve as the manager of the company. 205

The powers and functions of the executive director shall be stipulated by the articles of association of the company with reference to Article 46 of this Law. 206

Where limited liability company does not have a board of directors, the executive director shall be the legal representative of the company. 207

Article 52 208

A limited liability company with a relatively large-scale business shall have a supervisory board composed of no less than three members. The supervisory board shall elect a conveyer from among its members. 209

The supervisory board shall be composed of representatives of the shareholders and an appropriate proportion of the staff and workers of the company. The exact proportion shall be stipulated in the articles of association. The representatives of the staff and workers in the supervisory board shall be democratically elected by the staff and workers of the company. 210

Where a limited liability company has a small number of shareholders and is comparatively small in scale, it may have one or two supervisors. 211

Directors, the manager or personnel in charge of financial affairs of the company may not concurrently serve as supervisors. 212

Article 53 213

The term of office of a supervisor shall be three years. A supervisor may, if reelected upon expiration of his term of office, serve consecutive terms. 214

Article 54

215

The supervisory board or the supervisors shall exercise the following functions and powers:

216

(1) to examine the financial affairs of the company;

217

(2) to supervise the acts of the directors and the manager violating the laws, administrative rules and regulations or the articles of association of the company during the performance of their functions;

218

(3) to demand directors and the manager to make corrections if any of their acts if found to have damaged the interests of the company;

219

(4) to propose the convening of interim shareholders' meetings; and

220

(5) other functions and powers as stipulated in the articles of association of the company.

221

The supervisors shall attend meetings of the board of directors as non-voting participants.

222

Article 55

223

A company shall, in studying and deciding on issues involving the personal interests of its staff and workers such as their salaries, welfare, safety in production, labor protection and labor insurance, solicit in advance the opinions of the trade union and the staff and workers of the company. And representatives of the trade union or of the staff and workers shall be invited to attend relevant meetings as non-voting participants.

224

Article 56

225

A company shall solicit the opinions and suggestions of the trade union and the staff and workers of the company when studying and deciding on major issues concerning production and operation, and formulating important rules and regulations.

226

Article 57

227

None of the following persons may hold the position of director, supervisor or manager of a company:

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(1) a person without capacity or with restricted capacity for civil acts;

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(2) a person who was sentenced to criminal punishment for the crime of embezzlement, bribery, seizure of property or misappropriation of property or for undermining the socio-economic order, where not more than five years have elapsed since the expiration of the enforcement period; or a person who was deprived of his political rights for

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committing a crime, where not more than five years have elapsed since the expiration of the enforcement period;

(3) a director, or factory head or manager who was personally responsible for the bankruptcy liquidation of the company or enterprise due to mismanagement, where not more than three years have elapsed since the date of completion of the bankruptcy liquidation; 231

(4) a legal representative of the company or enterprise that had the business license revoked for violating the law, where such representative bear individual liability therefor and not more than three years have elapsed since the date of revocation of the business license; and 232

(5) a person with relatively large amount of personal debts that have fallen due but haven't been settled. 233

Where a company elects or appoints a director or supervisor or engages the manager in violation of the preceding paragraph, such election, appointment or engagement shall be in valid. 234

Article 58 235

Government functionaries may not concurrently serve as directors, supervisors or managers of companies. 236

Article 59 237

Directors, supervisors and the manager of a company shall comply with the articles of association of the company, faithfully perform their duties and maintain the interests of the company and shall not take advantage of their position, functions and powers in the company to seek personal gains. 238

Directors, supervisors and the manager of a company shall not, by taking advantage of their functions and powers, accept bribes or other unlawful incomes, nor may they misappropriate the property of the company. 239

Article 60 240

Directors and the manager of a company shall not misappropriate company funds or lend company funds to others. 241

Directors and the manager shall not deposit company assets in their own personal accounts or in personal accounts of other individuals. 242

Directors and the manager shall not use company assets as security for the personal debts of shareholders of the company or of other individuals. 243

Article 61

244

Directors and the manager shall not operate their own in, or operate for others, the same category of business as the company they are serving or, engage in activities which damage the interests of the company. If a director or the manager engages in such business or activities, the incomes derived therefrom shall belong to the company.

245

Directors and the manager shall not enter into contracts or conduct transactions with the company except as provided for in the articles of association or approved by the shareholders' meeting.

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Article 62

247

Directors, supervisors and the manager shall not disclose any company secrets except as provided for by the law or approved by the shareholders' meeting.

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Article 63

249

Directors, supervisors and the manager shall be liable for compensation, if they violate the laws, administrative rules and regulations or the articles of association in performance of their duties and thus cause damage to the company.

250

Section 3 - Wholly State-owned Companies

251

Article 64

252

A wholly State-owned company mentioned in this Law means a limited liability company invested in and established solely by the State-authorized investment institution or a department authorized by the State.

253

Companies which manufacture special products as determined by the State Council or companies that belong to the category of specialized trades shall adopt the form of wholly State-owned companies.

254

Article 65

255

The articles of association of a wholly State-owned company shall be formulated by the state-authorized investment institution or a department authorized by the State in accordance with this Law, or be formulated by the board of directors of the company and submitted for the approval of the relevant State-authorized investment institution or the department authorized by the State.

256

Article 66

257

A wholly State-owned company shall not have a shareholders' meeting. The State-authorized investment institution or the department authorized by the State shall authorize the board of directors of the company to exercise part of the functions and powers of the shareholders meeting and to make decisions on important matters of the company. However, the merger, division, dissolution, increase and reduction of capital, and issuance of company bonds must be decided by the State-authorized investment institution or by the department authorized by the State.

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Article 67

259

The State-authorized investment institution or the department authorized by the State shall exercise supervision and administration over the State-owned assets of the wholly State-owned company in accordance with the provisions of the laws and administrative rules and regulations.

260

Article 68

261

A wholly State-owned company shall have a board of directors, which shall exercise its functions and powers in accordance with the provisions of Article 46 and Article 66 of this Law. Each term of office of the board of directors shall be three years.

262

The board of directors shall be composed of three to nine members, who shall be appointed and replaced by the State-authorized investment institution or by the department authorized by the State in accordance with the term of office of the board of directors. The board of directors shall include representatives of the staff and workers of the company. The representatives of the staff and workers on the board of directors shall be democratically elected by the staff and workers of the company.

263

The board of directors shall have a chairman and may have a vice-chairman, if necessary. The chairman and vice-chairman shall be designated by the State-authorized investment institution or the department authorized by the State from among members of the board of directors.

264

The chairman of the board of directors shall be the legal representative of the company.

265

Article 69

266

A wholly State-owned company shall have a manager, who shall be engaged and dismissed by the board of directors. The manager shall exercise his functions and powers in accordance with the provisions of Article 50 of this Law.

267

A member of the board of directors may, subject to the consent of the State-authorized investment institution or the department authorized by the State, serve concurrently as manager.

268

Article 70

269

The chairman, vice-chairman and directors of the board, or the manager of a wholly State-owned company may not, without the consent of the State-authorized investment institution or the department authorized by the State, serve concurrently as responsible persons in other limited liability companies, joint-stock limited companies or other business organizations.

270

Article 71

271

Where a wholly State-owned company transfers its assets, the procedures for examination and approval, and the transfer of property rights shall be handled by the State-authorized investment institution or the department authorized by the State in accordance with the laws and administrative rules and regulations.

272

Article 72

273

Large-sized wholly State-owned companies with a sound business management system and relatively successful operations may be authorized by the State Council to exercise the rights of asset owners.

274

Chapter III - Incorporation and Organizational Structure of Joint Stock Limited Companies

275

Section 1 - Incorporation

276

Article 73

277

To incorporate a joint stock limited company, the following conditions must be satisfied:

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(1) the number of sponsors shall conform to the statutory number;

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(2) the share capital subscribed for by the sponsors and raised from the general public shall reach the statutory minimum amount of capital;

280

(3) the issuance of shares and preparations for incorporation shall be in conformity with the provisions of the law;

281

(4) the articles of association of the company shall be formulated by the sponsors and adopted at the inaugural meeting;

282

(5) the company shall have a name and an organizational structure required for the incorporation of joint stock limited company; and

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(6) the company shall have fixed premises and the necessary conditions for production and operation.

284

Article 74

285

Joint stock limited companies may be incorporated by means of sponsorship or by means of share offer.

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Incorporation by means of sponsorship means incorporation of a company by means of subscription by the sponsors for all the shares to be issued by the company.

287

Incorporation by means of share offer means incorporation of a company by means of subscription by the sponsors for a portion of the shares to be issued by the company and offer of the rest to the general public.

288

Article 75

289

To incorporate a joint stock limited company, there shall be five or more sponsors, of which more than half must have their domicile within the territory of the People's Republic of China.

290

Where a State-owned enterprise is restructured as a joint stock limited company, there may be less than five sponsors, however, such a company shall be incorporated by means of share offer.

291

Article 76

292

The sponsors of a joint stock limited company must subscribe in accordance with this Law for the shares to be subscribed for by them, and shall undertake the matters concerning the preparation for the incorporation of the company.

293

Article 77

294

The incorporation of a joint stock limited company must be subject to the approval of a department authorized by the state Council or of a people's government at the provincial level.

295

Article 78

296

The registered capital of a joint stock limited company shall be the total amount of paid-up share capital as registered with the Company Registration Authority.

297

The minimum registered capital of a joint stock limited company shall be RMB 10 ,000,000 yuan. If the minimum registered capital of a joint stock limited company needs to be higher than the aforesaid amount, it shall be stipulated separately by the laws, or administrative rules and regulations.

298

Article 79

299

The articles of association of a joint stock limited company shall specify the following items: 300

(1) the name and domicile of the company; 301

(2) the scope of business of the company; 302

(3) The method of incorporation of the company; 303

(4) the total number of shares, the amount of each share and the registered capital of the company; 304

(5) the names or titles of the sponsors and the numbers of shares subscribed for by the sponsors; 305

(6) the rights and obligations of the shareholders; 306

(7) the composition, functions and powers, the term of office and the deliberation rules of the board of directors; 307

(8) the legal representative of the company; 308

(9) the composition, functions and powers, the term of office and the deliberation rules of the supervisory board; 309

(10) methods for the distribution of the company's profit; 310

(11) the reasons for dissolution of the company and liquidation method; 311

(12) methods for notices and announcements of the company; and 312

(13) other matters that the shareholders' general meeting deems necessary to be specified. 313

Article 80

314

The sponsors may make their capital contributions in cash, or with material objects, industrial property rights, non-patented technology or land-use rights at their appraised value. Material objects, industrial property rights, non-patented technology or land-use rights contributed as capital must be appraised and valued, and such property must be verified and converted into shares. Such contributions may not be over-valued or under-valued. The appraisal and valuation of land-use rights shall be conducted in accordance with the provisions of the laws, administrative rules and regulations. 315

The amount of capital contributions made by sponsors in the form of industrial property rights and non-patented technology shall not exceed twenty percent of the registered capital of a joint stock limited company. 316

Article 81

317

where a State-owned enterprise is restructured as a joint stock limited company, it shall be strictly prohibited to convert the State-owned assets into shares at a depressed price or to sell off them at a depressed price, or to distribute them to individuals without charge.

318

Article 82

319

Where a joint stock limited company is incorporated by means of sponsorship, the sponsors shall pay in full for their shares immediately after confirming in writing their subscription of the shares to be issued according to the articles of association of the company. If material objects, industrial property rights, non-patented technology or land-use rights are invested as payment for shares, the sponsors shall undertake the transfer procedures for property rights therein in accordance with the law.

320

After the sponsors make their capital contributions in full, they shall elect the board of directors and supervisory board. The board of directors shall submit to the Company Registration Authority the documents such as approval document for the company's incorporation, articles of association and capital verification certificate of the company, and shall apply for registration of incorporation.

321

Article 83

322

Where a joint stock limited company is incorporated by means of share offer, the sponsors shall not subscribe for less than thirty five percent of the total shares issued by the company, and the remaining shares shall be offered to the general public.

323

Article 84

324

When offering shares to the general public for subscription, the sponsors must submit to the department of security administration under the State Council an application for share offer along with the following main documents:

325

- (1) the approval documents for the incorporation of the company;
- (2) the articles of association of the company;
- (3) a business forecast;
- (4) the names or titles of the sponsors, the number of shares subscribed for by the sponsors, the forms of capital contributions and the capital verification certificate;
- (5) the prospectus on share offer;
- (6) the name and address of the bank accepting subscription money on behalf of the company; and

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(7) the name of the selling agencies and related agreements. 332

The sponsors shall not offer shares to the general public without the approval of the department of securities administration under the State Council. 333

Article 85 334

A joint stock limited company may, with the approval of the department of security administration under the State Council, offer its shares to the general public outside the territory of the People's Republic of China. The specific measures therefor shall be specially stipulated by the State Council. 335

Article 86 336

The department of security administration under the State Council shall approve the applications for share offer which conform to the stipulations of this Law, and disapprove the applications which fail to conform to the stipulations of this Law. 337

If an approval is found to be inconsistent with the stipulations of this Law after it has been granted such approval shall be revoked. If the share offer has not yet been made, the offer shall be halted; if the share offer has already been made, the subscribers may claim a refund from the sponsors according to their paid-up subscriptions plus bank deposit interest calculated for the same period. 338

Article 87 339

A prospectus on share offer shall have the articles of association of the company formulated by the sponsors attached, and shall specify the following; 340

(1) then number of shares subscribed for by the sponsors; 341

(2) the face value and the issue price of each share; 342

(3) the total number of bearer shares issued; 343

(4) the rights and obligations of the subscribers; and 344

(5) the term of the share offer and a statement to the effect that subscribers may withdraw their share subscriptions if all the shares are not taken up within the time limit. 345

Article 88 346

Where shares are to be offered to the general public, the sponsors must publish the company's prospectus on share offer and prepare subscription forms. The subscription forms shall contain the items listed in the preceding Article, and the subscribers shall fill in the number of shares subscribed for, the amount of money contributed to, and their respective domiciles on the forms, and shall sign and seal such forms. The subscribers 347

shall pay their subscription money in accordance with the number of shares subscribed for.

Article 89

348

When sponsors offer shares to the public, the shares shall be distributed by a securities agency established according to law, with which a distribution agreement shall be concluded.

349

Article 90

350

Where shares are to be offered to the public, the sponsors shall enter into an agreement with a bank on the collection of subscription money on behalf of the company.

351

The bank entrusted with collecting the subscription money shall, in accordance with its agreement, collect and keep the subscription money, issue receipts to the subscribers for their payments, and bear an obligation to issue certification of receipt of subscription money to the relevant departments.

352

Article 91

353

After payment in full of the subscription money for all shares is made, a statutory capital verification institution shall be commissioned to conduct a verification of the funds and produce a verification certificate. The sponsors shall, within thirty days thereafter, convene and preside over an inaugural meeting composed of all the subscribers.

354

If the number of shares has not been fully subscribed for within the time limit specified in the prospectus on share offer or, after payment in full of the subscription money for the total share is made, or if sponsors fail to hold an inaugural meeting within thirty days thereafter, the subscribers may claim a refund from the sponsors according to the paid-up share subscription money plus bank deposit interest calculated for the same period.

355

Article 92

356

The sponsors shall notify each subscriber of the date of the inaugural meeting or make a public announcement 15 days prior to the convening of the meeting. The inaugural meeting may be convened only if subscribers representing fifty percent or more of the total shares issued are present.

357

The following functions and powers shall be exercised at an inaugural meeting:

358

(1) to examine the sponsors' report on the preparation for the incorporation of the company;

359

(2) to adopt the articles of association of the company;

360

- (3) to elect members of the board of directors; 361
- (4) to elect members of the supervisory board; 362
- (5) to examine and verify the expenses incurred in the incorporation of the company; 363
- (6) to examine and verify the valuation of the property used by the sponsors to pay for subscription money; and 364
- (7) to resolve not to incorporate the company in the event that a force majeure* or major changes in business operation conditions may directly affect the incorporation of the company. 365

The resolution made at the inaugural meeting on the issues listed in the preceding paragraph must be approved by subscribers attending the meeting who represent more than half of the voting rights. 366

Article 93 367

Sponsors and subscribers may not withdraw their share capital after paying their subscription money or making their capital contributions as substitutes for subscription money, except where the total share issue is not fully subscribed for within the time limit or the sponsors fail to convene the inaugural meeting according to the schedule, or the inaugural meeting resolves not to incorporate the company. 368

Article 94 369

The board of directors shall, within thirty days, after the inaugural meeting, submit the following documents to the Company Registration Authority and apply for registration of the incorporation of the company: 370

- (1) the approval documents issued by the relevant department in charge; 371
- (2) the minutes of the inaugural meeting; 372
- (3) the articles of association of the company; 373
- (4) the financial audit report on the preparation of the incorporation of the company; 374
- (5) the capital verification certificate; 375
- (6) the names and domiciles of the members of the board of directors and the supervisory board; and 376
- (7) the name and domicile of the legal representative. 377

Article 95 378

The Company Registration Authority shall, within thirty days after receipt of an application for the incorporation of a joint stock limited company, make a decision whether 379

or not to register the company. A company complying with the provisions of this Law shall be registered and a company business license shall be issued thereto. a company failing to comply with the provisions of this Law shall not be registered.

The date of issuance of a company business license shall be the date of the incorporation of the company. Once a company is incorporated, and announcement shall be made. 380

A joint stock limited company incorporated by means of share offer shall, after its registration for incorporation, report its share subscription to the department of security administration under the State Council for the record. 381

Article 96

382

Where branches are established simultaneously with the incorporation of a joint stock limited company, the company shall submit applications for registration of the establishment of the branches to, and obtain business licenses of the branches from, the Company Registration Authority. 383

Where branches are established after the incorporation of a joint stock limited company, the legal representative of the company shall submit applications for registration of the branches to, and obtain business licenses of the branches from, the Company Registration Authority. 384

Article 97

385

The sponsors of a joint stock limited company shall bear the following responsibilities: 386

(1) in the event of the company failing to be incorporated, joint and several liabilities for all debts and expenses incurred in the act of the incorporation; 387

(2) in the event of the company failing to be incorporated, joint and several liabilities for refunding to the subscribers the paid-up subscription money plus bank deposit interest calculated for the same period of time; and 388

(3) in the event of the interests of the company being damaged during the course of its incorporation due to fault of the sponsors, liability for compensation to the company. 389

Article 98

390

If a limited liability company is to be converted into a joint stock limited company, it shall satisfy the requirements for a joint stock limited company stipulated by this Law and the conversion shall be handled in accordance with the procedures stipulated in this Law for the incorporation of a joint stock limited company. 391

Article 99

392

Where a limited liability company is, after approval, converted into a joint stock limited company in accordance with the law, the total amount of its shares converted shall be equal to the amount of its net assets. Where a limited liability company that is, after approval, converted into a joint stock limited company in accordance with the law offers shares to the general public for the purpose of increasing its capital, it shall be handled in accordance with the provisions of this Law in respect of the share offers to the public.

393

Article 100

394

Where a limited liability company is converted into a joint stock limited company in accordance with the law, the claims and debts of the original limited liability company shall be succeeded to by the joint stock limited company into which it is converted.

395

Article 101

396

A joint stock limited company shall keep its articles of association, roster of the shareholders, minutes of the shareholders' general meetings and financial and accounting statements at the company.

397

Section 2 - Shareholders' General Meetings

398

Article 102

399

A joint stock limited company shall form a shareholders' general meeting which shall be composed of all the shareholders. The shareholders' general meeting is the organ of power of the company and shall exercise its functions and powers in accordance with this Law.

400

Article 103

401

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

402

(1) to decide upon policies on business operation and investment plans of the company;

403

(2) to elect and replace members of the board of directors and to decide upon matters concerning the remuneration of the directors;

404

(3) to elect and replace the supervisors who are representatives of the shareholders and to decide upon matters concerning the remuneration of the supervisors;

405

- (4) to examine and approve reports of the board of directors; 406
- (5) to examine and approve reports of the supervisory board; 407
- (6) to examine and approve plans of the company's fiscal financial budget and final accounts; 408
- (7) to examine and approve plans for company's profit distribution and making up losses; 409
- (8) to make resolutions on the increase or reduction of the registered capital of the company; 410
- (9) to adopt resolutions on the issuance of company bonds; 411
- (10) to adopt resolutions on matters such as the merger, division, dissolution and liquidation of the company; and 412
- (11) to amend the articles of association of the company. 413

Article 104 414

The annual meeting of the shareholders' general meetings shall be convened once a year. An interim shareholders' general meeting shall be convened within two months if any of the following situations occurs: 415

- (1) if the number of directors is less than the number stipulated by this Law, or less than two-thirds of the number required by the articles of association of the company; 416
- (2) if the amount of the company's losses that have not been made up reaches one-third of its total share capital; 417
- (3) if shareholders holding ten percent or more of the company's shares request to convene a shareholders' meeting; 418
- (4) if the board of directors deems it necessary; and 419
- (5) if the supervisory board proposes that such a meeting be convened. 420

Article 105 421

A Shareholders' general meeting shall be convened by the board of directors in accordance with the provisions of this Law and presided over by the Chairman of the board. Where the Chairman is unable to perform his duties due to special reasons, the vice-chairman or other director designated by the Chairman may preside over such meetings. Shareholders shall be notified of the matters to be considered at a shareholders general meeting thirty days prior to the holding of such a meeting. At interim shareholders' general meetings, no resolutions may be adopted in respect of matters not included in the notice. 422

Where bearer shares are to be issued, a public announcement shall be made in respect 423

of the matters mentioned in the preceding paragraph forty-five days prior to the holding of such a meeting.

424
Holders of bearer shares attending the shareholders' general meeting shall deposit their share certificates with the company for the period from five days prior to the holding of the meeting until the end of the meeting.

Article 106

425
Shareholders attending a shareholders' general meeting shall have the right to one vote for each share held. 426

427
A resolution of the shareholders general meeting must be passed by more than one half of the voting rights held by the shareholders present at the meeting. Resolutions on the merger, division or dissolution of the company adopted by the shareholders' general meeting must require more than two-thirds of the voting rights held by the shareholders present at the meeting.

Article 107

428
Amendments to the articles of association of the company must be adopted by more than two-thirds of the voting rights held by the shareholders present at the shareholders' general meeting. 429

Article 108

430
A Shareholder may entrust a proxy to attend the shareholders' general meeting on his behalf. The proxy shall present the shareholders' power of attorney to the company and exercise voting rights within the scope of authorization. 431

Article 109

432
Resolutions on matters discussed at a shareholders' general meeting shall be minuted* 433
down. The directors attending the meeting shall sign the minutes. The minutes of the meeting shall be kept together with the roster of the signatures of the shareholders attending the meeting and the powers of attorney of attending proxies.

Article 110

434
Shareholders shall have the right to examine the articles of association of the company, 435
the minutes of the shareholders' general meetings and the financial and accounting statements, and to make suggestions or inquiries about the business operation of the company.

Article 111

436

Where a resolution of the shareholders' general meeting or of the board of directors violates the law or administrative rules and regulations or infringes the lawful rights and interests of the shareholders, the shareholders concerned shall have the right to bring a lawsuit in a people's court demanding that such illegal or infringing action be stopped.

437

Section 3 - Board of Directors, and Manager

438

Article 112

439

A joint stock limited company shall have a board of directors composed of five to nineteen members.

440

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

441

(1) to convene the shareholders' general meeting and to report on its work to the shareholders' general meeting;

442

(2) to implement resolutions passed at the shareholders' general meetings;

443

(3) to decide on the business operation plans and the investment plans of the company;

444

(4) to formulate the fiscal financial budgets and the final accounts of the company;

445

(5) to formulate plans for the profit distribution and making up losses of the company;

446

(6) to formulate plans for increasing or reducing the registered capital of the company and plans for the issue of company bonds;

447

(7) to formulate plans for the merger, division and dissolution of the company;

448

(8) to decide on the establishment of the internal management organs of the company;

449

(9) to engage or dismiss the manager and, upon recommendation of the manager, to engage or dismiss the deputy manager(s) and responsible persons in charge of the financial affairs of the company, and to decide on matters concerning their remuneration; and

450

(10) to formulate the basic management system of the company.

451

Article 113

452

The board of directors shall have one chairman and may have one or two vice-chairmen.

453

The chairman and vice-chairmen of the board of directors shall be elected by the affirmative votes of more than half of all the directors.

The chairman of the board shall be the legal representative of the company. 454

Article 114 455

The chairman of the board shall exercise the following functions and powers: 456

(1) to preside over shareholders' general meetings, and to convene and preside over meetings of the board of directions; 457

(2) to examine the implementation of resolutions of the board of directors; and 458

(3) to sign the shares and the bonds of the company. 459

The vice-chairmen of the board shall assist the chairman of the board in his work and shall, upon designation by the chairman, exercise the chairman's powers and functions on behalf of the chairman of the board in case the chairman is unable to perform his powers and functions. 460

Article 115 461

The term of office of the directors shall be stipulated in the articles of association of the company, but each term shall not exceed three years. A director may serve consecutive terms if reelected upon expiration of his term of office. 462

The shareholders' general meeting may not without reason remove a director from office before the expiration of his term of office. 463

Article 116 464

Meetings of the board of directors shall be held at least twice a year. All the members of the board shall be notified of the meeting ten days prior to the holding of the meeting. 465

The notification method and time limit for giving notice of the convening of the interim meetings of the board of directors may be separately decided. 466

Article 117 467

A meeting of the board of directors shall be convened only if more than one half of all the directors are present. Any resolution of the board must be adopted by the affirmative votes of more than one half of all the directors. 468

Article 118

469

Meetings of the board of directors shall be attended by the directors in person. If a director is unable to attend a meeting of the board for certain reasons, he may entrust another director in writing with attending the meeting on his behalf. The power of attorney shall define the scope of authorization.

470

Decisions on matters discussed at a meeting of the board of directors shall be minutes. Such minutes of the meeting shall be signed by the directors and clerks present.

471

Directors shall be responsible for resolutions passed by the board of directors. If a resolution of the board violates the law, administrative rules and regulations or the articles of association of the company and thus causes serious losses to the company, the directors who participated in the adoption of such a resolution shall be liable for compensation to the company. However, if a director is proved to have expressed his objection to such a resolution when it was put to the vote and his objection was recorded in the minutes of the meeting, he may be exempted from such liability.

472

Article 119

473

A joint stock limited company shall have a manager, who shall be engaged or dismissed by the board of directors. The manager shall be responsible to the board of directors and shall exercise the following functions and powers:

474

(1) to be in charge of the production, operation and management of the company and to organize the implementation of resolutions of the board of directors;

475

(2) to organize the implementation of the annual business plans and investment plans of the company;

476

(3) to draft plans for the establishment of internal management organs of the company;

477

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

478

(5) to formulate specific rules and regulations of the company;

479

(6) to propose the appointment or dismissal of deputy manager(s) and responsible persons in charge of the financial affairs of the company;

480

(7) to appoint or dismiss management personnel, except those who shall be appointed or dismissed by the board of directors; and

481

(8) to exercise other functions and powers authorized by the articles of association of the company and by the board of directors.

482

The manager shall attend meetings of the board of directors as a non-voting participant.

483

Article 120

484

If necessary, the board of directors may authorize its chairman to perform part of its functions and powers when the meeting of the board is not in session.

485

The board of directors may decide that one of its members shall concurrently serve as the manager of the company.

486

Article 121

487

A company shall solicit in advance the opinions of the trade union and its staff and workers in studying and deciding on issues involving the personal interests of its staff and workers such as the salary, welfare, safety in production, labor protection and labor insurance, and shall invite representatives from the trade union or from its staff and workers to attend relevant meetings as non-voting participants.

488

Article 122

489

A company shall solicit the opinions and suggestions of the trade union and its staff and workers when studying and deciding major issues in respect of the company's production and operations or the formulation of important rules and regulations of the company.

490

Article 123

491

Directors and managers shall abide by the articles of association of the company, faithfully perform their duties and protect the interests of the company, and shall not use their positions, functions and powers in the company to seek personal gains.

492

Provisions of Articles 57 to 63 of this Law regarding persons disqualified to serve as directors and managers, and the obligations and responsibilities of the directors and managers shall apply to directors and managers of joint stock limited companies.

493

Section 4 - Supervisory Board

494

Article 124

495

A joint stock limited company shall have a supervisory board composed of no less than three members. The supervisory board shall elect a conveyer* from among its members.

496

The supervisory board shall be composed of shareholders' representatives and an appropriate proportion of representatives of the staff and workers of the company, and the specific proportion of such representatives shall be provided for by the articles of association of the company. The representatives of the staff and workers serving on

497

the supervisory board shall be democratically elected by the staff and workers of the company.

Directors, managers and responsible persons in charge of the financial affairs of the company may not serve concurrently as supervisors. 498

Article 125 499

The term of office of the supervisors shall be three years. A supervisor may serve consecutive terms if re-elected upon expiration of his term of office. 500

Article 126 501

A supervisory board shall exercise the following functions and powers: 502

(1) to examine the financial affairs of the company; 503

(2) to supervise the acts of the directors and the manager violating the laws, the administrative rules and regulations or the articles of association of the company during the performance of their functions; 504

(3) to demand directors or the manager to make corrections if any of their acts is found to have damaged the interests of the company; 505

(4) to propose the convening of interim shareholders' general meetings; and 506

(5) other functions and powers provided for in the articles of association of the company. 507

Supervisors shall attend meetings of the board of directors as non-voting participants. 508

Article 127 509

The articles of association of the company shall stipulate the method of deliberation and voting procedures of the supervisory board. 510

Article 128 511

A supervisor shall faithfully perform his duties of supervision in accordance with the law, the administrative rules and regulations and the articles of association of the company. 512

Provisions of Articles 57 to 59 and Articles 62 to 63 of this Law regarding persons disqualified to serve as supervisors and the obligations and responsibilities of supervisors shall apply to the supervisors of joint stock limited companies. 513

Chapter IV - Issue and Transfer of Shares of Joint Stock Limited Companies 514

Section 1 - Issue of Shares 515

Article 129 516

The capital of a joint stock limited company shall be divided into shares of equal value. 517

The shares of the company shall take the form of share certificates, their shareholders. 518

Article 130 519

The issue of shares shall be in compliance with the principles of publicity, fairness and justice. The same shares must carry the same rights and the same benefits. 520

Shares of the same issue shall be issued on the same conditions and at the same price. A unit or an individual subscribing to shares shall pay the same price for each share. 521

Article 131 522

Shares may be issued at or above par but not below par. 523

Shares to be issued above par shall be subjected to the approval of the department of security administration under the State Council. 524

The premiums generated from issuing shares above par shall be entered under the capital common reserve fund of the company. 525

Specific measures for the administration of issue of shares above par shall be separately stipulated by the State Council. 526

Article 132 527

Share certificates may be in paper form or in such other forms as stipulated by the department of security administration under the State Council. 528

The following main particulars shall be clearly stated on a share certificate: 529

(1) the name of the company; 530

(2) the date of registration of the company's incorporation; 531

(3) the class of the shares, the par value and the number of shares represented by the certificate; and 532

(4) the serial number of the share certificate. 533

A share certificate shall be signed by the chairman of the board of directors and sealed with the seal of the company. 534

In the case of share certificates owned by sponsors, the words sponsor's share certificate shall be clearly stated on the share certificates. 535

Article 133 536

Shares issued by a company to sponsors, a State-authorized investment institution or legal persons shall be registered shares which shall state the names of the sponsors, State-authorized investment institution or legal persons. Such shares may not be registered in other names, or names of their representatives. 537

Shares issued to the general public may be either registered shares or bearer shares. 538

Article 134 539

Where registered shares are issued, the company shall prepare a roster of the shareholders, in which the following items shall be recorded: 540

(1) the names or titles, and domiciles of the shareholders; 541

(2) the number of shares held by each shareholder; 542

(3) the serial numbers of the share certificates held by each shareholder; and 543

(4) the date on which each shareholder obtained his shares. 544

Where bearer shares are issued, the company shall keep a record of the number, the serial numbers and the issue date of the share certificates. 545

Article 135 546

The State Council may formulate separate regulations on the issue of other classes of shares which are not provided for in this Law. 547

Article 136 548

A joint stock limited company shall formally deliver share certificates to its shareholders immediately after the registration of its incorporation. No company may deliver share certificates to its shareholders prior to the registration of its incorporation. 549

Article 137

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To issue new shares, a company must satisfy the following conditions:

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(1) shares of the previous issue must have fully been subscribed for and at least one year has elapsed since the previous issue of shares;

552

(2) the company has been continuously profitable for the last three years and is able to pay dividends to its shareholders;

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(3) the company is not found to have false records in the financial accounting documents in the last three years; and

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(4) the forecast profit rate of the company can reach the interest rate of bank deposit for the same period of time.

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A company's distribution of new shares from the current year's profits shall not be restricted by item (2) of the preceding paragraph.

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Article 138

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Where a company issues new shares, resolutions on the following matters shall be adopted by a shareholders' general meeting:

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(1) the class and number of the new shares;

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(2) the issue price of the new shares;

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(3) the opening and closing dates of the new share issue; and

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(4) the class and number of new shares issued to existing shareholders.

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Article 139

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After the shareholders' general meeting adopts a resolution to issue new shares, the board of directors must apply to the department authorized by the State Council or to the local provincial people's government for approval. If the new shares are to be issued to the general public, the approval of the department of security administration under the State Council must be obtained.

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Article 140

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When a company obtains the approval to issue new shares to the general public, it must publicly announce its prospectus on new share offer and its financial accounting statements with annexed detailed schedules, and shall prepare subscription application forms.

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When a company issues new shares openly to the public, the new shares shall be distributed by a securities agency established in accordance with the law, with which a distribution agreement shall be concluded.

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Article 141

568

Where a company issues new shares, it may determine the pricing proposal for new shares based upon the circumstances of its consecutive proposal for new shares based upon the circumstances of its consecutive profit gains and property value appreciations.*

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Article 142

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Where the new share issue of a company is fully subscribed for, the company shall apply to the Company Registration Authority for registration of the modification in its capital and make a public announcement thereafter.

571

Section 2 - Transfer of Shares

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Article 143

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Shares held by shareholders may be transferred in accordance with the law.

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Article 144

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Transfer of shares by shareholders shall be conducted through stock exchanges established in accordance with the law.

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Article 145

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Registered shares shall be transferred by means of endorsement by the shareholders or by such other means as provided for by the law and administrative rules and regulations.

578

When registered shares are transferred, the company shall register the transferee's name or title and domicile in its roster of shareholders.

579

No registration of modification to the roster of shareholders as stipulated in the preceding paragraph shall be made within thirty days prior to the convening of a shareholders' general meeting or within five days prior to the date decided by the company for the distribution of dividends.

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Article 146

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Transfer of bearer shares shall become effective immediately after the shareholder delivers the share certificates to the transferee at a stock exchange established in accordance with the law.

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Article 147

583

Shares held by the sponsors of a company shall not be transferred within three years after the date of incorporation of the company.

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Directors, supervisors and the manager shall declare their numbers of shares held by them to company, and shall not transfer such shares during their term of office.

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Article 148

586

The State-authorized investment institution may transfer its shares held by it in accordance with the law and may purchase shares held by other shareholders. The authority to examine and approve such transfers or purchases and measures for administration thereof shall be separately provided for by the law and administrative rules and regulations.

587

Article 149

588

A company may not purchase its own shares except where, for the purpose of reducing its capital, shares need to be canceled, or where the company merges with another company which holds its shares.

589

A company must cancel the shares purchased by the company itself in accordance with the preceding paragraph within ten days, and register the change of its capital in accordance with laws and administrative rules and regulations and make a public announcement thereafter.

590

A company may not accept its own shares as the subject matter of a mortgage.

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Article 150

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Where registered share certificates are stolen, lost or destroyed, the shareholder may, in accordance with the procedure for publicizing public notice for assertion of claims provided for in the Civil Procedure Law, request a people's court to declare such share certificates as void.

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After the voidness has been declared by a people's court in accordance with the aforesaid procedure, the shareholder may apply to the company for a replacement of the share certificates.

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Section 3 - Listed Companies

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Article 151

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A listed company mentioned in this Law refers to a joint stock limited company which

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has its issued shares listed and traded at stock exchanges with the approval of the State Council or the department of securities administration authorized by the State Council.

Article 152

598

Where a joint stock limited company applies to have its shares listed and traded, the following conditions shall be satisfied:

599

(1) the shares have already been issued to the general public with approval of the securities administration department under the State Council;

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(2) the total amount of the company's share capital reaches not less than RMB 50 000 000 yuan;

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(3) the company must have been in operation for three years or more and have made profits for the past three consecutive years; the business operation of a company which is converted from a State-owned enterprise according to law or which is newly incorporated after the implementation of this Law with medium and large-sized State-owned enterprises as the main sponsors may be traced back without interruption to the original enterprise or the main sponsors;

602

(4) the number of shareholders holding shares at the face value of RMB 1 000 yuan or more is not less than one thousand and the shares issued to the general public amount to twenty five percent or more of the total share issue; where the company has a registered capital of more than RMB 400 000 000 yuan, the ratio of shares issued to the general public must amount of fifteen percent or more of the total share issue;

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(5) the company must have no records of involvement in serious illegal activities in the recent three years, and its financial accounting statements must contain no false information in the same period; and

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(6) other conditions as stipulated by the State Council.

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Article 153

606

Where a joint stock limited company applies to have its shares listed and traded in a stock exchange, it shall apply to the State Council or the department of security administration authorized by the State Council for approval and submit the relevant documents as required by the law and administrative rules and regulations.

607

The State Council or the department of security administration authorized by the State Council shall approve applications for approval of the listing and trading of shares that comply with the conditions specified in this Law and shall not approve those that fail to comply with the provisions of this Law.

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Where an application for the listing and trading of shares has been approved, the approved listed company must publicly announce its report on the listing of its shares and put its application documents at a designated place for public review.

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Article 154

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Shares of an approved listed company shall be listed and traded in accordance with the relevant laws and administrative rules and regulations.

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Article 155

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Upon approval of the department of security administration under the State Council, shares of a joint stock limited company may be listed and traded in stock exchanges outside the territory of the People's Republic of China and the measures therefor shall be specially formulated by the State Council.

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Article 156

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A listed company must, in compliance with the provisions of the laws and administrative rules and regulations, regularly disclose its financial and business situations. A financial accounting report shall be publicized every half year of each fiscal year.

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Article 157

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The department of security administration under the State Council may decide to suspend the listing of the shares of a listed company if any of the following circumstances occurs:

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(1) the total share capital and the distribution of share ownership have been altered to make the company no longer satisfy the requirements necessary for listing;

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(2) the company has failed to make public its financial situation in compliance with the legal provisions or has falsified its financial accounting statements;

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(3) the company is involved in major illegal acts; or

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(4) the company has incurred losses for the past three consecutive years.

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Article 158

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Where any of the circumstances stipulated in item (2) or (3) of the preceding Article applies to a listed company and the consequences are verified to be serious, or where any of the circumstances stipulated in item (1) or (4) of the preceding Article is unable to be eliminated within the time limit and the company has become disqualified as a listed company, the department of security administration under the State Council shall decide to terminate the listing of the shares of the company.

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Where a company decides to dissolve itself, is ordered by a competent administrative department in accordance with the law to close down or is declared bankrupt, the department of security administration under the State Council shall decide to terminate the listing of the company's shares.

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Chapter V - Company Bonds

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Article 159

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A joint stock limited company, a wholly State-owned company, and a limited liability company incorporated by two or more State-owned enterprises or by two or more other State-owned investment entities may, for the purpose of raising funds for its production and operation, issue company bonds in accordance with this Law.

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Article 160

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Company bonds mentioned in this Law mean negotiable instrument issued by a company in accordance with the legal procedures with repayment of the principal and payment of the interest within a definite time limit.

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Article 161

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To issue company bonds, the following conditions must be met:

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(1) for a joint stock limited company, the value of its net asset may not be lower than RMB 30 000 000 yuan; for a limited liability company, the value of its net asset may not be lower than RMB 60 000 000 yuan;

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(2) the accumulated value of the bonds issued may not exceed forty percent of the value of the net assets of the company;

633

(3) the average distributable* profits for the past three years shall be sufficient to pay the interest on the company bonds for one years;

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(4) the funds to be raised must be invested in accordance with the industrial policies of the State;

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(5) the interest rate for the bonds shall not exceed the ceiling fixed by the State Council; and

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(6) other conditions as a stipulated by the State Council.

637

Funds raised through the issue of company bonds must be used for the purpose approved by the examination and approval authorities and shall not be used to make up the losses of the company or for non-production expenditure.

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Article 162

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In any of the following circumstances, a company may not make another issue of bonds:

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(1) if the company bonds of the previous issue have not been fully subscribed for; or

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(2) if it is a fact that the company has defaulted on, or deferred repayment of the principal and the payment of interest of its previously issued company bonds or its debts, and such default or deferment still persists. 642

Article 163 643

For a joint stock limited company and a limited liability company to issue company bonds, its board of directors shall formulate a plan therefor, and a pertinent resolution shall be adopted by the shareholders' meeting. 644

For a wholly State-owned company to issue company bonds, a decision on the approval shall be made by the State-authorized investment institution or the department authorized by the State. 645

Where a resolution or decision is made in accordance with the preceding two paragraphs of this Article, the company shall submit the matter to the department of security administration under the State Council for approval. 646

Article 164 647

The scale of the company bond issues shall be determined by the State Council. Issues of company bonds examined and approved by the department of determined by the State Council. 648

The department of security administration under the State Council shall approve the application for issuing company bonds if it conforms with the provisions of this Law and shall disapprove the application if it does not conform with the provisions of this Law. 649

If an approval that has been granted is found not to be in compliance with the stipulations of this Law, such an approval shall be withdrawn. In the event that company bonds have not yet been issued, the company shall stop issuing the bonds; if the company bond issue has already commenced, the issuing company shall refund the subscribers the money already paid for their subscriptions plus bank deposit interest calculated for the same period of time. 650

Article 165 651

Where a company applies to the department of security administration under the State Council for issuing company bonds, the following documents shall be submitted: 652

(1) the registration certificate of the company; 653

(2) the articles of association of the company; 654

(3) the method of offer of the company bonds; and 655

(4) an asset valuation report and an asset verification report. 656

Article 166

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After an application for the issue of company bonds is approved, the company shall make a public announcement of the method of offer of the company bonds.

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The method of offer of company bonds shall specify the following main particulars:

659

(1) the name of the company;

660

(2) the total amount of the bonds and their par value;

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(3) the interest rate of the bonds;

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(4) the time limit for and the method of the repayment of the principal and the payment of interest;

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(5) the beginning and ending dates of the bond issue;

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(6) the amount of the net assets of the company;

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(7) the total amount of the undue bonds issued by the company; and

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(8) the selling agency of the company bonds.

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Article 167

668

Company bonds issued by a company must clearly carry thereon items such as the name of the company, the par value, the interest rate and the time limit for repayment, and the bonds shall be signed by the chairman of the board of directors and sealed by the company.

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Article 168

670

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

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Article 169

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A company issuing company bonds shall prepare the counterfoils of bonds issued.

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When registered company bonds are issued, the counterfoils of bonds shall specify the following:

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(1) the name or title and domicile of the bondholder;

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(2) the date on which the holder acquired the bonds and their serial numbers;

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(3) the total amount of the bonds, the par value, the interest rate of the bonds and the method of and time limit for repayment of the principal and payment of interest; and

677

(4) the issuing date of the bonds.

678

Where bearer company bonds are issued, the counterfoils of the company bonds shall specify the total amount of the bonds, the interest rate, the time limit for and method of repayment of the principal and payment of interest, the issuing date of the bonds and the serial numbers. 679

Article 170 680

Company bonds may be transferred. The transfer shall be carried out at the securities exchanges established in accordance with the law. 681

The price for the transfer of the company bonds shall be agreed upon by the transferor and transferee. 682

Article 171 683

Registered bonds shall be transferred by means of endorsement by the bondholder or by other means provided for by the law or administrative rules and regulations. 684

Where registered bonds are transferred, the name and domicile of the transferee shall be recorded in the counterfoils of the company bonds. 685

Where bearer bonds are transferred, the transfer becomes effective immediately after the bondholder delivers his bonds to the transferee at a securities exchange established in accordance with the law. 686

Article 172 687

Upon adoption of a resolution by the shareholders' general meeting, a listed company may issue company bonds which can be converted into shares. The specific measures for the conversion shall be stipulated in the method of offer of the company bonds. 688

The issue of company bonds convertible into shares shall be subjected to the approval of the department of securities administration under the State Council. Company bonds convertible into shares shall, in addition to satisfying the conditions for the issue of company bonds, satisfy the conditions for the issue of shares. 689

In issuing company bonds convertible into shares, the words convertible company bonds shall be clearly indicated on the bonds and the amount of convertible company bonds shall be recorded in the counterfoils of company bonds. 690

Article 173 691

A company that issues company bonds convertible into shares shall let the bondholders convert their bonds into shares in accordance with the conversion measures. However, bondholders shall have an option whether or not to convert their bonds into shares. 692

Chapter VI - Financial Affairs and Accounting of Companies 693

Article 174 694

A company shall establish its financial and accounting system in accordance with the law, administrative rules and regulations, and the stipulations of the department in charge of financial affairs under that State Council. 695

Article 175 696

At the end of each fiscal year, a company shall prepare its financial and accounting report, which shall be examined and verified in accordance with the law. 697

The financial and accounting report shall include the following financial and accounting statements and annexed detailed schedules: 698

- (1) a balance sheet; 699
- (2) a profit and loss statement; 700
- (3) a statement on changes in the financial position of the company; 701
- (4) a statement explaining the financial situation of the company; and 702
- (5) a statement regarding the distribution of profits. 703

Article 176 704

A limited liability company shall send the financial and accounting report to each of its shareholders within the time limit stipulated in its articles of association. 705

A joint stock limited company shall make the financial and accounting report available at the company for examination by its shareholders twenty days prior to the convening of the shareholders' annual general meeting. 706

A joint stock limited company incorporated by means of share offer must announce its financial and accounting report 707

Article 177 708

When a company distributes the annual after-tax profits, it shall allocate ten percent of its profits to its statutory common reserve fund and another five to ten percent to its statutory common welfare fund. Where the accumulated amount of the statutory common reserve fund has exceeded fifty percent of the registered capital of the company, no further allocation may be made. 709

Where the statutory common reserve fund is insufficient to make up the company's losses of the previous fiscal year, the company shall apply its annual after-tax profits to making up its losses before allocating such profits, in accordance with provisions of 710

the preceding paragraph, to the statutory common reserve fund and statutory common welfare fund.

After making its allocation to the statutory common reserve fund from the company's after-tax profits, the company may, upon resolution made by the shareholders' meeting, make allocations to the discretionary common reserve fund. 711

After a company makes up its losses and makes allocations to the statutory common reserve fund and the statutory common welfare fund a limited liability company shall distribute the remaining profits to its shareholders according to the proportion of capital subscribed for by each shareholder, and a joint stock limited company shall distribute the remaining profits to its shareholders according to the proportion of the shares held by each shareholder. 712

Where the shareholders' meeting or the board of directors violate the provisions of the preceding paragraphs by distributing profits to the shareholders before making up the company's losses and making allocations to the statutory common reserve fund and the statutory common welfare fund, the profits distributed in violation of the legal provisions must be returned to the company. 713

Article 178 714

The premium income derived from issuing shares above par by a joint stock limited company in accordance with the provisions of this Law, and other income which according to the rules set by the departments in charge of financial affairs under the State Council should be entered into the capital common reserve fund, shall be entered into the capital common reserve fund of the company. 715

Article 179 716

A company's common reserve fund shall be used to make up the company's losses, to expand the production and operation of the company or to increase the capital of the company by means of conversion. 717

If a joint stock limited company converts its common reserve fund into capital upon a resolution made by the shareholders' general meeting, it shall issue new shares in proportion to the original shares held by the shareholders or increase the original par value of each share. However, when the statutory common reserve fund is converted into its capital, the remaining amount of the statutory common reserve fund shall not be less than twenty five percent of the registered capital. 718

Article 180 719

The statutory common welfare fund retained by a company shall be used for the collective welfare of the company's staff and workers. 720

Article 181

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A company shall not have any other account books in addition to its statutory account books.

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No account may be opened in the name of any individual for deposit of a company's assets.

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Chapter VII - Merger and Divisions of Companies

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Article 182

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The merger or division of a company shall require the adoption of a resolution by its shareholders' meeting of the company.

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Article 183

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The merger or division of a joint stock limited company must be approved by the department authorized by the State Council or by the people's government at the provincial level.

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Article 184

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The merger of a company may take the form of merger by absorption or merger by new establishment.

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When a company absorbs another, it is an absorption merger, and the company being absorbed shall be dissolved. When two or more companies merge to establish a new company, it is merger for new establishment, and all parties being merged shall be dissolved.

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When companies merge, the parties to a merger shall sign a merger agreement and formulate a balance sheet and a detailed inventory of assets. The company shall inform its creditors of the intended merger within ten days following the date on which the merger resolution is adopted and make at least three announcements in newspaper within thirty days. The creditors shall have the right to claim full repayment of their debts or provision of a corresponding guarantee from the company within thirty days from the date of receipt of the notice or, within ninety days from the date of the first public announcement for those who have not received the notice. The company that fails to repay its debts in full or to provide a corresponding guarantee shall not be merged.

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The claims and debts of the parties to a merger shall be succeeded to by the absorbing company or the newly established company when companies are merged.

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Article 185

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Where a company proceeds into a division, its assets shall be divided correspondingly.

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Where a company decides to divide itself, it shall formulate a balance sheet and a detailed inventory of assets and shall inform its creditors of the intended division within ten days following the date on which the division resolution is adopted, and make at least three announcements in newspaper within thirty days. The creditors shall have the right to claim full repayment of their debts or provision of a corresponding guarantee from the company within thirty days from the date of receipt of the notice or, within ninety days from the date of the first public announcement for those who have not received the notice. The company that fails to pay its debts in full or to provide a corresponding guarantee shall not be divided.

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The debts prior to the division of a company shall be assumed by the companies following the division in accordance with the agreement reached between them.

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Article 186

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Where a company intends to reduce its registered capital, it must formulate a balance sheet and a detailed inventory of assets.

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The company shall inform its creditors of the planned reduction of its registered capital within ten days following the date on which the resolution to reduce its capital is adopted, and make at least three announcements in newspaper within thirty days following the aforesaid date. The creditors shall have the right to claim full repayment of their debt or provision of a corresponding guarantee from the company within thirty days from the date of the receipt of the notice or, within ninety days from the date of the first public announcement for those who have not received the notice.

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After the reduction of capital, the amount of a company's registered capital shall not be lower than the statutory minimum.

741

Article 187

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Where a limited liability company increases its registered capital, the capital contributions to the newly increased shares subscribed for by the shareholders shall be governed by the relevant provisions of this Law regarding the subscription for capital contributions in connection with the incorporation of a limited liability company.

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Where a joint stock limited company issues new shares to increase its registered capital, shareholders shall subscribe for the new shares in accordance with the relevant provisions of this Law regarding the payment of subscription money in connection with the incorporation of joint stock limited company.

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Article 188

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Where the merger or division of a company involves changes in registered items, such changes shall be registered according to law with the Company Registration Authority. Where a company is dissolved, it shall apply for cancellation of its registration in accordance with the law. Where a new company is incorporated, the registration of the incorporation of the company shall be carried out according to law.

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Where a company increases or reduces its registered capital, it shall apply to the Company Registration Authority for registration of the changes in accordance with the law.

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Chapter VIII - Bankruptcy, Dissolution and Liquidation of Companies

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Article 189

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Where a company is declared bankrupt according to law because it is unable to pay off its due debts, a people's court shall, in accordance with relevant laws, organize the shareholders, the relevant departments and relevant professionals to form a liquidation committee which shall conduct bankruptcy liquidation of the company.

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Article 190

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Where one of the following circumstances occurs, a company may be dissolved:

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(1) the term of operation as stipulated by the articles of association of the company expires or other reasons for dissolution as stipulated by the articles of association occur;

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(2) the shareholders' meeting resolves to dissolve the company;

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(3) dissolution is necessary as a result of the merger or division of the company.

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Article 191

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Where a company is dissolved in accordance with the provisions of item (1) or (2) of the preceding Article, a liquidation committee shall be formed within fifteen days thereafter. A liquidation committee of a limited liability company shall be composed of its shareholders. Membership of a liquidation committee of a joint stock limited company shall be decided upon by its shareholders' general meeting. Where a company fails to form a liquidation committee to conduct liquidation within the time limit, its creditors may request a people's court to designate relevant personnel to form a liquidation committee and conduct liquidation. The people's court shall accept such request and without delay designate the members to the liquidation committee to conduct liquidation.

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Article 192

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Where a company is ordered to be closed down in accordance with the law due to its violation of the law or administrative rules and regulations, it shall be dissolved. In such a case, the department in charge shall organize the shareholders, relevant departments and relevant professionals to form a liquidation committee to conduct liquidation.

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Article 193

760

During liquidation, a liquidation committee shall exercise the following functions and powers:

761

(1) to check up on the company's assets, and separately formulate a balance sheet and a detailed inventory of assets;

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(2) to notify creditors by notice or announcement;

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(3) to dispose of and liquidate the company's unfinished business;

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(4) to pay off taxes owed by the company;

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(5) to clear up claims and debts;

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(6) to dispose of, after paying off the debts of the company, its remaining property; and

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(7) to participate in civil lawsuits on behalf of the company.

768

Article 194

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A liquidation committee shall inform the creditors of the company of its establishment within ten days following the date of its establishment, and make at least three announcements in newspaper within sixty days following the aforesaid date. The creditors shall declare their claims to the liquidation committee within thirty days from the date of receipt of the notice or, within ninety days from the date of the first public announcement for those who have not received the notice.

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When declaring his claims, a creditor shall specify the relevant items of the claim and provide supporting material. The liquidation committee shall register the claims.

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Article 195

772

After the liquidation committee has checked up on the company's assets, formulated the balance sheet and a detailed inventory of assets, it shall formulate a liquidation plan and shall submit such plan to the shareholders' meeting or the department in charge for confirmation.

773

Where the assets of the company are sufficient to pay off the company's debts, such

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assets shall be applied to payment of the liquidation fee, the wages and labor insurance premiums of the staff and workers of the company, due taxes and the company's debts.

The remaining assets of a company after paying off all the debts and expenses as prescribed by the preceding paragraph shall be distributed, in the case of a limited liability company, in proportion to the shareholders' capital contributions and, in the case of a joint stock limited company, in proportion to the shareholders' shares. 775

During liquidation, a company may not engage in new business activities. No assets of the company shall be distributed to the shareholders prior to full payments prescribed by the second paragraph of this Article. 776

Article 196

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If a company is liquidated due to its dissolution and the liquidation committee, having checked up on the company's assets and formulated the balance sheet and a detailed inventory of assets, discovers that there are insufficient assets in the company to pay off its debts, the committee shall apply to the people's court for a declaration of bankruptcy of the company. 778

After the people's court has ruled to declare the company bankrupt, the liquidation committee shall turn the liquidation matters over to the court. 779

Article 197

780

After the completion of liquidation, the liquidation committee shall formulate a liquidation report and submit the report to the shareholders' meeting or to the department in charge for confirmation and submit it to the Company Registration Authority in order to cancel the registration of the company and publicly announce the company's termination. If no application is made for cancellation of the company's registration, the Company Registration Authority shall revoke the business license of the company and publicly announce the revocation. 781

Article 198

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Members of a liquidation committee shall be devoted to their duties and perform their liquidation obligations in accordance with the law. 783

Members of a liquidation committee shall not accept bribes or other illegal income, or misappropriate the property of the company by taking advantage of their position and power. 784

Members of a liquidation committee who cause losses to the company or to its creditors, either willfully or through gross negligence, shall be liable for compensation. 785

Chapter IX - Branches of Foreign Companies

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Article 199

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A foreign company may, in accordance with this Law, establish a branch within the territory of the People's Republic of China to engage in production and business activities.

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A foreign company mentioned in this Law means a company registered and incorporated outside the territory of the People's Republic of China in accordance with foreign laws.

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Article 200

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A foreign company that intends to establish a branch within the territory of the People's Republic of China must submit an application to the authorities in charge in China together with relevant documents such as its articles of association and the company's registration certificate issued by its country. Upon approval, it shall apply to the Company registration Authority for registration and for a business license for the Branch according to law.

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Measures for examining and approving the establishment of branches of foreign companies shall be formulated separately by the State Council.

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Article 201

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A foreign company that establishes a branch within the territory of the People's Republic of China must appoint its representative or agent within the territory of the People's Republic of China to take charge of the branch and shall allocate to the branch funds commensurate with the business which it is to engage in.

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Where a minimum amount of operational funds is required for a branch of a foreign company, the State Council shall separately prescribe to that effect.

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Article 202

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A branch of a foreign company shall clearly indicate in its name the nationality and the form of liability of such foreign company.

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

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Article 203

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A foreign company is a foreign legal person, so its branch established within the territory

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of the People's Republic of China shall not have the status of a Chinese legal person in China.

A foreign company shall bear civil liability for the operational activities engaged by its branch within the territory of the People's Republic of China. 801

Article 204 802

the business activities engaged in within the territory of the People's Republic of China by branches of foreign companies established upon due approval must comply with the laws of China and shall not harm the social and public interest of China. The lawful rights and interests of such branches shall be protected by the laws of China. 803

Article 205 804

Where a foreign company dissolves its branch established within the territory of the People's Republic of China, it must pay off the branch's debts according to law and carry out liquidation in accordance with the relevant procedures concerning company liquidation provided for in this Law. The assets of the branch shall not be transferred out of the territory of the People's Republic of China prior to the full payment of its debts. 805

Chapter X - Legal Liability 806

Article 206 807

Where a company obtains its registration by making a false report on its registered capital, submitting falsified certificates, or resorting to other fraudulent means to conceal important facts in violation of this Law when carrying out company registration, it shall be ordered to make a rectification; where a company makes a false report on its registered capital, it shall be fined an amount of not less than five percent but not more than ten percent of the registered capital falsely reported; where a company submits falsified certificates or resorts to other fraudulent means to conceal important facts, it shall be punished with a fine of not less than RMB 10 000 yuan but not more than RMB 100 000 yuan. If the circumstances are serious, the registration of the company shall be revoked. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law. 808

Article 207 809

Where a company issues shares or company bonds by making false prospectus on share offer, false subscription forms or false methods of offer of company bonds, it shall be ordered to stop the issuance and to refund the funds it has raised and the interest 810

therefrom to the subscribers, and shall be punished with a fine of not less than one percent but not more than five percent of the funds illegally raised. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

Article 208

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Where a sponsor or a shareholder makes a false capital contribution by failing to pay the promised cash or tangible assets, or to transfer property rights, thereby deceiving the creditors and the general public, he shall be ordered to make a rectification and imposed a fine of not less than five percent but not more than ten percent of the false capital contributions. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 209

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Where a sponsor or a shareholder of a company surreptitiously withdraws his capital contribution after the incorporation of the company, rectification shall be ordered and a fine of not less than five percent but not more than ten percent of the amount of capital contribution surreptitiously withdrawn shall be imposed. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 210

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Where a company issues shares or company bonds without the approval of the relevant department in charge as stipulated by this Law, it shall be ordered to stop the issuance and to refund the funds it has raise with interest, and a fine of not less than one percent but not more than five percent of the funds illegally raised shall be imposed. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 211

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Where a company violates the provisions of this Law by setting up account books in addition to its statutory account books, it shall be ordered to make a rectification and imposed a fine of not less than RMB 10 000 yuan but not more than RMB 100 000 yuan. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Whoever deposits the assets of a company in a personal account shall be confiscated of the illegal gains and imposed upon a fine from one to five times the amount of the illegal gains. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 212

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Where a company submits to the shareholders and the general public false financial and accounting reports or reports concealing important facts, the persons in charge and other persons held directly responsible shall be imposed upon a fine of not less than RMB 100 000 yuan but not more than RMB 100 000 yuan. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 213

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Where this Law is violated by converting the State owned assets into shares at a depressed value, or selling them at low prices, or distributing them gratuitously to individuals, the persons in charge and other persons held directly responsible shall be given administrative sanctions in accordance with the law. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 214

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Where a director, a supervisor or the manager of a company takes advantage of his position and powers to accept bribes, to take other illegal gains or to misappropriate company property, he shall be confiscated of the illegal gains, ordered to return such property to the company, and imposed upon a sanction. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Where a director or the manager misappropriates company funds or lends company funds to another person, he shall be ordered to return such funds to the company; the gains derived therefrom shall belong to the company; the company shall impose a sanction upon him. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Where a director or the manager violates the provisions of this Law by providing company assets as a guarantee for personal debts of a shareholder of its company or of another person, he shall be ordered to cancel the guarantee and shall be liable for compensation in accordance with the law; the gains derived from the illegal provision of guarantee shall belong to the company. If the circumstances are serious, the company shall impose a sanction upon him.

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Article 215

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Where a director or the manager violates the provisions of this Law by engaging for his own account or for another person in the same kind of business as his company is engaged in, the income derived therefrom shall belong to the company. In addition, the company may impose a sanction upon him.

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Article 216

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Where a company fails to make allocations to its statutory common reserve fund or statutory common welfare fund in accordance with this Law, the company shall be ordered to make up the amount that it is required to allocated and shall be imposed upon a fine of not less than RMB 10 000 yuan but not more than RMB 1000 000 yuan.

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Article 217

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Where a company fails to issue a notice or make an announcement to its creditors according to this Law in case of merger, division, reduction of its registered capital or liquidation, it shall be ordered to make a rectification and be imposed upon a fine of not less than RMB 10 000 yuan but not more than RMB 100 000 yuan.

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Where a company, in the process of its liquidation, conceals property, records false information in its balance sheet or inventory of assets or, distributes the company assets prior to the full payment of its debts, it shall be ordered to make a rectification and be imposed upon a fine of not less than one percent but not more than five percent of the amount concealed or of the amount distributed prior to the full payment of the debts of the company. The persons in charge and others held directly responsible shall be imposed upon a fine of not less than RMB 10 000 yuan but not more than RMB 100 000 yuan. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 218

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Where a liquidation committee fails to submit a liquidation report to the Company Registration Authority in accordance with the provisions of this Law, or where a report submitted conceals major facts or contains major omissions, it shall be ordered to make a rectification.

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Where a member of the liquidation committee takes advantage of his position and power to practice favoritism for personal gains, seek illegal income or misappropriate the property of the company, he shall be ordered to return the property to the company, confiscated of his illegal gains and imposed upon a fine from one to five times the amount of his illegal gains. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 219

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Where an institution in charge of asset valuation, capital verification or certificate verification provides false documents of certification, the illegal income derived therefrom shall be confiscated and a fine from one to five times the amount of the illegal income shall be imposed; the relevant department in charge may order the institution to suspend its business and revoke the qualification certificates of those held directly

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responsible according to law. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

Where an institution in charge of asset valuation, capital verification or certificate verification provides by negligence reports with major omissions, it shall be ordered to make a rectification; where the circumstances are serious, a fine from one to three times the amount of the income derived therefrom shall be imposed, and the relevant department in charge may order the institution to suspend its business and revoke the qualification certificates of those held directly responsible according to law. 840

Article 220

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Where a relevant department in charge authorized by the State Council approves an application for the incorporation of a company or an application for the issue of shares that does not satisfy the conditions as stipulated in this Law, if the circumstances are serious, the persons in charge and others held directly responsible shall be given administrative sanctions according to law. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law. 842

Article 221

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Where the department of security administration under the State Council approves an application for the offer of shares, the listing of shares or the issue of bonds that does not satisfy the conditions as stipulated in this Law, if the circumstances are serious, the persons in charge and others held directly responsible shall be given administrative sanctions according to law. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law. 844

Article 222

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Where the Company registration Authority approves an application for registration which does not meet the requirements as stipulated in this Law, if the circumstances are serious, the persons in charge and others held directly responsible shall be given administrative sanctions according to law. If the case constitutes a crime criminal liabilities shall be investigated in accordance with the law. 846

Article 223

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Where departments at a level higher than the Company Registration Authority force the Company Registration Authority to approve an application for registration which does not meet the requirements as stipulated in this Law or, covers up an illegal registration, the persons in charge and others held directly responsible shall be given administrative sanctions according to law. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law. 848

Article 224

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Where a company that has not registered according to law as a “limited liability company” or a “joint stock limited company” assumes the name of limited liability company or joint stock limited company it shall be ordered to make a rectification or be banned, and a fine of not less than RMB 10 000 yuan but not more than RMB 100 000 yuan may be imposed. If the case constitutes a crime, criminal liabilities shall be investigated in accordance with the law.

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Article 225

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Where a company fails to commence its business without justification within the period of more than six months of its incorporation or, after commencing its business, suspends business at its own will for a period of six consecutive months or more, the Company Registration Authority shall revoke the company's business license.

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Where a company fails to apply for modification registration in accordance with the provisions of this Law whenever modification occurs in items of company registration, it shall be ordered to conduct modification registration within a specified time limit, a fine of not less than RMB 10 000 yuan but not more than RMB 100 000 yuan shall be imposed.

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Article 226

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Where a foreign company, in violation of the provisions of this Law, establishes a branch within the territory of the People's Republic of China without authorization, it shall be ordered to make a rectification or to be closed down, and a fine of not less than RM. 10 000 Juan but not more than RM. 100 000 Juan may be imposed.

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Article 227

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Where relevant department in charge performing examination and approval duties according to this Law refuses to approve an application which meets the statutory requirements or the Company Registration Authority refuses an application for registration which meets the statutory requirements, the party concerned may apply for reconsideration or institute an administrative lawsuit in accordance with the law.

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Article 228

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Where a company violating the provisions of this Law should assume civil liability for compensation and pay fines and penalties, and the company's property is insufficient to pay such compensation, fines and penalties, the company shall assume the civil liability for compensation first.

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Chapter XI - Supplementary Provisions

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Article 229

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Companies registered and incorporated in accordance with the law, administrative rules and regulations, local regulations or the Opinions on Standardization of Limited Liability Companies and the Opinions on Standardization of Joint Stock Limited Companies formulated by the relevant competent departments under the State Council prior to the implementation of this Law shall continue to be retained; companies which do not fully meet the requirements as stipulated in this Law shall meet all such requirements within a prescribed time limit. Specific measures for the implementation thereof shall be formulated separately by the State Council.

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Article 230

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This Law shall enter into force as of July 1, 1994.

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